



***Raising standards for consumers***



**The Consumer Voice in Europe**

## ENSURING SAFE AND FAIR PLAY FOR CHILDREN

BEUC and ANEC recommendations to the European Parliament and EU Member States on the proposal for a Toy Safety Regulation

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Ref: BEUC-X-2023-168 - 20/12/2023  
ANEC-CHILD-2023-G-227

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Co-funded by the European Union

## Why it matters to consumers

Consumers expect products on the Single Market to be safe. This is especially relevant for toys, as children are particularly vulnerable. Whereas they deserve the highest level of protection, research from consumer associations and market surveillance authorities highlight several issues related to toy safety that put youngsters at risk: year after year, toys feature among the three product categories for which most notifications are placed on the EU's rapid alert system for dangerous products<sup>1</sup>. Exposure to chemicals raises particular concern, alongside new challenges brought by the proliferation of smart toys and the boom of online sales through which a high number of unsafe products reach consumers. The revision of EU toy safety rules must ensure a robust regulatory framework that addresses these challenges.

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<sup>1</sup> BEUC press release about the 2022 annual report of the EU Safety Gate <https://www.beuc.eu/press-releases/worrying-number-dangerous-products-reaching-consumers-highlights-need-greater-action>

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## 1. The consumer perspective in a nutshell

The draft text that the European Commission proposed in July 2023 to reform EU toy safety rules is good news for consumers. ANEC and BEUC particularly welcome:

- The focus to significantly reduce children's exposure to dangerous substances, especially by banning the most harmful chemicals such as endocrine disruptors.
- The ambition to reduce the high prevalence of non-compliant toys and unsafe toys on the market through the introduction of a Digital Product Passport.

As we consider that only a few aspects of the proposal need to be improved to fully benefit consumers' safety, we call for a swift adoption of their position by the European Parliament and the Council, so the co-legislators and the European Commission can engage into inter-institutional negotiations right after the European elections.

For the Toy Safety Regulation (TSR) to fully deliver on the above-mentioned objectives, we recommend to:

- Get the scope of the TSR right by ensuring a precautionary-based approach and the coverage of online games targeted at children.
- Strengthen the chemical requirements.
- Cover adequately the risks posed by smart toys.
- Set out maximum noise limit values.
- Make toy labels and warnings work for consumers.
- Further improve market surveillance.
- Close loopholes regarding the online sales of dangerous toys.
- Improve governance.

Our recommendations on toy safety should be read in conjunction with other position papers such as the one on the customs reform<sup>2</sup>, as well as our analysis of legislation recently adopted on related policy developments such as the Product Liability Directive<sup>3</sup>, a Cyber-Resilience Act<sup>4</sup> and an Artificial Intelligence Act<sup>5</sup>.

## 2. What key proposals from the European Commission must be secured

We call on the European Parliament and the Council to confirm the overall approach of the European Commission on the way forward.

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<sup>2</sup> BEUC position paper on the reform of the EU customs <https://www.beuc.eu/position-papers/reforming-customs-better-protect-european-consumers-global-markets>

<sup>3</sup> BEUC position paper [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-141\\_recommendations\\_for\\_PLD\\_trilogue\\_negotiations.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-141_recommendations_for_PLD_trilogue_negotiations.pdf) and press release about the outcomes of the trialogue negotiations on the PLD proposal <https://www.beuc.eu/press-releases/eu-better-protect-consumers-case-defective-products-cause-damage>

<sup>4</sup> BEUC position paper [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-128\\_Cyber\\_Resilience\\_Act\\_Trilogue\\_Recommendations.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-128_Cyber_Resilience_Act_Trilogue_Recommendations.pdf) and press release about the outcomes of the trialogue negotiations on the CRA proposal <https://www.beuc.eu/press-releases/connected-devices-become-more-cybersecure-big-win-consumers>

<sup>5</sup> BEUC position paper <https://www.beuc.eu/position-papers/ai-and-generative-ai-trilogue-negotiations-ai-act> and press release about the outcomes of the trialogue negotiations <https://www.beuc.eu/press-releases/eu-rules-ai-lack-punch-sufficiently-protect-consumers>

In particular, ANEC and BEUC welcome the proposal to turn the current Directive into a Regulation and the efforts to align the current EU toy safety rules with the new provisions of the Market Surveillance Regulation and the General Product Safety Regulation (GPSR). This will contribute to a more streamlined application of the text across the Single Market and to consistency with the overall regulatory framework for product safety.

