Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber, Extended Composition)

14 July 2021 *

(Access to documents – Regulation (EC) No 1049/2001 – Harmonised standards – Documents concerning four harmonised standards approved by CEN – Refusal to grant access – Exception relating to the protection of the commercial interests of a third party – Protection deriving from copyright)

In Case T-185/19,

Public.Resource.Org, Inc., established in Sebastopol, California (United States),

Right to Know CLG, established in Dublin (Ireland),

represented by F. Logue, Solicitor, A. Grünwald, J. Hackl and C. Nüßing, lawyers,

applicants,

v

European Commission, represented by G. Gattinara, F. Thiran and S. Delaude, acting as Agents,

defendant,

supported by

European Committee for Standardisation (CEN), and the other interveners, whose names are listed in the annex,[1] represented by U. Karpenstein, K. Dingemann and M. Kottmann, lawyers,

interveners,

APPLICATION on the basis of Article 263 TFEU for annulment of Commission Decision C(2019) 639 final of 22 January 2019 refusing to grant a request for access to four harmonised standards adopted by CEN,

THE GENERAL COURT (Fifth Chamber, Extended Composition),

composed of S. Papasavvas, President, D. Spielmann, U. Öberg, O. Spineanu-Matei (Rapporteur) and R. Norkus, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 10 November 2020,

* Language of the case: English.

1 The list of the other interveners is annexed only to the version sent to the parties.

gives the following

Judgment

I. Background to the dispute

1 On 25 September 2018, the applicants, Public.Resource.Org, Inc. and Right to Know CLG, non-profit organisations whose main focus is to make the law freely accessible to all citizens, made a request to the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), for access to documents held by the Commission ('the request for access').

2 The request for access concerned four harmonised standards adopted by the European Committee for Standardisation (CEN), in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ 2012 L 316, p. 12), namely standard EN 71-5:2015, entitled 'Safety of toys – Part 5: Chemical toys (sets) other than experimental sets'; standard EN 71-4:2013, entitled 'Safety of toys – Part 4: Experimental sets for chemistry and related activities'; standard EN 71-12:2013, entitled 'Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances'; and standard EN 12472:2005+A 1:2009, entitled 'Method for the simulation of wear and corrosion for the detection of nickel released from coated items' ('the requested harmonised standards').

3 By letter of 15 November 2018, the Commission, on the basis of the first indent of Article 4(2) of Regulation No 1049/2001, refused to grant the request for access ('the initial refusal decision').

4 On 30 November 2018, the applicants, pursuant to Article 7(2) of Regulation No 1049/2001, submitted a confirmatory application to the Commission. By decision of 22 January 2019, the Commission confirmed the refusal to grant access to the requested harmonised standards ('the confirmatory decision').

II. Procedure and forms of order sought

5 By application lodged at the Court Registry on 28 March 2019, the applicants brought the present action.

6 By document lodged at the Court Registry on 10 July 2019, CEN and 14 national standardisation bodies, namely the Asociación Española de Normalización (UNE), the Asociația de Standardizare din România (ASRO), the Association française de normalisation (AFNOR), Austrian Standards International (ASI), the British Standards Institution (BSI), the Bureau de normalisation/Bureau voor Normalisatie (NBN), Dansk Standard (DS), the Deutsches Institut für Normung eV (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV),

Standard Norge (SN), the Suomen Standardisoimisliitto ry (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission.

7 By order of 20 November 2019, *Public.Resource.Org and Right to Know* v *Commission* (T-185/19, not published, EU:T:2019:828), the President of the Fifth Chamber of the General Court granted the application for leave to intervene. The interveners lodged the statement in intervention and the main parties lodged their observations on that statement within the prescribed periods.

8 On a proposal from the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral part of the procedure.

9 By order of 17 June 2020, the Court (Fifth Chamber), pursuant to Article 91(c), Article 92(1), and Article 104 of the Rules of Procedure, ordered the Commission to produce the requested harmonised standards and decided that they would not be communicated to the applicants. The Commission complied with that measure of inquiry within the prescribed period.

10 On a proposal from the Fifth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to assign the case to the Fifth Chamber sitting in extended composition.

11 On a proposal from the Judge-Rapporteur, the Court (Fifth Chamber, extended composition), by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure, put written questions to the parties, asking them to reply both before the hearing and at it. The parties replied in writing to certain questions within the prescribed period and presented oral argument and answered the other questions put by the Court at the hearing on 10 November 2020. At the hearing, the applicants stated to the Court that by the action they sought only the annulment of the confirmatory decision, which was noted in the minutes of the hearing.

12 The applicants claim, further to the clarification referred to in paragraph 11 above, that the Court should:

– annul the confirmatory decision;

– order the Commission to pay the costs.

13 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

14 The interveners contend that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

III. Law

A. Admissibility

15 The interveners argue that the action is inadmissible since the applicants have no legal interest in bringing proceedings. In the interveners' view, inasmuch as the applicants, first, could access the requested harmonised standards free of charge for non-commercial purposes through libraries, secondly, could access those standards and use them for any purpose in return for the payment of a 'reasonable' fee, and, thirdly, have in fact owned since 2015 (that is, well before their request for access to the documents in 2019) a copy of at least three of the four requested harmonised standards, they have no interest in bringing the present proceedings.

16 It follows from the Court's case-law that any action for annulment brought by a natural or legal person must be based on an interest on the part of the applicant in bringing proceedings (see, to that effect, order of 24 September 1987, *Vlachou* v *Court of Auditors*, 134/87, EU:C:1987:388, paragraph 8) and that non-compliance with that essential prerequisite, which it is for that natural or legal person to prove, constitutes an absolute bar to proceeding with a case, which the EU Courts may raise of their own motion at any time (see, to that effect, orders of 7 October 1987, *G. d. M.* v *Council and ESC*, 108/86, EU:C:1987:426, paragraph 10, and of 21 July 2020, *Abaco Energy and Others* v *Commission*, C-436/19 P, not published, EU:C:2020:606, paragraph 80).

