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Project Report: Copyright and Standards

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This policy brief was written by Linda Zhou, Bas Tissing, and Freek van den Oetelaar of the Glushko & Samuelson Information Law and Policy Lab (ILP Lab) at the Institute for Information Law (IViR), University of Amsterdam, in collaboration with the Clinic Law Incubator.

The ILP Lab is a student-run, IViR-led initiative that develops and promotes research-based policy solutions to protect fundamental rights and freedoms in European information law.

This report was produced in the context of a project carried out in collaboration with Public.Resource.Org. It reflects the findings, recommendations, and conclusions of the ILP Lab authors.

We are grateful for the comments received from Carl Malamud and Dr Olia Kanevskaia.

Contents

Introduction

This report sets out the research conducted to examine the legal, institutional and policy consequences of the landmark judgement in Case C-588/21P *Public.Resource.Org and Right to Know v Commission and Others* in 2024 in the Netherlands. The case has sparked significant debate, as it touches upon European law, the standardisation policies of European and national entities and public governance, and directly challenges the longstanding practice of restricting access to harmonised technical standards ("HTS") referenced in EU legislation.

1.1 Purpose and scope

The purpose of our research is to find out how and to what extent the Dutch government and the Dutch standardisation body, Nederlands Normalisatie Instituut, ("NEN") have implemented the judgment by the CJEU. Specifically, we investigate whether the Netherlands has adjusted its practices and legal frameworks to ensure that HTS, once incorporated by reference into legislation, are made freely accessible to the public, and what difficulties Dutch citizens might face when enforcing their right to access legal norms. For that reason, our own research is limited in geographical scope and confined to Dutch institutions. We will enrich our research by comparing our findings with the results of a similar research project in France, conducted by students from DigiLaw (SciencesPo).[1]

1.2 Relevance for policy and governance

The relevance for this research for policy and governance lies in its focus on national-level implementation. While the CJEU sets a clear precedent, stating that HTS referenced in EU legislation must be freely accessible, it is up to Member States to interpret and apply its implications within their own administrative and legal systems. Our research aims to shed light on how the Netherlands navigates the tension between European legal obligations, fundamental democratic principles and the longstanding practices in technical standardisation. Additionally, our comparative analysis with the findings of French students offers valuable insight into the potential fragmentation within the European legal landscape resulting from the ruling.

1.3 Structure of the report

Our report is structured as follows: we will first analyse the nature of the initial legal dispute, the arguments brought before the Court, the dispute parallel to the landmark judgment and the broader implications of the ruling for both EU institutions, Member States and EU citizens (chapter 2 and 3). We then discuss the practical implications and NEN's motivations (chapter 4). Afterward, we will examine how the main judgment can be applied in practice by individuals, explore the relevant national legal framework, and present our findings on its

[1] L. Dsouza, E. Maranaku & L. Pecht: 'Access to Public Harmonized Safety Standards', a presentation held at IViR (Amsterdam) on February 11th, 2025.

implementation in the Netherlands. This includes the results of our efforts to exercise the right of access to information, followed by a critical discussion of the arguments put forward by Dutch government bodies (chapter 5). Lastly, we will compare our results with the findings of the Digilaw clinic at SciencesPo in France, ultimately shedding light on how EU Member States are implementing the judgment in their own country (chapter 6).

Section 1: The Legal Framework

2. The CJEU rulings

2.1 Public.Resource.Org v. European Commission

At the center of this dispute is the tension between democratic legitimacy and private intellectual property. The question arises whether HTS that have been cited in EU legislation can be hidden behind a paywall, or whether they must be freely accessible as part of the law.[2]

Public.Resource.Org, Inc. and Right to Know CLG are two non-profit organisations whose main mission is to make the law freely accessible to all citizens.[3] They requested access to four HTS adopted by The European Committee for Standardization ("CEN"), arguing that the public has access to standards that have been referenced in EU legislation once incorporated into law. The Commission denied access to the harmonised standards, arguing that disclosure of harmonised standards conflicts with copyrights of standardisation organisations and are subject to licensing agreements with the European Standardisation Organisations (ESOs) like the CEN.[4]

The organisations base their claims on Article 15(3) TFEU, which determines the right of access to documents held by EU institutions, and Regulation 1049/2001 on public access to documents of EU bodies.[5] They argue that a standard must be considered part of EU law once it is referenced in binding EU legislation, and should therefore be made available to the public without restriction or difficulties. Individuals should be able to know and understand the laws that bind them, as is required by the principle of legal certainty. This can only be possible if they are able to access EU legislation at any given time.[6]

While the General Court initially sided with the Commission, the Court of Justice of the European Union (CJEU) reversed that ruling, deciding that standards integrated into law, must be freely available. However, the CJEU did not elaborate on the copyright status of harmonised standards, leading to legal uncertainty about the implications of such a ruling on the copyrights of standardisation bodies like the CEN.[7] Following the judgment, the EU and

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[2] The European Commission has since expressed their desire to turn to 'common specifications' instead of harmonised standards, meaning that they will be writing the standards themselves.
[3] PublicResourceOrg has filed two additional cases in the General Court, T-53/25 and T-581/24.
[4] *PublicResourceOrg v European Commission* [2024] CJEU ECLI:EU:C:2024:201 / C-588/21 [16–20].
[5] Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/1, art 15(3); 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 [2001] OJ L145/43
[6] ibid 52–64.
[7] *See also this blogpost for an analysis on the copyrightability of harmonised standards:* Eleonora Rosati and Olia Kanevskaia, 'Harmonized Technical Standards under EU Copyright: The

Member States also need to reassess their reliance on private regulatory governance mechanisms and how they approach standardisation.[8]

2.2 International Electrotechnical Commission v. European Commission

Parallel to the dispute is the case of the International Standard Organisation (ISO) and the International Electrotechnical Commission (IEC) against the European Commission, in a separate but related conflict.[9] The IEC is an international standardisation body that plays a role in developing technical standards references across multiple EU regulatory frameworks. The legal dispute was initiated in response to the CJEU's *Public.Resource.Org* judgment and the Commission's shifting position on access to harmonised standards.

IEC argues that the *Public.Resource.Org* judgment did not sufficiently address whether there was an overriding public interest in favour of disclosing standards. They further argue that the judgment undermines the financial model of international standardisation institutions and that the Commission violates contractual and copyright obligations once they disclose or facilitate the access to the standards that are developed by the IEC and referenced in EU law.

According to the IEC, the standards are proprietary works protected under copyright law. The economic viability of the standardisation system depends on revenues from licensing fees charged to users who seek access to the content of these documents. Making these standards publicly available would threaten this business model and deter future innovation and cooperation with regulatory bodies.[10]

This case exposes the ambiguity between private governance and public law. While the Commission increasingly facilitates public access to legislation as they are institutionally responsible for upholding fundamental principles, private standardisation bodies fear that unrestricted access could destabilise the existing standardisation system and undermine the trust and collaborative relationship between public and private actors. The dispute with the IEC might possibly lead to institutional reform and new licensing frameworks.