The proposal to empower the European Commission to adopt common specifications in the absence of relevant harmonised standards is also important. This will allow for additional safeguards when the process linked to the development of standards is blocked or delayed. It is likewise important to guarantee the possibility for the European Commission to amend legislative provisions in response to market changes or the emergence of new risks. This built-in flexibility will contribute to a continued relevance of the rules.

To ensure that children are safe when using toys, below are three other key elements that we recommend keeping in the TSR:

- An ambitious approach on chemicals.
- The efforts to tackle the challenges posed to children's mental health.
- The introduction of a Digital Product Passport for toys.

## 2.1. An ambitious approach on chemicals

In line with the Chemical Strategy for Sustainability<sup>6</sup> and the recommendations by consumer organisations in Europe, the European Commission put forward a strong proposal to reduce children exposure to dangerous chemicals. Crucially, the TSR will:

- **Extend the generic prohibition** of CMR (carcinogenic, mutagenic, or toxic for reproduction) substances in toys to further harmful chemicals, such as endocrine disruptors and substances affecting the immune, nervous or respiratory systems. In 2023, Forbrugerrådet TÆNK together with six other consumer groups<sup>7</sup> found that 11 out of 20 tested teething-toys released known or potential endocrine disruptors. The Commission proposal will help ensure that children are more consistently protected against these dangerous chemicals, including by strictly limiting the circumstances where such chemicals exceptionally could be present in toys.<sup>8</sup>
- **Enable protective limits to be set for all toys** rather than just for toys for children under the age of 36 months or for toys intended to be put in the mouth. This 'artificial' limitation under the currently applicable Toy Safety Directive (TSD) has proven insufficient to keep children safe. We therefore welcome that the EU in future can set limits to protect all children, while the application of existing limit values is also rightly extended to all toys. As such, we recommend that the **review obligation** in Article 46.9 is extended to hazardous substances subject to specific limit values or labelling requirements. This will ensure that the Commission regularly evaluates those limit values and labelling requirements, including adapting them to technical and scientific progress.<sup>9</sup>

<sup>6</sup> BEUC press release on the publication of a TSR proposal <https://www.beuc.eu/press-releases/groundbreaking-commission-proposal-ban-hormone-disrupting-chemicals-toys-must-become>

<sup>7</sup> Altroconsumo (Italy), dTest (Czechia), Testaankoop/Testachats (Belgium), UFC-Que Choisir (France), Verein für Konsumenteninformation (Austria), and Zveza Potrošnikov Slovenije – ZPS (Slovenia) <https://taenk.dk/kemi/english/bisphenols-should-be-banned>

<sup>8</sup> For example, the new limit related to the presence of unavoidable traces of prohibited substances in toys substantially reduces the existing default limit – and with good reason: indeed, whenever limit values have been introduced for specific substances in the past, these have been 15 to 1,000 times lower than the default limit established in the TSD. See Commission impact assessment: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0269>

<sup>9</sup> Several of the limit values established in the Appendix such as those for arsenic or chromium(III) have

## 2.2. The protection of children's mental health

ANEC and BEUC support the extension of essential safety requirements to the psychological and mental health, well-being and cognitive development of children, as provided by the Commission's proposal.

Data from different EU countries similarly point to a worsening of mental health amongst younger generations, exacerbated by the COVID-19 pandemic<sup>10</sup>. While mental health conditions can be affected by different determinants such as health, environmental, social or commercial considerations, one should also consider that timely access to specialised help is often missing.

Although toys are not the only market sector where policy makers should direct their efforts - and not all the toys are posing risks or to the same extent in this regard - one should not ignore the negative impact linked to the extensive use of video games and other digital toys on childhood<sup>11</sup>. To tackle this and the consequences that the rapid uptake of toys with new technologies may bring, the general safety requirement must ensure the psychological and mental health of children as foreseen in the Commission's proposal. We also recommend including in the scope of the TSR interactive software designed for and targeted at children, or which can be reasonably expected to be played by children for leisure and entertainment.