17 In that regard, it should be noted that it is settled case-law that an action for annulment brought by a natural or legal person is admissible only in so far as the applicant has an interest in the annulment of the contested measure. Such an interest presupposes that the annulment of the contested measure must of itself be capable of having legal consequences and that the action must be likely, if successful, to procure an advantage for the party who brought it. That interest must be vested and present and is evaluated as at the date on which the action is brought. The interest must continue until the final decision, failing which there will be no need to adjudicate (see judgment of 19 December 2019, *XG* v *Commission*, T-504/18, EU:T:2019:883, paragraphs 30 and 31 and the case-law cited).

18 In the specific context of disputes concerning access to documents on the basis of Regulation No 1049/2001, a person who is refused access to a document or to part of a document has, by virtue of that very fact, established an interest in the annulment of the decision refusing access (see judgment of 5 December 2018, *Falcon Technologies International* v *Commission*, T-875/16, not published, EU:T:2018:877, paragraph 29 and the case-law cited).

19 In the present case, the parties agree that the Commission did not grant the applicants access to the requested harmonised standards.

20 In those circumstances, having regard to the case-law referred to in paragraph 18 above, the applicants have an interest in obtaining the disclosure of the requested harmonised standards under Regulation No 1049/2001 and, accordingly, in seeking annulment of the confirmatory decision. In the present case, the applicants, despite the possibility to consult copies of the requested harmonised standards in public libraries, may invoke an interest in bringing proceedings since, by that consultation, they do not achieve full satisfaction in the light of the objectives they pursued by their request for access (see, to that effect, judgment of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraph 47) and therefore retain a genuine interest in gaining access to those harmonised standards on the basis of Regulation No 1049/2001.

21 That is all the more the case since, as the applicants maintain without being contradicted on that point by the Commission or the interveners, the requested harmonised standards are available only in a very limited number of libraries, sometimes only in one library in a Member State or in libraries which are not open to the public, and their accessibility is excessively difficult in practice.

22 As regards paid access to the requested harmonised standards via points of sale managed by the national standardisation bodies, it must be noted that that does not in any way correspond to the objective pursued by the applicants to obtain freely available access to those standards which is without charge and does not reveal an absence or even a loss of interest in bringing proceedings (see, to that effect and by analogy, judgment of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraph 47).

23 In the light of the above, the interveners' arguments relating to a lack of interest in bringing proceedings on the part of the applicants must be rejected, without it being necessary to examine the admissibility of those arguments.

B. Substance

24 In support of the action, the applicants rely on two pleas in law, alleging, first, errors of law and of assessment in the application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001, aimed at protecting commercial interests, and, secondly, errors in law as regards the existence of an overriding public interest, within the meaning of the last clause of Article 4(2) of that regulation, and infringement of the obligation to state reasons.

1. First plea in law: errors of law and of assessment in the application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001, aimed at protecting commercial interests

25 The applicants dispute, in essence, the application in the present case of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001 on the grounds that, first, copyright protection cannot be applicable to the requested harmonised standards and, secondly, no harm to the commercial interests of CEN and its national members has been established.

26 The applicants divide the first plea into three parts. The first and second parts allege errors of law related to the application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001. The third part alleges an error of assessment as to the effect on commercial interests.

(a) The first part: errors of law consisting of the wrongful application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001

27 The applicants submit that since the requested harmonised standards form part of 'EU law', they should be accessible freely and without charge, with the result that no exception to the right of access can apply to them. According to the applicants, private rights cannot be granted with respect to a 'text of the law', which must be freely accessible to all and, accordingly, those standards cannot be protected by copyright. In support of their line of argument they rely on the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821).

28 The Commission, supported by the interveners, disputes the applicants' arguments.

29 In that regard, it is important to reiterate that, having been adopted on the basis of Article 255(2) EC (now Article 15(3) TFEU), the purpose of Regulation No 1049/2001, as stated in recital 4 and Article 1 thereof, is to give the public the widest possible right of access to EU institutions' documents. In accordance with Article 2(3) of that regulation, that right covers both documents drawn up by those institutions and documents received from third parties, which includes any legal person, as expressly stated in Article 3(b) of that regulation.

30 The right of access to documents held by the EU institutions is, however, subject to certain limits, based on public or private interest grounds. More specifically, and in reflection of recital 11 of that regulation, Article 4 of Regulation No 1049/2001 lays down a system of exceptions authorising the institutions to refuse access to a document where its disclosure would undermine one of the interests protected by that provision.

31 Among the exceptions to the right of access is that set out in the first indent of Article 4(2) of Regulation No 1049/2001, which states that 'the [EU] institutions shall refuse access to a document where disclosure would undermine the protection of … commercial interests of a natural or legal person, including intellectual property, … unless there is an overriding public interest in disclosure'.

32 In the case of documents emanating from third parties, Article 4(4) of Regulation No 1049/2001 states that the EU institution is to consult the third party with a view to assessing whether the exceptions laid down in Article 4(1) or (2) of the regulation may be applied, unless it is clear that the document should or should not be disclosed. If the institution concerned considers that it is clear that access to a document emanating from a third party must be refused on the basis of the exceptions laid down in Article 4(1) or (2), it is to refuse access to the applicant without even having to consult the third party from which the document originates, whether or not that third party has previously refused a request for access to those same documents made on the basis of that regulation.

33 Lastly, as regards the discretion enjoyed by EU institutions when dealing with requests for access to documents from third parties, it should be pointed out that the provisions of Regulation No 1049/2001, establishing, subject to the exceptions which it lists, a right of access to all the documents held by an institution must be implemented effectively by the institution to which the request for access is addressed.

34 Consequently, in accordance with Article 8 of Regulation No 1049/2001, ultimate responsibility for the proper application of that regulation lies with the EU institution and it is also for the latter to defend the validity of a decision refusing access to documents emanating from a third party before the Courts of the European Union or the Ombudsman. If, in a situation involving documents from third parties, the institution were required to accept automatically the reasons given by the third party concerned, it would be forced to defend – vis-à-vis the person making the request for access and, in some cases, before those review bodies – positions which it does not itself consider to be defensible (see, to that effect and by analogy, judgment of 14 February 2012, *Germany* v *Commission*, T-59/09, EU:T:2012:75, paragraph 47).