2.3 Key legal principles established or confirmed

Several legal principles can be derived from these two disputes in the reassessment between EU law, intellectual property rights, and the public's right to access legal norms.

The first is that legal acts that are part of EU law must be accessible to the public without restrictions and that this also applies to harmonised technical standards, as the presumption of conformity with the law is too strong to use other means of demonstrating compliance.[11] This essentially grants the standards a legislative character and brings them within the scope of EU legislative transparency requirements.[12] This also reflects the

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Public.Resource.Org Judgment' (*The IPKat*) <https://ipkitten.blogspot.com/2024/07/harmonized-technical-standards-under-eu.html> accessed 16 June 2025.

[8] *Public.Resource.Org v. European Commission* (n 4) paras 70–85.

[9] *International Electrotechnical Commission and European Commission* [2024] CJEU Case T-631/24. doi:10.1017/err.2024.64.

[10] *International Electrotechnical Commission v European Commission* [2024].

[11] Olia Kanevskaia, 'Is It Really All about the Money? The Future of European Standardization after *PublicResourceOrg*' (2025) 16 European Journal of Risk Regulation 344, 345.

[12] ibid 347.

democratic principle that laws must be known and understood by all who are subjected to them, even if they are developed by private third parties. The judgment by the CJEU emphasizes that the right to access legal norms override copyright claims when standards are referenced in legislation.

Secondly, intellectual property rights cannot justify the restriction of public access to legal norms, and the exercise of this right can therefore be limited. This creates a legal exception within the IP framework, recognising that copyrights of private entities must give way to the public interest in transparency and legal certainty. So even though harmonised standards may normally be protected by copyright, once they become part of EU law, they must be freely accessible and copyright protections cannot be used to block that access. This ensures that legal norms remain open to the public, prioritising democratic accountability over exclusive economic rights such as copyrights.[13]

These principles highlight the willingness of EU bodies to protect fundamental rights and democratic values and may influence future EU policy on legislative drafting and standardisation policies.

3. Individual right or positive state obligation?

In this section, we will examine the legal implications of the CJEU ruling for EU Member States and civilians who might be obligated to comply with a harmonized standard. In this context, a key question arises: is the civilian, in principle, expected to actively request the harmonized standard, or is it up to the EU Member State to provide a broad accessibility to all harmonized standards? To answer this question, we will delve deeper into the arguments raised in the CJEU cases and in critical comments of legal scholars.

3.1 Individual right to request access

The CJEU judgment in *Public.Resource.Org* (C-588/21 P) reaffirms the individual right of access to HTS under Regulation (EC) No 1049/2001. This regulation guarantees that any EU citizen, or natural/legal person residing in a Member State, has a right to request access to documents held by EU institutions, including the European Commission. The applicants in this case invoked this right to challenge the Commission's refusal to disclose the HTS incorporated by reference into EU legislation.[14]

Crucially, both the Court and the Advocate General emphasized that this right is not merely procedural but derives from fundamental EU principles, especially the rule of law (Article 2 TEU) and transparency (Articles 1 and 10(3) TEU, Article 15 TFEU and Article 42 CFR). These principles require that individuals can ascertain their rights and obligations under EU law.[15] Since HTS acquire binding legal effect and become part of EU law once referenced in the Official Journal of the European Union (OJEU), access to them is essential for ensuring legal compliance. The Court therefore annulled the Commission's refusal, arguing that there was an overriding public interest in disclosure that outweighed any commercial interest in maintaining copyright protection.[16]

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[13] Alexandru Soroiu, 'The Fall of The Great Paywall for EU Harmonised Standards' [2024] Verfassungsblog <https://verfassungsblog.de/eu-harmonised-standards/>.
[14] *Public.Resource.Org v. European Commission* (n 4) paras 52–54.
[15] ibid 81–86; *Opinion of Advocate General Medina delivered on 22 June 2023 PublicResourceOrg, Inc and Right to Know CLG v European Commission* [2021] ECJ Case C-588/21 P [46–49].
[16] *Public.Resource.Org v. European Commission* (n 4) para 71.

This ruling establishes a clear individual entitlement: any citizen or resident of the EU can request access to HTS held by an EU institution, and such requests must generally be granted when the HTS in question specify legally binding obligations and affect legal certainty.

3.2 A positive obligation for public accessibility?

The *Public.Resource.Org* judgment confirms the individual right to request access to HTS and also implies a broader obligation for public authorities, including the Commission and possibly Member States, to ensure their proactive and public accessibility. Although the Court did not explicitly mandate the publication of HTS in the OJEU, there are convincing arguments that its reasoning seems to reveal a systemic concern for legal certainty and democratic accountability that transcends a case-by-case disclosure model.

For starters, the CJEU reaffirmed that HTS form part of EU law once their references are published in the OJEU. This is a result of the legal effects they produce, especially the presumption of conformity they confer under EU legislation.[17] The Court emphasized that these standards are not created independently of the EU legal framework: they are initiated, financed, and validated by the Commission, which plays a central role in their standardisation lifecycle. Furthermore, it is often "difficult, or even impossible" for economic operators to rely on alternative compliance methods, rendering HTS de facto mandatory.[18]

In this context, the Court relied heavily on its previous ruling in CJEU *Stichting Rookpreventie Jeugd*, where it held that technical standards which produce legal effects must be published to be binding on individuals.[19] While that case concerned ISO standards, the CJEU in *Public.Resource.Org* made no distinction between de jure and de facto obligations, focusing instead on the binding consequences for affected parties.[20] This supports the view that HTS must be published, not merely accessible on request, when they define individual rights, obligations, and compliance requirements. Advocate General Medina was more explicit, arguing that HTS "should be published in the Official Journal in order to meet requirements of enforceability and legal certainty."[21]

Academic commentary has strongly supported this broader interpretation. Alexandru Soroiu describes the ruling as imposing a "proactive publication obligation," grounded in the principles of the rule of law and transparency. He states that citizens needing to actively request access to the standard should be regarded as an additional burden, not in line with principles of transparency.[22] Sunimal Mendis and Olia Kanevskaia argue that denying public access to HTS disproportionately harms SMEs and consumers, and even undermines fundamental rights such as the right to information and freedom to conduct a business.[23]

In conclusion, while the Court's judgment technically resolved an access request, its reasoning certainly implies a de facto systemic obligation for public authorities to dismantle the paywall around HTS. This challenges the existing business model of ESOs and calls for a regulatory shift that fully aligns with the public character of EU law.