Building on the concerns that BEUC and ANEC expressed in light of the integration of Artificial Intelligence (AI) in more and more products and services<sup>12</sup>, we call on the EU legislators to ensure a robust regulatory framework on toy safety. This is also in line with the concerns expressed by the European Parliament in its initiative report on the implementation of the TSD<sup>13</sup> especially when it comes to the "new vulnerabilities and risks posed by connected toys". Same as regards the own-initiative report on addictive design of online services and consumer protection in the EU Single Market<sup>14</sup> as well as the one on mental health<sup>15</sup>. The latter recognises the importance of protective factors and of the active promotion of resilience, including through play, and it also touches upon the impact of digitalisation.

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- for example not been revisited since the adoption of the Toy Safety Directive in 2009.
- <sup>10</sup> [https://health.ec.europa.eu/system/files/2022-12/2022\\_healthatglance\\_rep\\_en\\_0.pdf](https://health.ec.europa.eu/system/files/2022-12/2022_healthatglance_rep_en_0.pdf)
- <sup>11</sup> See concerns expressed by the German consumer association Verbraucherzentrale Bundesverband (vzbv) about Pokémon Sleep <https://netzpolitik.org/2023/alles-fuer-relaxo-pokemon-sleep-will-kinder-beim-schlafen-belauschen/>.
- <sup>12</sup> BEUC letters to EU safety ([https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-046\\_BEUC\\_concerns\\_over\\_AI\\_and\\_mental\\_health\\_%20Ms\\_Pinuoccia\\_Contino.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-046_BEUC_concerns_over_AI_and_mental_health_%20Ms_Pinuoccia_Contino.pdf)) and consumer protection authorities ([https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-045\\_Call\\_for\\_action\\_CPC\\_authorities\\_Generative\\_AI\\_systems.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-045_Call_for_action_CPC_authorities_Generative_AI_systems.pdf)) calling to start investigations because of the breadth and speed of the rollout of generative AI model. See also report on "Addressing the consumer harms of generative AI" from Forbrukerrådet, a Norwegian consumer organisation and BEUC member <https://www.beuc.eu/press-releases/consumer-groups-call-regulators-investigate-generative-ai-risks-enforce-existing>
- <sup>13</sup> Initiative report on the implementation of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys (Toy Safety Directive [https://www.europarl.europa.eu/doceo/document/A-9-2021-0349\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2021-0349_EN.html))
- <sup>14</sup> Initiative report on addictive design of online services and consumer protection in the EU single <https://www.europarl.europa.eu/news/en/press-room/20231023IPR08161/new-eu-rules-needed-to-make-digital-platforms-less-addictive>
- <sup>15</sup> Initiative report on mental health [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0457\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0457_EN.html)

Securing provisions on mental health in the TSR would also echo:

- The opinion expressed by the Consumer Safety Network sub-group on AI, connected products and other new challenges in product safety, which looked into connected products as a cause of depression, loss of sleep, altered brain function and myopia or early blindness in children.
- The clarifications included in the GPSR and according to which a) health should be understood as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, as stated in the WHO definition; and b) safety assessment of products should take into account the health risk posed by digitally connected products, including the risk to mental health, especially of vulnerable consumers in particular children (see recitals 19 and 23).
- The Communication adopted by the European Commission in June 2023 for a comprehensive approach to mental health, which aims to help Member States and stakeholders take action on these challenges<sup>16</sup> and which includes a special chapter on mental health of children and young people.

### 2.3. The introduction of a Digital Product Passport for toys

As the TSR aims at reducing the high number of non-compliant and unsafe toys still available on the EU market, we consider the introduction of a Digital Product Passport (DPP) a suitable addition to the toolbox of customs and market surveillance authorities.

This will certainly facilitate the verification of product information by making checks and the interconnection between different IT systems more automatic, systematic and immediate. It means for instance, that if there is no DPP available for a given toy at custom clearance, there will be no release of the product on the Single Market. When considering that EU customs handled the import of 546 million items in 2022<sup>17</sup>, the potential to stop products at the border is therefore high.

Beyond its added value for the authorities in charge of product controls, the DPP will also improve traceability along the value chain and consumer information overall. In this regard, we welcome the distinction proposed by the European Commission between what must be included in the DPP as compulsory information, and what additional information it may contain. We insist though on the fact that digital labelling under no circumstance must replace on-product labels<sup>18</sup>.