35 In the present case, it is apparent from the arguments put forward by the parties that they do not agree, in the first place, as to the scope and intensity of the review which the EU institution concerned, in the present case, the Commission, must carry out in the procedure referred to in Article 4(4) of Regulation No 1049/2001 relating to the existence and consequences of purported copyright protection for requested documents originating from a third party, for the purposes of applying the exception laid down in the first indent of Article 4(2) of that regulation.

36 The Commission, supported by the interveners, maintains that it is not entitled, when examining an application made under Regulation No 1049/2001 for access to documents, to call into question the existence of copyright protection for the requested documents that has been accorded to a third party by the 'applicable national law'.

37 The applicants, in turn, criticise the Commission for not verifying that the conditions for the existence of copyright over the requested harmonised standards in favour of CEN were satisfied. In so doing, they implicitly but necessarily recognise the Commission's power to carry out an exhaustive review of the existence and consequences of alleged copyright protection for requested third party documents.

38 In the second place, the parties disagree on the eligibility of the requested harmonised standards to be subject to copyright protection inasmuch as they form part of EU law and, consequently, to come under the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001.

39 Therefore, it is necessary to examine the applicants' arguments concerning, first of all, an error of law in the application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001 in that the Commission found that there was an effect on commercial interests stemming from copyright protection for the requested harmonised standards (see paragraph 35 above), and, secondly, an error of law connected with the eligibility of those harmonised standards to be subject to copyright protection inasmuch as they are part of EU law (see paragraph 38 above).

40 In the first place, it must be pointed out that copyright is an intellectual property right which guarantees legal protection for the creator of an original work, which remains, notwithstanding progressively closer harmonisation, largely governed by national law. Its existence and the scope of its protection, and more particularly exceptions to that protection, which are not the subject of either EU harmonising provisions or international provisions to which the European Union or its Member States are bound, continue to be defined by the laws of the Member States (see, to that effect, Opinion of Advocate General Jääskinen in *Donner*, C-5/11, EU:C:2012:195, points 24 and 27).

41 Furthermore, under Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works, signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), in the amended version of 28 September 1979 ('the Berne Convention'), the enjoyment and the exercise of copyright are not to be subject to any formality (principle of 'automatic protection').

42 Moreover, the scope of copyright protection for the same work may differ according to the place where that protection is sought. Accordingly, under Article 5(3) of the Berne Convention, protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he or she is protected under that convention, that person is to enjoy in that country the same rights as national authors. By contrast, in accordance with paragraph 2 of that article, the extent of protection, as well as the means of redress afforded to the author to protect his or her rights, is to be governed exclusively by the laws of the country where protection is claimed (the principle of the 'independence' of protection).

43 In those circumstances, it must be held that it is for the authority which has received a request for access to third-party documents, where there is a claim for copyright protection for those documents, inter alia, to identify objective and consistent evidence such as to confirm the existence of the copyright claimed by the third party concerned. Such a review corresponds in fact to the requirements inherent in the division of competences between the European Union and the Member States in the field of copyright.

44 It is in the light of those considerations that the General Court must examine whether the Commission complied with the scope of the review which it was required to carry out when applying the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001 (see paragraph 35 above).

45 In that regard, it should be noted that, first, in the initial refusal decision, the Commission, in order to justify the applicability of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001, refers to the copyright over the requested harmonised standards belonging to CEN as a European organisation governed by private law which holds a right of ownership over all its publications, including European standards. Consequently, the Commission found that disclosure of those harmonised standards, 'could undermine the protection of commercial interests of a legal person, including intellectual property … as CEN [was] the copyright owner of all deliverables produced by their respective technical committees' and that, 'consequently, the copyright and

exploitation rights (distribution and sales) on any CEN publication (including draft European standards) belong exclusively to CEN and its national members from whom the (draft) standards [could] be obtained'.

46 In the confirmatory decision, the Commission rejects the applicants' allegations related to the lack of copyright protection for the requested harmonised standards, stating that, 'contrary to what [they] allege[d], the [harmonised standards were] protected by copyright [despite the fact that they did] contain data which [could] be considered as factual or relating to procedures'. In addition, in response to the applicants' criticisms that the originator of those harmonised standards was not consulted, it referred to the position paper of CEN and CENELEC of 17 May 2017 on the consequences of the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), in which those organisations had 'as copyright holders for European standards, explicitly considered that, on the basis of [that judgment] there were no grounds to challenge their copyright and distribution policies of harmonised standards'. The Commission 'consequently … considered that the consultation under Article 4(4) of Regulation … No 1049/2001 was not necessary as the position of the originator of the documents, the copyright holder in question, was already made publicly known by the abovementioned position paper'.

47 It follows that the Commission based its finding on the existence of copyright protection for the requested harmonised standards on objective and consistent evidence such as to support the existence of the copyright claimed by CEN for those standards.

48 Secondly, in the confirmatory decision, the Commission states that, 'the texts of the [requested harmonised] standards, while taking into account the specific requirements provided for in the legislation they support, were drafted by [their] authors in a way that is sufficiently creative to deserve copyright protection', that 'the length of the texts implies that the authors had to make a number of choices (including in the structuring of the document), which results in the document being protected by copyright' and that, 'consequently, [those harmonised standards] as a whole [make them] an original work of authorship, deserving protection under the copyright rules'. In carrying out such an analysis, it thus assessed, from the perspective of the threshold of originality which a product must attain in order to constitute a 'work' in terms of the case-law, whether those harmonised standards were capable of being protected by copyright. Although the condition of originality required for a product to be eligible for that protection remains governed by the laws of the Member States, it follows from the Court's settled case-law on the interpretation of the autonomous concept of 'work' that, if a subject matter is to be capable of being regarded as original, it is both necessary and sufficient that the subject matter reflects the personality of its author, as an expression of his or her free and creative choices (see judgment of 11 June 2020, *Brompton Bicycle*, C-833/18, EU:C:2020:461, paragraph 23 and the case-law cited). In the light of that case-law, the Commission was entitled, without committing any error, to find that the necessary threshold of originality for the harmonised standards in question had been met in the present case.

49 It follows from all of the foregoing that the Commission cannot be accused of any error of law connected with the scope of the review required of it when applying the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001 in order to find that there was an effect on commercial interests stemming from copyright protection for the requested harmonised standards.