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[17] ibid 74–77.
[18] ibid 72–75.
[19] *Stichting Rookpreventie Jeugd* [2022] CJEU ECLI:EU:C:2022:101 / Case C-160/20 [48].
[20] *Public.Resource.Org v. European Commission* (n 4) paras 74–80.
[21] *Opinion of Advocate General Medina delivered on 22 June 2023. Public.Resource.Org, Inc. and Right to Know CLG v European Commission.* (n 15) para 65.
[22] Soroiu (n 13).
[23] Rosati and Kanevskaia (n 7).

Section 2: Practical Implications and Legal Leverage

We can now turn to the practical implications of the CJEU ruling in an EU Member State, specifically the Netherlands. The following paragraphs take the perspective of a natural or legal person legally required to comply with a harmonised standard. The previous findings show two main routes that could (or should) provide this person with the full content of the standard: either (i) the government actively ensures that the HTS is available for free, without any additional burdens or resources, or (ii) the person should at least get access to the technical standard after a specific request.

We examined both routes in the Netherlands. We will explain both processes that a Dutch citizen can follow and then present our findings from our own attempts to acquire access to specific HTS.

4. Proactive publication by Dutch public bodies

4.1 The NEN Connect portal

The first place where a Dutch person would look for technical standards is the official national standardization institute, NEN. At a first glance, it appears that the Netherlands has taken some steps to respond to the *Public.Resource.Org* ruling: NEN has launched a dedicated webpage listing about 150 European HTS that are freely accessible. This page links to the 'NEN Connect' portal, where registered users can view more standards, with registration itself being free.[24]

However, our review revealed significant limitations. Some HTS are fully accessible, while others are available only in read-only format; and a majority remain behind a paywall. Several standards could not be found in the portal at all. In total, a few hundred standards are freely viewable (mostly in read-only), compared to an estimated 5,000 harmonised EU standards.[25] Interestingly, the site also states that access is provided "without prejudice to the rights of copyright holders," reflecting the CJEU's position that HTS are not automatically exempt from copyright protection.[26] While legally defensible, this disclaimer may sow confusion about user rights. In our view, it risks undermining the accessibility the Court intended.

4.2 'Who pays?' The motivations behind NEN's practices

To better understand this situation, we spoke directly with representatives of NEN.[27] They confirmed that a joint process with the European Commission and CENELEC is underway to

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[24] Harmonized European Standards, NEN Connect, Last accessed July 23 2025, https://connect.nen.nl/portal/Registreren/Vrij-Beschikbare-Normen/Geharmoniseerde-Europese-normen/de

[25] *Public.Resource.Org* database.

[26] Harmonized European Standards, NEN Connect, Last accessed July 23 2025, https://connect.nen.nl/portal/Registreren/Vrij-Beschikbare-Normen/Geharmoniseerde-Europese-normen/de

[27] Samantha Hoogstrate (Legal Counsel) and Jappe van der Zwan (MT member, digital products Business Unit Manager).

determine which standards can be made public via portals. The current NEN Connect portal is one result of this effort. While NEN manages the implementation at the national level, decisions about which standards become publicly accessible are ultimately made by the Commission. NEN's role is therefore largely consultative.

NEN emphasized that it is a non-profit organisation whose income from standard sales funds the development of new standards. While they support the principle of lowering access barriers, they also stressed that full open publication without a subsidy or alternative financial model could jeopardize their capacity to facilitate the development of standards. Additionally, while NEN, as one of the larger ESOs, may be relatively resilient in case of further public access, other standardisation bodies may be more severely affected. In their view, this would affect the majority of ESOs.

The broader tension here reflects a deeper structural issue: HTS are developed by NEN in cooperation with private actors and are typically hidden behind a paywall, yet these standards are eventually integrated into EU law and become binding for the public. This raises the question of whether the development of such standards should become the responsibility of the public. NEN counters this by pointing to the strength of its consensus-based process, which includes procedural guarantees to involve all relevant stakeholders. According to NEN, this model leads to high acceptance and compliance within the private sector. This acceptance could be undermined if the process were shifted entirely into the public domain.

In sum, NEN's response offered valuable insights into the post-judgment implementation process and the complex interplay between legal obligation and institutional reality. While the NEN Connect portal is a step towards improved accessibility, it is part of a broader, EU-driven initiative. The underlying structural and financial tensions currently remain unresolved, and the risk of fragmentation across Member States persists if no harmonised framework is adopted.

5. Leveraging an individual right to request

The previous findings lead us to the second possibility for a Dutch civilian to try and gain access to HTS: by requesting access through a public administrative body. Continuing from the legal framework and the leveraging mechanics, this paragraph describes our findings in trying to request some HTS ourselves. Starting with a short description of the Open Government Act ('Wet Open Overheid'), the following chapter describes how we tried to gain access to certain standards. We conclude by discussing our findings.

5.1 Wet Open Overheid

The Wet Open Overheid ("Woo") makes the Dutch government more transparent by giving everyone the right to access public information. It applies to all public bodies, including ministries, municipalities, provinces, and water authorities. Replacing the older *Wet openbaarheid van bestuur* (*Wob*), the Woo came into force on 1 May 2022 and applies to all administrative bodies (e.g. ministries, municipalities, provinces).

In practice, this means that anyone (e.g. citizens, journalists or companies) can submit a Woo request to ask for government documents or data, for example about policy decisions, public spending, or contracts. This right is established in art. 4(1) Woo. The public body must respond within four weeks, with a possible two-week extension (art. 4(4)).

However, not all information has to be disclosed. There are exceptions listed in art. 5(1), such as in which cases releasing information would harm national security, ongoing investigations, or personal privacy. Authorities must weigh the interest of transparency against potential harm. Besides responding to requests, public bodies are also required to proactively publish certain types of information, like organizational structures, meeting documents, or subsidies (art. 3(3)).

To support proper implementation and oversight, an independent advisory board was established under art. 8(2). Overall, the Woo aims to strengthen public trust by making government operations more open and accessible. After a decision on a Woo-request, according to Dutch administrative law (Algemene wet bestuursrecht), the applicant has six weeks to file a formal appeal with the governing body.

5.2 Gaining access through the Woo

5.2.1 What standards?

This research began by identifying specific standards that, in light of the CJEU judgment in *Public.Resource.Org*, the government is obligated to make public. For the standards to be subject to this 'mandatory disclosure' we're discussing, the standards used by the Dutch government must be based on a European Directive or Regulation and it must be published in the Government Gazette. So in assessing the standards, we started by looking for standards published or mentioned in the Government Gazette. For instance, we found a publication on amending the Dutch Packaging Management Regulation ('Regeling beheer verpakkingen') that mentioned five standards.[28] From there, we examined the underlying legal basis of the Regulation: the Decree on Packaging Management (or 'Besluit beheer verpakkingen').

The next requirement is to assess whether the Dutch legislation is built on European law. So, the Decree must mention a European legislative instrument. The Decree states that one must comply with one or more requirements of Appendix II of Directive 94/62/EG. According to Article 9(2)(a-b), this requirement is met when one complies with a HTS that has been published in the Official Journal of the European Communities, or by the National legislators. As stated, the standards we're discussing have been published by the Dutch government in the Government Gazette. In Appendix I of this report, you will find an overview of the ways we assessed all requested standards.