Further down, we also share suggestions on how to make the DPP fit for purpose, alongside other recommendations to curb the influx of dangerous products deriving from online sales.

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<sup>16</sup> Communication: A comprehensive approach to mental health [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/european-health-union/comprehensive-approach-mental-health\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/european-health-union/comprehensive-approach-mental-health_en)

<sup>17</sup> Source [EU customs – facts and figures](https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures_en). [https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures\\_en](https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures_en)

<sup>18</sup> <https://www.beuc.eu/publications/beuc-x-2021-016-why-moving-essential-product-information-online-is-a-no-go.pdf>

## 3. How must the proposal be improved

### 3.1. Getting the scope of the TSR right

#### Our recommendations in a nutshell

1. Reintegrate the precautionary principle in the legal text.
2. Extend the scope of the regulation to software.
3. Reducing the overlap with sports and other recreational equipment.

To ensure a high level of protection of children health and safety, the TSR lays down a number of essential requirements that toys must comply with. In this respect, it is also key for the text to be grounded on the precautionary principle as a basis for risk identification, risk assessment and management. This will serve as guidance for the regulators in circumstances where there are reasonable grounds for concern, but scientific evidence is insufficient or uncertain. **Similar to the current TSD<sup>19</sup>, the precautionary principle should be enshrined in the legal text of the TSR rather than just mentioned in the recitals.**

While no change was introduced in the definition of 'toy' compared to the one in the TSD, getting the scope of the TSR right also requires to better reflect societal and market developments related to toys. On the one hand, physical toys are increasingly being replaced by digital and smart toys, i.e. toys that are connected, that include software or a certain degree of AI. On the other hand, games downloaded on consoles, computers, mobile phones or tablets are today very popular and fit with the TSR definition of toys as products "designed or intended, whether or not exclusively, for use in play by children under 14 years of age". It is also likely that the interaction of children with chatbots will increase in the future: for example, chatbots impersonating characters are being developed and one could easily imagine children chatting with characters such as Barbie or Mickey in a play situation. These products come with important risks for child protection and mental health, such as addiction and the possibility of manipulation.

In this context, **changes should be brought to Annex 1 to clarify that the TSR applies to interactive software either specifically designed for and targeted at children, or that can be reasonably expected to be played by children.** This would also be in line with the above-mentioned extension of the general safety requirement to the psychological and mental health, well-being and cognitive development of children.

**The legal scope of the TSR also needs clarification regarding scooters.** For many years now, there has been an overlap between the standard for toys and the one for sport equipment when it comes to scooters with weight classes from 20kg to 50kg. This has caused problems in the classification of such products and has led to double standardization work<sup>20</sup>. We therefore recommend deleting point 5 of Annex I and introducing scooters in point 3. Scooters are similar products to roller skates, inline skates and skateboards, as indicated in Annex III, point 6 of the TSR.

<sup>19</sup> See article 39 in Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys.

<sup>20</sup> EN 71-1 'Safety of toys - Part 1: Mechanical and physical properties', dealt with by CEN/TC 52 "Safety of toys" and EN 14619 'Roller sports equipment - Kick scooters - Safety requirements and test methods', dealt with by CEN/TC 136 "Sports, playground and other recreational facilities and equipment".

### 3.2. Strengthening the chemical requirements

#### Our recommendations in a nutshell

1. Protect children against combination effects.
2. Extend the limit for nitrosamines to all toys.
3. Reduce children's exposure to skin sensitisers.
4. Close the loophole for biocides used in toys.
5. Improve transparency about chemicals in toys.

Children are particularly vulnerable to harmful chemicals. As outlined above, we therefore strongly support the proposed approach to better protect their health and well-being. **The co-legislators should further improve the safeguards against chemicals in toys by ensuring that the TSR:**