50 In the second place, the applicants, in support of their line of argument concerning an error of law related to the eligibility of the requested harmonised standards to be subject to copyright protection, in so far as they form part of EU law, invoke the fact that they are 'texts of law' and the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821).

51 In that regard, it must be borne in mind that a harmonised standard is defined in Article 2(c) of Regulation No 1025/2012 as a technical specification adopted by a European standardisation organisation on the basis of a request made by the Commission for the application of EU harmonisation legislation, with which compliance is not compulsory.

52 In the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), the Court of Justice held in particular that a harmonised standard such as that at issue in the main proceedings, adopted on the basis of [secondary legislation] and the references to which have been published in the *Official Journal of the European Union*, forms part of EU law (paragraph 40).

53 It should be noted, as has the Commission, that it is in no way apparent from the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), that the Court of Justice declared invalid the system of publication of harmonised standards laid down in Article 10(6) of Regulation No 1025/2012, by which only the references of those standards are to be published. On the contrary, the Court pointed to the choice of the EU legislature to make the legal effects attached to a harmonised standard subject solely to the prior publication of its references in the C Series of the Official Journal (judgment of 27 October 2016, *James Elliott Construction*, C-613/14, EU:C:2016:821, paragraphs 37, 40 and 43).

54 In those circumstances, the applicants are wrong to claim that, since the Court of Justice held in the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821) that the requested harmonised standards formed part of 'EU law', those harmonised standards should be freely accessible without charge with the result that no exception to the right of access can be applied to them.

55 In the light of all of the foregoing considerations, the first part of the first plea must be rejected.

(b) The second part: errors of law relating to the application of the exception laid down by the first indent of Article 4(2) of Regulation No 1049/2001

56 According to the applicants, even if copyright protection for the requested harmonised standards was theoretically possible, it was not applicable to the harmonised standards in question because they do not constitute a 'personal intellectual creation' for the purposes of the case-law of the Court of Justice, which is necessary in order to be able to benefit from such protection.

57 In that regard, as noted in paragraph 40 above, since the conditions for the enjoyment of copyright protection, the extent of the protection for that right, and more particularly exceptions to that protection, remain governed by the laws of the Member States, which are free to determine the protection to be given to official texts of a legislative, administrative or judicial nature, and, as is apparent from the case-law, those conditions may be contested solely before the courts of the Member States (see, to that effect and by analogy, Opinion 1/09 (Agreement creating a Unified Patent Litigation System) of 8 March 2011, EU:C:2011:123, paragraph 80, and order of 5 September 2007, *Document Security Systems* v *ECB*, T-295/05, EU:T:2007:243, paragraph 56), the Commission was not authorised, contrary to the applicants' arguments, to examine the conditions required by the applicable national law for the purpose of checking the veracity of copyright protection for the requested harmonised standards as such an examination goes beyond the scope of the review which it was empowered to carry out in the procedure for access to documents.

58 Furthermore, there is no support at all for the applicants' argument that CEN, when drafting the requested harmonised standards, does not exercise free and creative choices.

59 The applicants argue, first, that the requested standards 'merely consist of lists of technical characteristics and/or test methods and therefore there is no genuine creative choice available to the drafter which could be considered to be the expression of the author's personality or his or her own intellectual creation' and, secondly, that 'there is also no room for any free or creative choices with respect to the design of [those harmonised standards], for example, regarding layout, structure, language, or any other of their key features [because] these aspects of standard-setting are governed by [their] own sets of standards which heavily restrict any potential room for creativity [by] standard-setting bodies'. However, they merely make assertions, without substantiating their claims with any analysis or refuting the Commission's arguments set out in the confirmatory decision (see paragraph 48 above) as to the degree of originality of those harmonised standards, which is apparent from the length of the texts at issue, which implies choices by the authors, including in the structuring of the documents. Moreover, they do not specify how the restrictions on creativity which are imposed by the standardisation legislation are such that those harmonised standards are not capable of reaching the threshold of originality required at EU level.

60 Consequently, the second part of the first plea must be rejected.

(c) The third part: error of assessment of the effect on commercial interests

61 The applicants argue that the Commission has not established how disclosure of the requested harmonised standards would undermine the commercial interests of CEN and its national members. They submit that, even if copyright protection for those harmonised standards was theoretically possible and even if the harmonised standards in question were regarded as a personal intellectual creation, the confirmatory decision should still be annulled given that the Commission has not proved the alleged infringement of the commercial interests of CEN as the author of those same harmonised standards.

62 The Commission, supported by the interveners, disputes the applicants' arguments.

63 In that regard, it should be observed that in order to justify refusal of access to a document, it is not sufficient, in principle, for that document to fall within an activity or an interest mentioned in Article 4 of Regulation No 1049/2001. The institution concerned must also show how access to that document could specifically and actually undermine the interest protected by an exception laid down in that article and that the risk of that interest being undermined is reasonably foreseeable and not purely hypothetical. The same applies in respect of a third party where he or she is consulted in the context of the consultation procedure provided for in Article 4(4) of Regulation No 1049/2001, since the purpose of that article is to enable the institution to assess whether an exception laid down in paragraph 1 or 2 of that article should apply (see judgment of 5 February 2018, *Pari Pharma* v *EMA*, T-235/15, EU:T:2018:65, paragraph 69).

64 In the present case, it is clear from the confirmatory decision that the Commission based its refusal to disclose the requested harmonised standards on two connected but different infringements of the commercial interests of CEN and its national members, namely, first, the protection of those harmonised standards by copyright and, secondly, the risk of a very large fall in the fees collected by CEN and its national members in return for access to those harmonised standards, if access to them could be obtained free of charge from the Commission.

65 In that regard, it should be borne in mind, as the Commission submits, that the sale of standards is a vital part of the standardisation bodies' business model. Freely available access to those standards without charge would call that model into question and would oblige those bodies to reconsider entirely the way in which they are organised, thus creating significant risks for the production of further standards and the possibility of having a method which shows that a product is deemed to comply with the requirements established by EU legislation by using a uniform method.

66 Thus, to the extent that, as was observed in connection with the first and second parts of the first plea (see paragraph 47 above), the Commission was justified in finding that the requested harmonised standards were covered by copyright protection, under which they were accessible to interested parties solely after the payment of certain fees (see paragraph 19 above), their disclosure for free on the basis of Regulation No 1049/2001 could specifically and actually affect the commercial interests of CEN and its national members, in terms of the case-law cited in paragraph 63 above.