5.2.2 The Woo request

In the Dutch system, as mentioned, Woo requests are open to anyone and do not meet a lot of formal requirements. The only things required to mention in a request are:

- Contact details, including telephone number;
- That it concerns a Woo request;
- The subject matter;
- Which or what type of documents are involved; and
- The period concerned.

[28] Staatscourant 2019, 4279 (https://zoek.officielebekendmakingen.nl/stcrt-2019-4279.html); NEN-EN 13427, NEN-EN 13428, NEN-EN 13429, NEN-EN 13430, NEN-EN 13431 en NEN-EN 13432.

For the Woo requests, we wrote up a format that we used for all the requests. The format can be found in Appendix II, in both Dutch and (machine translated) English.

5.2.3 Formal requests

As stated at the beginning of this chapter, the governing bodies generally have four weeks to respond to the request. However, it is widely known that Dutch governing bodies do not have the capacity to respond to all the requests in time.[29] It was therefore not surprising that we quickly received a statement of deferral for two weeks, which is lawful under article 4(4) Woo. Within the eventual statutory period of six weeks, the governing bodies responded to all the requests. Although the text and wording used by the bodies were slightly different, the message was the same throughout all the responses.

Firstly, our requests would fall outside of the scope of the Open Government Act (Woo), because the information we have requested is already public and accessible to everyone. This is substantiated by stating that the NEN-standards can already be bought at https://www.nen.nl. Secondly, they stated that it is possible to view the standards at the NEN office in Delft. This would mean that the NEN standards you refer to are already public. Lastly, they made a reference to the CJEU case, stating that this decision (only) refers to EU Regulation 1049/2001 and therefore does not have any effect on national legislation, such as the Woo.

You can find one of the Woo decisions, as well as a (machine translated) English version in Appendix III.

5.2.4 Findings

First, one of our predictions was confirmed: Dutch governing bodies lack sufficient capacity to respond to formal Woo requests within the required timeframe; at least not in the first four weeks as determined by law. Another one of our predictions was confirmed as well: all Woo requests were denied on the grounds that the documents were already considered publicly available. However, in our reading of the law, the meaning of ‘publicly available’ does not include documents available behind a paywall, or on a location which one can only visit on appointment, without the possibility of making copies or taking photos. We will get back to this in more detail in the next step, which is the formal appeal.

5.3 Formal appeal

In the previous section, we described the grounds on which the governing bodies denied our Woo request. In this chapter, we will describe the grounds on which we filed our formal appeal.

5.3.2 Legal basis: the CJEU judgement

The CJEU judgment shows that HTS, the references of which have been published in the OJEU, have legal effects and must therefore be considered part of EU law. The Court explicitly states:

[29] See for an example this recent article on the national Dutch news channel: Ministeries doen nog langer over behandeling informatieverzoek

> '*In the light of the foregoing considerations, it must be held [...] that the requested harmonised standards form part of EU law.*'[30]

And further:

> '*By the effects conferred on it by EU legislation, a harmonised standard may specify the rights conferred on individuals as well as their obligations.*'[31]

As we explained before in more detail, the Court concludes that access to these standards, without hindrance and free of charge, follows from the principle of the rule of law, transparency and the right of access to legislation.[32] It can therefore be concluded that publication is not optional, but mandatory.

5.3.3 Counterargument: the definition of 'Publicly Accessible'

According to the Dutch government, our requests would fall outside of the scope of the Open Government Act (Woo), because the requested information is already public and accessible to everyone. This is substantiated by stating that the NEN-standards can already be bought at https://www.nen.nl. Secondly, they stated that it is possible to view the standards at the NEN office in Delft. This would mean that the NEN standards you refer to are already public. Lastly, they made a reference to the CJEU case, stating that this decision (only) refers to EU Regulation 1049/2001 and does therefore not have any effect on national legislation, such as the Woo.

In our view, the statement in the decision that the standards are already public and accessible to everyone is based on faulty legal reasoning. Although NEN states that the standards can be viewed in Delft, the practical limitations are so restrictive that they most likely fail to meet the requirements of genuine public access:

- The standards can only be viewed with a prior appointment and are not digitally accessible;
- Copying, photographing or taking away (parts of) the standards is not permitted;
- These documents are only available on nen.nl for a fee.

A case from the highest court for administrative law (the ABRVS) from 2019 may offer a relevant precedent. It concerned documents stored in a municipal system, which could only be viewed by appointment or requested in copy; most of the times requiring a small fee as well. In any case, citizens could not access the documents in a digital environment or without on-site consultation by appointment. Due to these circumstances, the court ruled that these documents were not publicly accessible under the Wob (replaced by the Woo).[33]

In the case of the physical copies at NEN, the situation is slightly different, as NEN does allow citizens to view the documents by themselves and free of charge. Nevertheless, we argue that the core issue remains similar: disclosure requires easy and free access to the requested information, as intended by the Woo. Moreover, the CJEU judgment even strongly implies a positive obligation to publish all HTS. As we described before, merely the fact that

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[30] *Public.Resource.Org v. European Commission* (n 4) para 80.
[31] ibid 82.
[32] ibid 85.
[33] ABRVS 201810347/1/A3 [2019], ECLI:NL:RVS:2019:3100.

a citizen needs a specific request to get access can be regarded as a detrimental burden to the fundamental principle of transparency; let alone citizens that are required to travel to a closed space in Delft for a specific HTS.

Additionally, the specific nature of the documents in question might also play a decisive role here: HTS can be elaborate documents, consisting of many pages, which are meant to be used by undertakings that have an obligation to comply with safety obligations. Considering that photographs or copies are not allowed, it becomes in reality virtually impossible to implement the HTS in their product or business practices without purchasing access.

5.3.4 Relevance of the CJEU ruling for national Woo requests

The argument of the governing bodies that the ruling of the CJEU only relates to Regulation 1049/2001 and has therefore no significance for the Woo, is legally untenable. The CJEU included fundamental legal principles, such as the principle of legality and the right of access to justice in its assessment. These principles are not only limited to European institutions, they are also of binding effect to national administrative bodies when they implement Union law. We refer to paragraphs 81–84 of the judgment in this regard.

Furthermore, information that forms part of Union law, such as HTS, is subject to the same principles of openness when Member States implement Union law. The Woo does not contain any derogating rules that allow for derogation from Union law in this regard.

5.3.5 The Appeal

On June 4 2025, we filed our formal appeal by registered letter, sent to the Ministry of Infrastructure and Water Management. The letter sent out is attached in Appendix IV, in both Dutch and (machine translated) English.