- **Protects children against risks from possible combination effects.** We welcome that the TSR will require toy manufacturers to consider known combination effects from simultaneous exposure to multiple chemicals in their safety assessments. A similar obligation should however apply to the regulator. In particular, a corresponding obligation should be introduced with respect to opinions by the European Chemicals Agency (ECHA). This will help ensure that decisions on possible derogations from the generic prohibition as well as new limit values for other substances of concern, take into account the need to protect children against (at a minimum) known combination effects.
- **Extends the new limit value for nitrosamines and nitrosatable substances to all toys.** Nitrosamines are strong carcinogens, as well as genotoxic substances for which no safe exposure limit can be established. Nitrosatable substances can be converted into nitrosamines in the human body. Therefore, children's exposure to these substances should be kept to the lowest technically achievable level.<sup>21</sup> Extending the new limit to all toys will ensure that children of all ages are guaranteed the same high level of protection, as also observed in Recital 22. This will also help prevent the risk correctly noted by the European Parliament, in its initiative report, that rogue manufacturers could seek to circumvent the limit by indicating that a toy is intended for children above 36 months even when it is not the case.
- **Reduces children's exposure to skin sensitisers,** including fragrance allergens. Skin sensitisation is a severe and growing concern for consumer health, with an estimated 27% of the EU population sensitised to one or more allergens<sup>22</sup>. An allergy developed in childhood is irreversible, and the EU must ensure that children's exposure to these harmful chemicals is effectively reduced. Therefore, the TSR should introduce stricter safeguards on fragrance allergens and other sensitisers to reduce their use in toys. This could for example be achieved by extending the scope of the generic prohibition to skin sensitisers.

<sup>21</sup> BfR. Toys made of natural and synthetic rubber for children under three years of age: Release of N-nitrosamines should be as low as possible.  
<https://www.bfr.bund.de/cm/349/toys-made-of-natural-and-synthetic-rubber-for-children-under-three-years-of-age-release-of-n-nitrosamines-should-be-as-low-as-possible.pdf>

<sup>22</sup> T. Diepgen *et al.* 2016. Prevalence of contact allergy in the general population in different European regions. *British Journal of Dermatology* 174(2).

- **Closes the loophole for biocides used in toys.** The Biocidal Product Regulation (BPR) exempts toys from its authorisation requirements, meaning that biocides used in toys do not need to be authorised for that use. This is a serious omission, and we urge that the TSR prohibits the use of biocides in toys that have not been authorised under the BPR.
- **Improves transparency about chemicals in toys,** building on the proposed obligation to include information on substances of concern<sup>23</sup> in the Digital Product Passport. This will afford consumers an informed choice, as well as facilitate future regulatory action meant to protect children's health. Consumer groups and other NGOs could further contribute to disseminating this information in a way that is understandable to consumers. Finally, the obligation to provide an ingredient list for cosmetic toys should be extended to all toys that are chemical mixtures, such as for example 'soap bubble toys', 'finger paints' or 'slime toys'.

### 3.3. Covering adequately the risks posed by smart toys

#### Our recommendations in a nutshell

1. Include cybersecurity in the list of essential requirements that toys must comply with.
2. Require third-party verification of smart toys.

Over the last years, consumer groups have continuously tested and then exposed how critical vulnerabilities in connected devices can be easily exploited and put consumers at risk. In December 2016, a product test by the Norwegian Consumer Council<sup>24</sup> had already highlighted serious concerns with connected toys and kids' wearables. The lack of cybersecurity features in dolls, toy robots and kids' smartwatches, was pointed out as posing unacceptable security threats: for instance, by making it possible for strangers to take control of the products and use them to track, listen in or talk to the children.

In 2017, another test conducted by Which? in the UK in the context of the "hackable home project"<sup>25</sup> looked into how popular smart gadgets and appliances in homes could resist a hack: a stuffed toy that enabled family and friends to send messages to a child via Bluetooth was found with a public flaw which made it possible to play own voice messages.

While technologies develop at a fast pace and the offer for digital products - including toys - is expanding, it is key to count on a solid and future proof legislative framework.

Against this background, Recital 14 of the TSR proposal explains that requirements for the cybersecurity of toys should not be set out in this legislation as they are addressed in other legal instruments, i.e. the proposal for a Cyber Resilience Act - that will replace the Radio Equipment Directive - and the proposal for an Artificial Intelligence Act.