67 In any event, as the Commission rightly argues, supported by the interveners, in the context of the first indent of Article 4(2) of Regulation No 1049/2001, freely available public access to the standards would undeniably undermine the protection of CEN's intellectual property since those standards are subject to licensing conditions imposed on buyers. The absence of any kind of control over the disclosure of the standards would evidently have an impact on CEN's commercial interests.

68 That conclusion is not called into question by the applicants' argument that, in the process of drawing up the requested harmonised standards, CEN acts as a public authority by performing public functions which are not subject to any commercial interest.

69 In that regard, in accordance with Article 10 of Regulation No 1025/2012, harmonised standards are to be drafted or, as necessary, revised by one of the three European standardisation organisations, at the initiative and under the direction and supervision of the Commission. To that end, that regulation recognises three European standardisation organisations, namely CEN, the European Committee for Electrotechnical Standardisation (Cenelec) and the European Telecommunications Standards Institute (ETSI). Those organisations are non-profit associations; CEN and Cenelec are governed by Belgian private law and ETSI by French law.

70 Contrary to the applicants' submission, it is in no way apparent from the provisions governing the European standardisation system that, in the standards development process, CEN acts as a public authority by performing public functions which are not subject to any commercial interests.

71 The fact that the European standardisation organisations, including CEN, contribute to the performance of tasks in the public interest by providing certification services relating to compliance with the applicable legislation does not in any way alter their status as private entities engaged in an economic activity (see, to that effect and by analogy, judgment of 5 December 2018, *Falcon Technologies International* v *Commission*, T-875/16, not published, EU:T:2018:877, paragraph 47).

72 In that regard, it should be noted, as did the Commission, that if a publicly owned undertaking may hold commercial interests, the same must apply a fortiori to a private entity, even if it contributes to the performance of tasks in the public interest (see, to that effect and by analogy, judgment of 5 December 2018, *Falcon Technologies International* v *Commission*, T-875/16, not published, EU:T:2018:877, paragraph 49).

73 It follows from all of the foregoing that, in accordance with the first indent of Article 4(2) of Regulation No 1049/2001, the Commission demonstrated that disclosure of the requested harmonised standards could specifically and actually undermine the commercial interests of CEN or its national members and that the risk of those interests being undermined was reasonably foreseeable and not purely hypothetical, in terms of the case-law cited in paragraph 63 above.

74 Consequently, the third part of the first plea and that plea in its entirety must be dismissed.

2. Second plea in law: errors of law as regards the existence of an overriding public interest within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001 and breach of the obligation to state reasons

75 The applicants complain that the Commission erred in law in considering that no overriding public interest, within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, justified disclosure of the requested harmonised standards and that it failed to give sufficient reasons for its refusal to recognise the existence of an overriding public interest.

76 This plea is divided into three parts. The first alleges an error of law as regards the existence of an overriding public interest requiring free access to the law. The second concerns an error of law relating to the existence of an overriding public interest owing to the obligation of transparency in environmental matters. The third part alleges an inadequate statement of reasons for the Commission's refusal to recognise the existence of an overriding public interest.

77 It is appropriate to examine the third part of the second plea first of all.

(a) The third part: inadequate statement of reasons for the Commission's refusal to recognise the existence of an overriding public interest

78 First, the applicants submit that the Commission did not give sufficient reasons in the confirmatory decision for its rejection of the arguments put forward in the confirmatory application regarding the existence of an overriding public interest justifying access to the requested harmonised standards.

79 In that regard, the applicants submit that the Commission remained silent in relation to the most important arguments which they had put forward in their confirmatory application relating to the implications of the requested harmonised standards being classified as 'EU law' by the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821). More specifically, they submit that the Commission does not explain, in particular, why their argument on the need to have access to the law in a state governed by the rule of law should not be regarded as constituting an overriding public interest.

80 Secondly, according to the applicants, the Commission did not explain its reasoning with regard to the balancing of the conflicting interests in the present case, in terms of the case-law arising from the judgment of 1 July 2008, *Sweden and Turco* v *Council* (C-39/05 P and C-52/05 P, EU:C:2008:374), and, in so doing, has led them to believe that such a balancing exercise was not carried out.

81 The Commission disputes the applicants' arguments and submits that it stated to the requisite legal standard the reasons for its refusal to recognise the existence of an overriding public interest.

82 As a preliminary point, it must be observed that the obligation to state reasons is a general principle of EU law, enshrined in the second paragraph of Article 296 TFEU and in Article 41(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), under which any legal act adopted by the EU institutions must state the reasons on which it is based (see judgment of 6 February 2020, *Compañía de Tranvías de la Coruña* v *Commission*, T-485/18, EU:T:2020:35, paragraph 19 and the case-law cited). That obligation on the part of EU institutions to state the reasons on which a decision is based is not merely taking formal considerations into account, but is intended to enable the EU judicature to exercise its power to review the lawfulness of the decision and the persons concerned to know the reasons for the measure adopted so that they can defend their rights and ascertain whether or not the decision is well founded. Thus, the parties concerned can make genuine use of their right to a judicial remedy only if they have precise knowledge of the content of and the reasons for the act in question (see judgment of 28 November 2019, *Mélin* v *Parliament*, T-726/18, not published, EU:T:2019:816, paragraph 40 and the case-law cited).

83 In the context of applying the provisions of Regulation No 1049/2001, it has been held that the purpose of the obligation for the institution to state the reasons for its decision refusing to grant access to a document is, first, to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested and, secondly, to enable the Courts of the European Union to review the lawfulness of the decision. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted (see judgment of 6 February 2020, *Compañía de Tranvías de la Coruña* v *Commission*, T-485/18, EU:T:2020:35, paragraph 20 and the case-law cited).

84 According to the case-law, the obligation to state reasons does not however require the institution concerned to respond to each of the arguments put forward during the procedure preceding the adoption of the contested decision (see judgment of 25 September 2018, *Psara and Others* v *Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 134 and the case-law cited).