On September 2 2025, we received a decision on objection by the Ministry of Infrastructure and Water Management. The decision is attached in Appendix V (in Dutch). In its decision, the Ministry states that our objection is inadmissible. It argues that the letter from the Ministry dated 23 April 2025 (the rejection of the Woo request, see 5.2.4) is not a decision against which an objection can be lodged on the basis of Articles 8:1, 7:1 and 1:3(1) of the General Administrative Law Act. According to the Ministry, the decision merely contains a response to a request to disclose documents that are already public. Such a letter is not intended to have any legal effect and would therefore not qualify as a decision.

In order to better understand the Ministry's decision-making process, we called the Ministry on 2 October 2025 and asked the following questions:

> *“1. In the response to our Woo request (refering to IENW/BSK- 2025/90592), reference is made on several points to a “Woo decision” or “Decision”. Our objection is declared inadmissible because it is not a decision within the meaning of Article 1:3(1) of the General Administrative Law Act. Even though this may be legally correct, we believe that it violates the general principles of good governance, in particular the principles of legal certainty and trust. In our opinion, citizens without a legal background cannot reliably trust the information provided by the government in this way.*

2. For question two, I would first like to quote a section from 'SDU Commentaar Wet Open Overheid' ['SDU Commentary on the Open Government Act'] on Article 4:3 Woo:

> *'However, if the Woo request can be answered in its entirety with information that is already public, then there is no decision within the meaning of the Awb. Nevertheless, the public nature of the information may be called into question in an objection or (higher) appeal.'*

I would also like to quote a section from our objection:

> *'2. The standards are not freely accessible in practice. The statement in the decision that the standards are already public and accessible to everyone is factually incorrect. Although NEN claims that access is possible in Delft, in practice this is so limited that it cannot meet the public access requirement:*
>
> > ** The standards can only be viewed by appointment and are not digitally accessible.*
> > ** Copying, photographing or taking away (parts of) the standards is not permitted.*
> > ** These documents are only available on nen.nl for a fee.*
>
> *This means that there is no actual accessibility within the meaning of the Woo. Disclosure requires a low-threshold and free access to the requested information for everyone, as intended by the Woo.*
>
> *We do indeed question the public nature of the information in our objection. Based on the idea behind Article 4:3 of the General Administrative Law Act, we should therefore be able to question this in an objection procedure. On this basis, we therefore believe that you should consider our objection admissible.'*

3. This question concerns the same grounds as the first question, namely the general principles of good governance. In your response to our Woo request (which, according to the Ministry of Infrastructure and Water Management, is not a decision), you state the following on page 3: 'Under the General Administrative Law Act, interested parties may lodge an objection to this decision within six weeks of the date on which it was announced.' This would mean that the response to the Woo request is not only a decision, but also a decision against which an objection can be lodged. In our opinion, this directly contravenes the principle of trust, which aims to protect legitimate expectations about future legal positions."

During the conversation, the Ministry referred to case law from the Administrative Law Division of the Council of State. If something is public, it does not fall under the Woo. We indicated that, according to the commentary in the SDU, you can object to public disclosure. However, the Ministry again referred to case law from the Division, which rules that the opposite is true.

In response to our third question, the Ministry also indicated that the objection clause was indeed an error, but that this does not lead to citizens being able to object to communication that is not regarded as a decision within the meaning of the Awb.

Finally, the Ministry pointed out to us that the ruling is a ruling by the Court of Justice against the European Commission, and that the Commission is therefore bound by these standards. Her recommendation was therefore to submit a Eurowob request to the European Commission specifically regarding NEN standards.

5.4 Limits

This chapter assessed whether Dutch civilians can obtain access to HTS by relying on the individual right to request information under the Wet Open Overheid (Woo). Although the Woo formally provides a broad right of access to government-held information, our findings show that this mechanism does not currently ensure effective, free, and unhindered access to HTS in practice.

All Woo requests submitted in this research were rejected on the basis that the requested standards were already publicly accessible, either through purchase via NEN or by on-site consultation in Delft. This interpretation adopts a formal notion of public accessibility that fails to account for significant practical restrictions, including payment requirements, limited physical access, and prohibitions on copying or reproduction. Such conditions sit uneasily with the objectives of the Woo and the specific role of HTS as instruments with legal effects for individuals and undertakings.

The subsequent objection procedure further exposed structural limitations. By classifying the rejection of the Woo request as a non-decision, the Ministry effectively precluded substantive legal review, notwithstanding the fact that applicants were explicitly informed that an objection could be lodged. This approach raises concerns regarding legal certainty, legitimate expectations, and effective legal protection. Moreover, the reluctance to acknowledge the relevance of the CJEU's judgment in *Public.Resource.Org* at national level illustrates a broader disconnect between Union law principles and domestic administrative practice.

Overall, the individual right to request under the Woo appears insufficient to bridge the gap between the formal availability and the genuine accessibility of HTS, indicating the need for alternative or structural solutions.

Section 3: Comparative Analysis with French Practices

To assess the broader implications of the *Public.Resource.Org* ruling and the accessibility of harmonised technical standards (HTS) across Member States, we compared our own findings with a parallel research project conducted by students of the Digilaw clinic (SciencesPo) in France.

6.1 Digilaw: methodology and results

The project of Digilaw involved submitting eleven formal access requests for various harmonised standards in key sectors such as environment, energy, and healthcare. These requests were directed to various French administrative bodies, based on procedures outlined in the French *Code des relations entre le public et l'administration* (CRPA). When most requests were denied or left unanswered, the team followed up with a direct request to AFNOR, the French national standardisation body. AFNOR refused to provide free access, asserting that the standards were already "publicly available" via paid channels. The group then filed an appeal with CADA (Commission d'Accès aux Documents Administratifs), the French authority on access to public documents, and awaits a decision.[34]

6.2 Dutch and French practices: comparing the results

When viewed through the lens of the *Public.Resource.Org* ruling, the French experience reflects significant tensions between EU-level legal principles and national administrative practice. While the CJEU judgment emphasises that binding standards must be genuinely accessible to ensure legal certainty and respect for the rule of law, both the French and Dutch cases show that access is often limited in practice. Nevertheless, a comparative analysis leads to some important insights.

There seems to be at least one notable difference: the French students experienced difficulties in finding the official channels for their requests. Even when they found them, they were often met with very abrupt and informal answers, simply stating that the answer is no. It seems that in the Netherlands, despite considerable delays, there is at least developed apparatus to specifically handle formal requests for HTS. In the Netherlands, we were met with a substantive answer that attempted to deny our request on legal grounds. However, like the French students, we have not received a very satisfactory answer with a legitimate rejection.

A second point of attention is the fact that the Dutch standardization organisation NEN is already making some progress when it comes to a proactive effort of the government to make the HTS freely available. The portal certainly has important shortcomings, but at the least, there is a system in place that could be a fertile ground for improvement. To our knowledge, the French students did not come across a similar effort at the national level.