85 In the present case, it should be noted that in part 4 of the confirmatory decision, headed 'No overriding public interest in disclosure', the Commission responded to the applicants' arguments in the confirmatory application related to the purported existence of overriding public interests stemming, first, from the interpretation given by the Court of Justice in the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), and, secondly, from alleged obligations of transparency in environmental matters.

86 In that regard, first, the Commission stated that, as it had explained in part 2.1 of the confirmatory decision, which concerned conditions for the protection of the commercial interests of a natural or legal person, the effects of the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), had to be considered in the context in which that judgment was delivered. Consequently, according to the Commission, that judgment '[did] not create the obligation of proactive publication of the harmonised standards in the Official Journal, nor [did] it establish an automatic overriding public interest in their disclosure'.

87 Secondly, the Commission rebutted the applicants' claims related to the obligations of transparency in environmental matters, deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a natural or legal person, arguing, in essence, that they do not apply in the present case.

88 Thirdly, the Commission added that it had not, moreover, been able to identify any overriding public interest justifying such disclosure.

89 It follows that the confirmatory decision does indeed state, succinctly but clearly, that the applicants had not put forward any argument capable of demonstrating the existence of an overriding public interest in disclosure of the requested harmonised standards. The Commission furthermore added that it had not been able to identify any overriding public interest justifying such disclosure.

90 Moreover, in so far as, by some of their arguments, the applicants are in fact challenging the merits of the statement of reasons in the confirmatory decision as to the absence of an overriding public interest in disclosure of the requested harmonised standards, such arguments are ineffective in the context of this part of the plea.

91 Lastly, it should be borne in mind that, even though the Commission is required to set out the reasons justifying the application to the particular case of one of the exceptions to the right of access provided for by Regulation No 1049/2001, it is not however required to provide more information than is

necessary in order for the person requesting access to understand the reasons for its decision and for the Court to review the legality of that decision (see, to that effect, judgment of 26 March 2020, *Bonnafous* v *Commission*, T-646/18, EU:T:2020:120, paragraph 25 and the case-law cited).

92 In those circumstances, the third part of the second plea must be rejected.

(b) The first part: error of law as regards the existence of an overriding public interest requiring free access to the law

93 The applicants submit that even if the requested harmonised standards may be covered by the exception relating to the effect on commercial interests, there was an overriding public interest in disclosure of those harmonised standards within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, consisting of ensuring free access to the law. More specifically, the fact that those harmonised provisions are part of EU law, 'result[s] in the constitutional imperative to freely access the Requested Standards'.

94 According to the applicants, since the requested harmonised standards form part of EU law, as the Court of Justice held in its judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), there is an 'automatic overriding public interest' justifying the disclosure of those harmonised standards. They rely inter alia on the principle of legal certainty, which can be guaranteed only by proper publication of the law in the official language of the addressee of that law. They also refer to the case-law of the European Court of Human Rights on the accessibility of the law. They also emphasise the link between the accessibility of standards and the proper functioning of the internal market. Lastly, they submit that the principle of good administration, laid down in Article 41 of the Charter, and the free movement of goods and the freedom to provide services, guaranteed in Articles 34 and 56 TFEU, require free access to the standards.

95 In any event, the applicants submit that the confirmatory decision disregards the last clause of Article 4(2) of Regulation No 1049/2001 since the Commission failed to examine the existence of a public interest in disclosure and, more generally, to weigh the interests served by disclosure against those opposing such disclosure. In that regard, they dispute the assertion that they merely put forward general considerations which were not capable of establishing that the principle of transparency was especially pressing in the present case. The reference to the particular nature of the requested harmonised standards was sufficient in the present case to provide proof of the existence of a particular public interest in disclosure for the purposes of that provision.

96 The Commission, supported by the interveners, disputes the applicants' arguments.

97 It must be observed, as a preliminary point, that even in cases such as the present, in which the Commission relies on a general presumption in order to refuse access to the documents requested pursuant to the first indent of Article 4(2) of Regulation No 1049/2001, the possibility of demonstrating that there is an overriding public interest which justifies the disclosure of the documents, in accordance with the last clause of Article 4(2), is not ruled out (see, to that effect, judgment of 25 September 2014, *Spirlea* v *Commission*, T-306/12, EU:T:2014:816, paragraph 90 and the case-law cited).

98 By contrast, the onus is on the party arguing for the existence of an overriding public interest to rely on specific circumstances to justify the disclosure of the documents concerned and that setting out purely general considerations cannot provide an appropriate basis for establishing that an overriding public interest prevails over the reasons justifying the refusal to disclose the documents in question (see judgment of 11 May 2017, *Sweden* v *Commission*, C-562/14 P, EU:C:2017:356, paragraph 56 and the case-law cited).

99 In the present case, the applicants are in fact seeking to remove entirely the category of harmonised standards from the scope of application of the system of substantive exceptions established by Regulation No 1049/2001 on the generic ground that they form part of 'EU law', which should be freely accessible to the public without charge.

100 However, in the first place, having regard to the case-law referred to in paragraph 98 above, setting out such general considerations is not sufficient for the purposes of establishing that an overriding public interest in having freely available access without charge to EU law, including the harmonised standards, even if it proves to be genuine, would prevail over the reasons justifying the refusal to disclose those standards.

101 First, aside from general claims as to the need to make 'EU law' accessible, the applicants do not substantiate the specific grounds which would justify the disclosure of the requested harmonised standards in the present case. In particular, they do not explain to what extent the disclosure of those harmonised standards ought to prevail over the protection of the commercial interests of CEN or its national members. In that regard, it must be emphasised that, as is apparent from the case-law cited in paragraph 98 above, while the burden of proof, when applying the exception in the first indent of Article 4(2) of Regulation No 1049/2001, rests on the EU institution invoking that exception, in so far as the last clause of Article 4(2) of that regulation is concerned, it is, by contrast, for the party alleging an overriding public interest, within the meaning of that clause, to prove that interest.

102 Secondly, even if the applicants' general allegations concerning the existence of a public interest in the guarantee of access to harmonised standards that is freely available and without charge were to be accepted, the disclosure of the requested harmonised standards in the present case is unlikely to serve that interest. Irrespective of the nature of the right to which their design gives rise for their creators, access to harmonised standards remains subject to restrictions, such as the payment of the fees established by the national standardisation bodies on the basis of the system of European standardisation or the consultation for free in certain libraries. It is thus necessary to endorse the Commission's assessment that the public interest in ensuring the functioning of the European standardisation system, the aim of which is to promote the free movement of goods while guaranteeing an equivalent minimum level of safety in all European countries, prevails over the guarantee of freely available access to the harmonised standards without charge.