Understandably, there are some differences between the approaches in France and the Netherlands. That said, it seems that some core issues are similar. In France, AFNOR's refusal was based on an interpretation of "public availability" that includes paywalls, while in the Netherlands, physical-only access at the NEN building, with restrictions on copying, was similarly deemed sufficient by authorities. However, our legal analysis and the 2019 Dutch administrative court ruling suggest that such limited forms of access do not meet the requirements of the Dutch Open Government Act (Woo). In this regard, it is very much likely that national interpretations of public availability might lead to different outcomes in the two Member States.

The comparative findings thus reveal a potentially troubling degree of divergence in how Member States interpret and implement the principle of public accessibility of HTS. This fragmentation undermines the uniform application of EU law and risks creating barriers for

[34] L. Dsouza, E. Maranaku & L. Pecht: 'Access to Public Harmonized Safety Standards', a presentation held at IViR (Amsterdam) on February 11th, 2025.

consumers, SMEs, and legal professionals who rely on these standards. A harmonised approach at the EU level, possibly through legislative clarification or further jurisprudence, may be necessary to ensure that HTS, once made binding through OJEU reference, are fully and freely accessible across all Member States.

Conclusion and final recommendations

This research examined the implications of the *Public.Resource.Org* judgment of the CJEU, which confirmed the individual right to request access to harmonised technical standards (HTS) under Regulation 1049/2001, while also hinting at a broader positive obligation for public authorities to ensure proactive accessibility. The Court reaffirmed that HTS, once referenced in the Official Journal of the European Union, acquire legal effect and thus must be accessible to safeguard legal certainty and the rule of law. This has seemingly led to the publication of certain HTS in the NEN portal in The Netherlands. However, access remains incomplete and inconsistent. In parallel, our formal Woo requests for specific standards were all denied, based on the claim that the standards were already "publicly available." In practice however, they were only accessible under restrictive conditions at the NEN building in Delft: by appointment and without the possibility to copy or photograph.

The CJEU ruling mandates free access to HTSs referenced in EU law. This move significantly undermines existing business models of standards organizations like NEN, which depend heavily on licensing revenues. As NEN itself has acknowledged, this threatens their financial sustainability and heightens pressure on how they fund standardization activities. The government should be aware of the financial pressure and take a proactive role in resolving it to ensure the viability of HTS and the organizations in the long term. Therefore, we recommend the following to the (Dutch) government.

First, the government should consider allocating public funds to support the publication of HTS that are referenced in EU law. This would reduce NEN's reliance on commercial licensing while ensuring public accessibility, and simultaneously aligns with Public.Resource.Org's stance that citizens of Member States should not have to pay to know the law.

Second, the government should, together with NEN and its relevant ministries, develop transparent guidelines to determine which HTS must be published and under what conditions. For instance, they can determine which HTS are available for free entirely, and which HTSs are only freely available in a read-only format. This increases the legal certainty for citizens. These guidelines must also be available on the website of NEN.

Lastly, the government should advocate for a harmonised EU-level compensation mechanism. As the people at NEN have made clear, not all standardization organizations in the EU have the same financial resources to make standards freely available to the public. Fragmentation within the EU, as can already be seen in the price differences for standards between Member States, must be prevented. A harmonised compensation mechanism could involve co-funding from the European Commission for open-access HTS or establishing a structural licensing framework for public use.

These recommendations aim to safeguard the legal certainty across the EU, while recognising the economic reality of standardization organisations. If unrestricted access

jeopardises the financial model of standardization organisations, the government must step in to ensure compliance with EU law, and to protect the public interest in accessible and reliable technical regulation.

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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 [2001] OJ L145/43

Appendix I

Ministry	Description	Standards
Ministry of Infrastructure and Water Management	Article 3(5) of the Packaging Management Decree 2014: packaging must meet one or more of the requirements set out in Annex II to the Packaging Directive if it complies with the standard designated by Our Minister. According to Article 4 of the Packaging Management Regulations, the harmonised standards NEN-EN 13427, NEN-EN 13428, NEN-EN 13429, NEN-EN 13430, NEN-EN 13431 and NEN-EN 1343 are designated as standards within the meaning of the above. According to Article 1a of these regulations, this is also based on Article 21.6(4) of the Environmental Management Act. The Ministry of Infrastructure and Water Management has published these standards in the Government Gazette.	NEN-EN 13427 NEN-EN 13428 NEN-EN 13429 NEN-EN 13430 NEN-EN 13431 NEN-EN 1343
	Article 2c of the Civil Explosives for Civil Use Act stipulates that explosive substances may only be made available on the market if they meet the essential safety requirements referred to in Directive 2014/28/EU. According to the publication in the Government Gazette of 24 July 2017 (no. 41702), the harmonised standards NEN-EN 13631-1 and	NEN-EN 13631-1:2005 EN 13631-1:2005 NEN-EN 13938-1:2004 EN 13938-1:2004

	NEN-EN 13938-1 are designated as relevant technical specifications within the meaning of this provision. The Ministry of Infrastructure and Water Management has published these standards in the Government Gazette.	
Ministry of Economic Affairs	Directive 2014/53/EU has been transposed into Dutch law in the Radio Equipment Decree 2016. Article 6 of this decree stipulates that radio equipment is presumed to comply with the requirements of the decree if it complies with the harmonized standards relating to Directive 2014/53. The Ministry of Economic Affairs has published these standards in the Government Gazette.	NEN-EN 301178:2017-04 EN 301178:2017-04 NEN-EN 301908-3:2017-04 EN 301908-3:2017 NEN-EN 301908-13:2016-07 EN 301908-13:2016-07 NEN-EN 301908-14:2017-04 EN 301908-14:2017 NEN-EN 301908-18:2017-04 EN 301908-18:2017 NEN-EN 302017:2017-04 EN 302017-1:2017 NEN-EN 302502:2017-03 EN 392592:2017 NEN-EN 302729:2016-12 EN 302729:2016 NEN-EN 303132:2017 EN 303132:2017 NEN-EN 303354:2017 EN 303354:2017
	Article 45(1) of the Metrology Act requires measuring instruments to comply with harmonised standards that provide a presumption of conformity under Directive 2004/22/EC and Directive 2014/32/EU. The Government Gazette of 29 November 2024 (no. 38970) confirms the applicability of the harmonised standards NEN-EN 1359 and NEN-EN 14236 to diaphragm and	NEN-EN 1359:1999 NEN-EN 1359:1999/A1:2006 NEN-EN 1359:2017 NEN-EN 14236:2007 NEN-EN 14236:2018

	ultrasonic gas meters respectively. These standards are recognised as relevant within the meaning of the Metrology Act and have been published in the Government Gazette.	
	Article 6 of the Radio Equipment Decree implements the essential requirements of Directive 2014/53/EU for radio equipment. The harmonised standard NEN-EN 302195:2016-05 is designated as fulfilling the requirements of Article 3.2 of the directive concerning short-range devices (SRD), specifically for ultra-low power active medical implants (ULP-AMI) and their peripherals. This designation is confirmed in the Government Gazette (no. 19103), where the reference to the standard has been officially published by the Ministry.	NEN-EN 302195:2016-05
Ministry of Social Affairs and Employment	According to Article 8 of the Pressure Equipment Decree, this equipment must comply with the essential safety requirements of Annex I of Directive 2014/68. This conformity is presumed to be present when it complies with the harmonized standards or parts thereof. The Minister of Social Affairs and Employment has published these standards in the Government Gazette.	NEN-EN 378-2:2016 EN 378-2:2016 NEN-EN 10028-7:2016 EN 10028-7:2016 NEN-EN 10222-1:2017 EN 10222-1:2017 NEN-EN 10222-2:2017 EN 10222-2:2017 NEN-EN 10222-3:2017 EN 10222-3:2017 NEN-EN 10222-4:2017 EN 10222-4:2017 NEN-EN 10222-5:2017 EN 10222-5:2017 NEN-EN 10272:2016 EN 10272:2016 NEN-EN 10273:2016 EN 10273:2016

		NEN-EN 12178:2016 EN 12178:2016 NEN-EN 13480-1:2017 (Issue 1:2017) EN 13480-1:2017 NEN-EN 13480-2:2017 (Issue 1:2017) EN 13480-2:2016 NEN-EN 13480-3:2017 (Issue 1:2017) EN 13480-3:2017 NEN-EN 13480-5:2017 (Issue 1:2017) EN 13480-5:2017 NEN-EN 13480-6:2017 (Issue 1:2017) EN 13480-6:2017 NEN-EN 13480-8:2017 (Issue 1:2017) EN 13480-8:2017 NEN-EN-ISO 15493:2003/A1:2017 EN ISO 15493:2003/A1:2017 NEN-EN-ISO 21028-1:2016 EN ISO 21028-1:2016
Ministry of Health, Welfare and Sport	According to Article 18a(1) of the Commodities Act, products are presumed to comply with the general safety requirement in Article 18(a) of the Commodities Act if they conform to standards designated by the Minister. The annex to the Regulation on the Designation of General Safety Standards under the Commodities Act is amended to reflect changes from Implementing Decision (EU) 2022/1401. The Ministry Health, Welfare and Sport has published these standards in the Government Gazette.	EN 1130:2019 EN 1130:2019/AC:2020 EN 1272:2017 EN 14988:2017+A1:2020
	According to Article 6(1) of the Warenwetbesluit	NEN-EN 13814-1:2019 versnelling gebied 1 of 2 NEN-EN 13814-1:2019

	attractie- en speeltoestellen 2023, products are presumed to comply with the general safety requirements of the decree if they conform to the standards designated by ministerial regulation. According to Article 10 of the Warenwetregeling attractie- en speeltoestellen, the harmonised standards are designated as applicable norms. The Ministry Health, Welfare and Sport has published these standards in the Government Gazette.	versnelling gebied 3 of 4 NEN-EN 13814-1:2019 versnelling gebied 5

Appendix II

Dutch

Woo verzoek

Aan (naam instantie)
(adres instantie)
Amsterdam, (datum)

Geachte heer/mevrouw,

Als studenten zijn wij verbonden aan het ILP Lab van het Instituut voor Informatierecht van de Universiteit van Amsterdam en daarnaast werkzaam bij de Clinic Law Incubator. In deze hoedanigheid werken wij voor een research project samen met de belangenorganisatie Public.Resource.Org, onder leiding van Carl Malamud. Dit project is gestart naar aanleiding van de uitspraak in zaak C-588/21 P. (5 maart 2024; Public.Resource.Org, Inc. et.al./Europese Commissie) van het Europese Hof van Justitie, waarin het Hof heeft geoordeeld dat de geharmoniseerde standaarden waarnaar wordt verwezen in Europees recht, inherent deel uitmaken van het EU-recht. Derhalve dienen dergelijke standaarden kosteloos beschikbaar te worden gesteld voor het publiek.

In het kader van bovengenoemde uitspraak, artikel ***[NOEM RELEVANT NEDERLANDS WETSARTIKEL WAARIN VERWEZEN WORDT NAAR STANDAARD], [EUROPESE RICHTLIJN WAARNAAR WET VERWIJST] en [NOEM STAATSCOURANT]*** verzoek ik u mij de volgende documenten te verstrekken.

– (DESBETREFFENDE NORM(EN))

Het bovenstaande is een verzoek zoals bedoeld in artikel 4.1 van de Wet open overheid (Woo).

Met verwijzing naar de termijn die is genoemd in artikel 4.4 van de Woo, verzoek ik u mij de gevraagde informatie voor ***[uiterlijke ontvangstdatum, de wettelijke termijn is maximaal 4 weken na ontvangst]*** toe te sturen.

Indien u kosten in rekening brengt voor het maken van kopieën e.d., verzoek ik u mij hiervan vooraf op de hoogte te brengen.

Graag worden wij in ieder geval/minstens schriftelijk op de hoogte gesteld van de uitkomst van dit verzoek. (Alleen) als aanvulling op het schriftelijke zouden wij telefonisch ook op de hoogte gesteld kunnen worden.

Hoogachtend,

(handtekening)
(naam, adres)

English

Woo request

To (name of institution)
(address of institution)
Amsterdam, (date)

Dear Sir/Madam,

As students, we are affiliated with the ILP Lab of the Institute for Information Law at the University of Amsterdam and also work at the Clinic Law Incubator. In this capacity, we are collaborating on a research project with the advocacy organisation Public.Resource.Org, led by Carl Malamud. This project was initiated in response to the ruling in case C-588/21 P. (5 March 2024; Public.Resource.Org, Inc. et.al./European Commission) of the European Court of Justice, in which the Court ruled that the harmonised standards referred to in European law are an inherent part of EU law. Therefore, such standards must be made available to the public free of charge.

In the context of the above-mentioned judgment, Article ***[NAME OF RELEVANT DUTCH LAW REFERRING TO THE STANDARD], [EUROPEAN DIRECTIVE REFERRED TO BY THE LAW] and [NAME OF THE GOVERNMENT GAZETTE]***, I request that you provide me with the following documents.

– (RELEVANT STANDARD(S))

The above is a request as referred to in Article 4.1 of the Open Government Act (Woo).
With reference to the deadline specified in Article 4.4 of the Woo, I request that you send me the requested information before ***[latest date of receipt, the statutory deadline is a maximum of 4 weeks after receipt]***.

If you charge costs for making copies, etc., please inform me in advance.
We would appreciate being informed of the outcome of this request in writing. (Only) as a supplement to the written notification, we could also be informed by telephone.

Yours sincerely,

(signature)
(name, address)

Appendix III

Appendix III (NL) and Appendix III (EN) on file with the authors. Available upon request.