103 In the second place, the approach chosen by the applicants, which seek court-mandated freely available access to the harmonised standards that is without charge by means of the mechanism established by Regulation No 1049/2001, without however challenging the European standardisation system, cannot be regarded as appropriate. Indeed, Regulation No 1025/2012 first, as noted in paragraph 53 above, expressly provides for a system of publication which is limited to the references of harmonised standards only and, secondly, as stated in paragraph 19 above, allows for paid access to those standards for those wishing to benefit from the presumption of conformity attached to them.

104 In that regard, it should be noted that the Commission found in the confirmatory decision that there was no overriding public interest justifying the disclosure of the requested harmonised standards under the last clause of Article 4(2) of Regulation No 1049/2001. According to the Commission, the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), relied on by the applicants in support of their argument concerning the existence of an overriding public interest in ensuring accessibility to the law, does not create an obligation of proactive publication of the harmonised standards in the Official Journal, nor does it establish an automatic overriding public interest in their disclosure.

105 That assessment by the Commission is not vitiated by any error.

106 The applicants' argument is based on inferences which they themselves draw from the classification of harmonised standards as 'EU law' by the Court of Justice in its judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821). Accordingly, they submit, in essence, that the fact that harmonised standards belong to EU law 'result[s] in the constitutional imperative to freely access the Requested Standards'.

107 Apart from the fact that the applicants do not state the exact source of a 'constitutional principle' which would require access that is freely available and free of charge to harmonised standards, they do not in any way explain the reason why those standards should be subject to the requirement of publication and accessibility attached to a 'law', inasmuch as those standards are not mandatory, they produce the legal effects attached to them solely with regard to the persons concerned, and they may be consulted for free in certain libraries in the Member States.

108 The first part of the second plea in law must therefore be rejected.

(c) The second part: error of law relating to the existence of an overriding public interest owing to the obligation of transparency in environmental matters

109 The applicants submit, first, that the requested harmonised standards contain environmental information, which results in an overriding public interest justifying their disclosure, in accordance with Article 5(3)(b) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), as implemented by Article 4(2)(a) of Regulation No 1367/2006. Secondly, the harmonised standards concern emissions into the environment and, as a result, there is an overriding public interest in their disclosure, for the purpose of Article 6(1) of that same regulation.

110 The Commission, supported by the interveners, contests the applicants' arguments.

111 In that regard, it should be observed that, as with Regulation No 1049/2001, the objective of Regulation No 1367/2006, as provided for in Article 1 thereof, is to ensure the widest possible systematic availability and dissemination of environmental information held by the institutions and bodies of the European Union.

112 In order to examine the applicants' arguments relating to the existence of an overriding public interest owing to the obligation of transparency in environmental matters, it is necessary to ascertain, assuming that the requested harmonised standards contain environmental information, whether that would have sufficed to conclude that there was an overriding public interest in their disclosure. Next, the Court must, if necessary, analyse whether the harmonised standards in question concern emissions into the environment, so that, in accordance with Article 6(1) of Regulation No 1367/2006, an overriding public interest in their disclosure would be deemed to exist.

(1) The existence of an overriding public interest in cases of requests for environmental information

113 The applicants argue, in essence, that pursuant to Article 5(3)(b) of the Aarhus Convention, as implemented by Article 4(2)(a) of Regulation No 1367/2006, the Commission was required actively to disseminate the requested harmonised standards.

114 In that regard, it should be noted that both Article 5(3)(b) of the Aarhus Convention and Article 4(2)(a) of Regulation No 1367/2006 govern the obligation actively to disseminate information on the environment, without establishing an 'overriding public interest' in that regard.

115 It must be pointed out, as the Commission does, that the first sentence of Article 6(1) of Regulation No 1367/2006 is the only provision in that regulation which contains a clear and specific reference to an 'overriding public interest' and that it concerns only situations in which the information requested relates to emissions into the environment.

116 In addition, the second sentence of Article 6(1) of Regulation No 1367/2006 refers only to a 'public interest' in disclosure and not to an 'overriding' public interest within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001. It cannot therefore be inferred from the second sentence of Article 6(1) of Regulation No 1367/2006 that there is always an overriding public interest in the disclosure of environmental information (see, to that effect and by analogy, judgment of 23 September 2015, *ClientEarth and International Chemical Secretariat* v *ECHA*, T-245/11, EU:T:2015:675, paragraph 189).

117 It follows from the foregoing considerations that an overriding public interest in the disclosure of the requested harmonised standards cannot be inferred from the mere fact, assuming that fact were established, that they contain environmental information.

118 In any event, as is apparent from Article 5(3)(b) of the Aarhus Convention, as implemented by Article 4(2)(a) of Regulation No 1367/2006, the obligation actively to disseminate environmental information is limited to texts of EU legislation on the environment or relating to it, and to policies, plans and programmes relating to the environment. While they form part of EU law, the requested harmonised standards do not, however, fall within the category of EU legislation, which is strictly circumscribed by the Treaties and comes within the exclusive competence of the EU's own institutions entrusted with powers in that regard. It follows that the applicants' argument that the Commission was required actively to disseminate the requested harmonised standards is based on the erroneous premiss that those harmonised standards fall within the category of 'EU legislation on the environment or relating to it'.

119 Furthermore, both the Aarhus Convention and Regulation No 1367/2006 provide for public access to environmental information either on request or as part of active dissemination by the authorities and institutions concerned. However, since the authorities and institutions may refuse a request for access to information where that information falls within the scope of a number of exceptions, it necessarily follows that they are under no obligation actively to disseminate that information. Were matters otherwise, the exceptions concerned would cease to serve any useful purpose, which is manifestly incompatible with the spirit and the letter of the Aarhus Convention and that regulation (see, to that effect and by analogy, judgment of 13 September 2013, *ClientEarth* v *Commission*, T-111/11, EU:T:2013:482, paragraph 128).