Appendix IV

Dutch

Dagtekening:

Aantekenen

Aan:
Staatssecretaris van Infrastructuur en Waterstaat
t.a.v. Hoofddirectie Bestuurlijke en Juridische Zaken
Afdeling Algemeen Bestuurlijk-Juridische Zaken

Betreft: Bezwaarschrift tegen besluit (...)

Geachte heer/mevrouw,

Ondergetekenden maken hierbij bezwaar tegen uw besluit van 23 april 2025, kenmerk (...), waarbij ons verzoek op grond van de Wet open overheid (Woo) tot openbaarmaking van de volgende geharmoniseerde normen is afgewezen:

- NEN-EN 13427
- NEN-EN 13428
- NEN-EN 13429
- NEN-EN 13430
- NEN-EN 13431
- NEN-EN 13432

1. Geharmoniseerde normen zijn juridisch bindend en integraal onderdeel van het Unierecht

Uit het arrest van het Hof van Justitie van de Europese Unie in zaak C-588/21 P (ECLI:EU:C:2024:201) blijkt dat geharmoniseerde normen, waarvan de referenties zijn gepubliceerd in het Publicatieblad van de EU, rechtsgevolgen hebben en daarom als onderdeel van het Unierecht moeten worden beschouwd. Het Hof oordeelt expliciet:

> “In the light of the foregoing considerations, it must be held […] that the requested harmonised standards form part of EU law.” (r.o. 80)

En verder:

> “By the effects conferred on it by EU legislation, a harmonised standard may specify the rights conferred on individuals as well as their obligations.” (r.o. 82)

Het Hof verbindt hieraan de conclusie dat toegang tot deze normen, ongehinderd en kosteloos, voortvloeit uit het rechtsstatelijk beginsel, de transparantie en het recht op toegang tot wetgeving (r.o. 85). Daarmee is hun openbaarmaking niet facultatief, maar verplicht.

2. De normen zijn in de praktijk niet vrij toegankelijk

De stelling in het besluit dat de normen reeds openbaar en voor iedereen toegankelijk zijn, is feitelijk onjuist. Hoewel NEN beweert dat inzage in Delft mogelijk is, is dit in de praktijk dusdanig beperkt dat het niet voldoet aan het openbaarheidsvereiste:

- De normen zijn alleen op afspraak in te zien, niet digitaal toegankelijk.
- Kopiëren, fotograferen of meenemen van (delen van) de normen is niet toegestaan.
- Op nen.nl zijn deze documenten alleen tegen betaling beschikbaar.

Dat betekent dat er géén sprake is van daadwerkelijke toegankelijkheid in de zin van de Woo. Openbaarmaking vereist een voor eenieder laagdrempelige en vrije toegang tot de gevraagde informatie, zoals ook de Woo beoogt.

3. Relevantie van de CJEU-uitspraak voor nationale Woo-verzoeken

Uw standpunt dat het arrest van het Hof van Justitie slechts betrekking heeft op Verordening 1049/2001 en dus geen betekenis zou hebben voor de Woo is juridisch onhoudbaar. De CJEU heeft fundamentele rechtsbeginselen als het legaliteitsbeginsel en het recht op toegang tot het recht betrokken bij de beoordeling, die niet tot de Europese instellingen beperkt zijn, maar ook nationale bestuursorganen binden wanneer zij Unierecht uitvoeren. Zie hierover r.o. 81–84 van het arrest.

Bovendien geldt voor informatie die deel uitmaakt van het Unierecht, zoals geharmoniseerde normen, dat lidstaten bij de uitvoering van Unierecht gehouden zijn aan dezelfde openheidsbeginselen. De Woo kent op dit punt geen afwijkende regels die afwijking van het Unierecht toestaan.

Conclusie en verzoek

Gelet op het bovenstaande verzoeken wij u om:

1. Het besluit (...) te herroepen;
2. De gevraagde normen alsnog openbaar te maken op grond van de Woo;
3. De door ons gemaakte proceskosten te vergoeden op grond van artikel 7:15 Awb.

Hoogachtend,

Namens indieners,

(...)

English

Date:

Note

To

State Secretary for Infrastructure and Water Management

Attn: Head of Administrative and Legal Affairs

General Administrative and Legal Affairs Department

Subject: Objection to decision (...)

Dear Sir/Madam

The undersigned hereby object to your decision of 23 April 2025, reference (...), rejecting our request under the Open Government Act (Woo) for disclosure of the following harmonised standards:

- NEN-EN 13427
- NEN-EN 13428
- NEN-EN 13429
- NEN-EN 13430
- NEN-EN 13431
- NEN-EN 13432

1. Harmonised standards are legally binding and an integral part of Union law

The judgment of the Court of Justice of the European Union in case C-588/21 P (ECLI:EU:C:2024:201) shows that harmonised standards, the references of which have been published in the Official Journal of the EU, have legal effects and must therefore be considered part of EU law. The Court explicitly states:

‘In the light of the foregoing considerations, it must be held [...] that the requested harmonised standards form part of EU law.’ (para. 80)

And further:

‘By the effects conferred on it by EU legislation, a harmonised standard may specify the rights conferred on individuals as well as their obligations.’ (para. 82)

The Court concludes that access to these standards, without hindrance and free of charge, follows from the principle of the rule of law, transparency and the right of access to legislation (paragraph 85). Their publication is therefore not optional, but mandatory.

2. The standards are not freely accessible in practice

The statement in the decision that the standards are already public and accessible to everyone is factually incorrect. Although NEN claims that they can be consulted in Delft, in practice this is so limited that it does not meet the requirement of public access:

- The standards can only be consulted by appointment and are not digitally accessible.
- Copying, photographing or taking away (parts of) the standards is not permitted.
- These documents are only available on nen.nl for a fee.

This means that there is no actual accessibility within the meaning of the Woo. Disclosure requires easy and free access to the requested information for everyone, as intended by the Woo.

3. Relevance of the CJEU ruling for national Woo requests

Your position that the ruling of the Court of Justice only relates to Regulation 1049/2001 and therefore has no significance for the Woo is legally untenable. The CJEU has taken into account fundamental legal principles such as the principle of legality and the right of access to justice, which are not limited to European institutions but are also binding on national administrative bodies when they implement Union law. See paragraphs 81–84 of the judgment.

Furthermore, information that forms part of Union law, such as harmonised standards, is subject to the same principles of openness when Member States implement Union law. The Woo does not contain any deviating rules that allow for derogation from Union law in this regard.

Conclusion and request

In view of the above, we request that you:

1. Revoke the decision (...);
2. To publish the requested standards on the basis of the Woo;
3. To reimburse the legal costs incurred by us on the basis of Article 7:15 of the Awb.

Yours sincerely,

On behalf of the petitioners,

(...)

Appendix V

Appendix V on file with the authors. Available upon request.