(2) The existence of information relating to emissions into the environment within the meaning of Article 6(1) of Regulation No 1367/2006

120 It is apparent, in essence, from Article 1(1)(b) of Regulation No 1367/2006, read in conjunction with Article 2(1)(d) of that regulation, that the objective of that regulation is to guarantee the right of access to information on factors, such as emissions, affecting or likely to affect the elements of the environment referred to in Article 2(1)(d)(i) of that regulation, including the air, water and soil.

121 In that regard, the first sentence of Article 6(1) of Regulation No 1367/2006 lays down a legal presumption that the disclosure of 'information … [which] relates to emissions into the environment', with the exception of information relating to investigations, is deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a particular natural or legal person, with the result that the protection of those commercial interests may not be invoked to preclude the disclosure of that information. By establishing such a presumption, that article merely allows actual implementation of the principle that the public should have the widest possible access to

information held by the institutions and bodies of the European Union (see, to that effect, judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 54).

122 However, it follows from the wording of the first sentence of Article 6(1) of Regulation No 1367/2006 that that provision concerns information which 'relates to emissions into the environment', that is to say information which concerns or relates to such emissions and not information with a direct or indirect link to emissions into the environment. That interpretation is confirmed by point (d) of the first subparagraph of Article 4(4) of the Aarhus Convention, which refers to 'information on emissions' (judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 78).

123 In the light of the objective set out in the first sentence of Article 6(1) of Regulation No 1367/2006 of ensuring a general principle of access to 'information … [which] relates to emissions into the environment', that concept must be understood to include, inter alia, data that will allow the public to know what is actually released into the environment or what, it may be foreseen, will be released into the environment under normal or realistic conditions of use of the product or substance in question, namely those under which the authorisation to place that product or substance on the market was granted and which prevail in the area where that product or substance is intended to be used. Consequently, that concept must be interpreted as covering, inter alia, information concerning the nature, composition, quantity, date and place of the actual or foreseeable emissions, under such conditions, from that product or substance (judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 79).

124 It is also necessary to include in the concept of 'information [which] relates to emissions into the environment' information enabling the public to check whether the assessment of actual or foreseeable emissions, on the basis of which the competent authority authorised the product or substance in question, is correct, and the data relating to the effects of those emissions on the environment. It is apparent, in essence, from recital 2 of Regulation No 1367/2006 that the purpose of access to environmental information provided by that regulation is, inter alia, to promote more effective public participation in the decision-making process, thereby increasing, on the part of the competent bodies, the accountability of decision-making and contributing to public awareness and support for the decisions taken. In order to be able to ensure that the decisions taken by the competent authorities in environmental matters are justified and to participate effectively in decision-making in environmental matters, the public must have access to information enabling it to ascertain whether the emissions were correctly assessed and must be given the opportunity reasonably to understand how the environment could be affected by those emissions (judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 80).

125 On the other hand, while it is not necessary to apply a restrictive interpretation of the concept of 'information [which] relates to emissions into the environment', that concept may not, in any event, include information containing any kind of link, even direct, to emissions into the environment. If that concept were interpreted as covering such information, it would to a large extent deprive the concept of 'environmental information' as defined in Article 2(1)(d) of Regulation No 1367/2006 of any meaning. Such an interpretation would deprive of any practical effect the possibility, laid down in the first indent of Article 4(2) of Regulation No 1049/2001, for the institutions to refuse to disclose environmental information on the ground, inter alia, that such disclosure would have an adverse effect on the protection of the commercial interests of a particular natural or legal person and would jeopardise the balance which the EU legislature intended to maintain between the objective of transparency and the protection of those interests. It would also constitute a disproportionate interference with the protection of business secrecy ensured by Article 339 TFEU (see, to that effect, judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 81).

126 In addition, while the concept of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006, cannot be limited to information concerning emissions actually released into the environment, it does not include however information relating to hypothetical emissions (see, to that effect, judgment of 23 November 2016, *Commission* v *Stichting Greenpeace Nederland and PAN Europe*, C-673/13 P, EU:C:2016:889, paragraph 72 and the case-law cited and paragraph 73).

127 In the present case, according to the Commission, which is not contradicted on this point by the applicants, the requested harmonised standards merely describe tests and methods designed to comply with safety requirements, before certain products are placed on the market. They do not contain any information affecting or likely to affect the elements of the environment referred to in Article 2(1)(d)(i) of Regulation No 1367/2006, but have information on the best ways to make toys safer and to avoid some of the effects of nickel where it is in prolonged contact with the skin.

128 As the Commission rightly submits, the mere fact that the requested harmonised standards relate in part to substances and contain some information on the maximum amounts of chemical mixtures and substances certainly does not create a sufficient link with actual or foreseeable emissions for the purposes of the case-law referred to in paragraphs 123 and 124 above.

129 It follows from the foregoing that the requested harmonised standards do not come within the sphere of 'information [which] relates to emissions into the environment' so as to be subject to the application of the presumption laid down in the first sentence of Article 6(1) of Regulation No 1367/2006.

130 The second part of the second plea in law must therefore be dismissed, as must, therefore, that plea in its entirety and the action.

IV. Costs

131 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

132 In this case, since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by it.

133 Lastly, under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in paragraphs 1 and 2 of that article to bear its own costs. In the present case, CEN, the UNE, the ASRO, the AFNOR, ASI, the BSI, the NBN, DS, the DIN, the NEN, the SNV, SN, the SFS, the SIS and the ISS are to bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Public.Resource.Org, Inc. and Right to Know CLG to bear their own costs and to pay those incurred by the European Commission;**

3. **Orders the European Committee for Standardisation (CEN), the Asociación Española de Normalización (UNE), the Asociația de Standardizare din România (ASRO), the Association française de normalisation (AFNOR), Austrian Standards International (ASI), the British**

Standards Institution (BSI), the Bureau de normalisation/Bureau voor Normalisatie (NBN), Dansk Standard (DS), the Deutsches Institut für Normung eV (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV), Standard Norge (SN), the Suomen Standardisoimisliitto ry (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) to bear their own costs.

Papasavvas Spielmann Öberg

Spineanu-Matei Norkus

Delivered in open court in Luxembourg on 14 July 2021.

E. Coulon
Registrar

S. Papasavvas
President