<sup>23</sup> As defined in the European Sustainable Product Regulation

<sup>24</sup> <https://www.forbrukerradet.no/internet-of-things/> and <https://www.forbrukerradet.no/side/german-doll-ban-illustrates-flaws-in-product-safety-regulation/>

<sup>25</sup> <https://press.which.co.uk/whichpressreleases/the-hackable-home-investigation-exposes-vulnerability-of-smart-home-devices/>

Although the Cyber Resilience Act (CRA) is still to be formally adopted by the EU institutions, the provisional agreement reached by EU legislators on 30 November 2023 falls short of the necessary ambition to ensure a satisfactory level of child protection. Connected toys are expected to be added to the CRA's list of critical products but to the lowest risk class only (Annex III, Class I): although this classification does entail a more rigorous conformity assessment procedure, we regret that connected toys will still not be required to undergo a mandatory third-party assessment with the performance of penetration testing by an independent third-party. These would be particularly relevant to identify the specific and serious risks that these products can bring to children's health and safety in case of cyberattacks.

The CRA does explicitly allow in its article 2(4) for the application of EU sectoral rules laying down "requirements that address all or some of the risks covered" by the CRA where they serve to achieve the same (or higher) level of protection. Therefore, based on the reasoning that digital risks are a similar issue to chemical risks (i.e. there are general rules on chemicals in the CLP/REACH and there are specific rules on chemicals in toys), it is relevant to have these risks fully covered in the TSR.

To do so, **cybersecurity should be mentioned in the list of safety requirements to which toys must comply and third-party verification should be required for smart toys along other categories of toys.**

This will also ensure the absence of loophole in EU legislation when it comes to toys including AI as their categorisation as "high-risk AI system" which will need to comply with stricter rules under the Artificial Intelligence Act (AIA), will also depend on whether they need to undergo EU-type examination in sector specific legislation (i.e. the TSR).

### 3.4. Regulating impulse noise levels

Another product requirement that should be improved has to do with the setting of clear limit values for both impulse noise (i.e. a noise that occurs suddenly and reaches a peak) and continuous noise emitted by toys.

Recital 15 of the proposal for a TSR states that "in order to protect children from the risk of impaired hearing, maximum values should be set out for both impulse noise and continuous noise emitted by toys". However, the way the corresponding provisions about particular safety requirements have been drafted is not in accordance with the intention of this recital. Annex II part 1 point 10 reads that toys "shall be designed and manufactured in such a way, in terms of the maximum values for impulse noise and continuous noise, that the sound from them is not able to impair children's hearing".

**We urge that limit values with a direct impact on the health and safety of consumers, and in this case of children, shall be set by the legislators in the TSR,** instead of other bodies during the standardisation process. As there is no safety-based reason to expose children to higher levels than what is allowed for adults in industry, inspiration could be taken from the provisions Directive 2003/10/EEC on the protection of workers.

### 3.5. Making toy labels and warnings work for consumers

#### Our recommendations in a nutshell

1. Set specific criteria for the visibility and legibility of warnings.
2. Allow the use of a single warning pictogram.
3. Relegate the CE marking to the technical documentation and the Digital Product Passport

Experience shows that warnings on toys are often too small, hidden by other text or under the packaging. When consumers do not see them or face difficulties with reading them, children are not properly protected.

As also rightly noted by the European Parliament in its initiative report on the implementation of the TSD, the lack of specific requirements for warnings was highlighted by some authorities as a challenge to enforce the legislation in a uniform way.

**It is therefore important in the interest of child protection and legal certainty, to introduce specific requirements for the visibility and legibility of warnings on toys**, e.g. a minimum letter size, letter spacing or contrast between the text and the background. Inspiration could be taken from EU food law or the revised<sup>26</sup> Regulation on Classification, Labelling and Packaging of Chemicals (CLP regulation).

While the TSR will give the possibility to toy manufacturers to replace the word “warning” by a pictogram and therefore save on translation costs and/or packaging space, it must avoid that consumers are confused by a proliferation of different, potentially unfamiliar symbols. **Only one single and specific pictogram must be allowed, similar to the one that indicates when a toy is not suitable for children under 3 years of age.**

**To make toy labels work for consumers, the CE marking should be removed from the toy or its packaging and added to the technical documentation/DPP.** Even though it is not intended as a mark for consumers, its appearance on many products or their packaging is misleading because consumers consider it as a proof of safety and confuse it with a certification label.

As many other children’s products are not required to bear CE Marking, this also leads consumers to question its absence on certain products and to some curious examples: A bed for a baby is exempted from having to bear CE Marking and yet a bed for a baby doll, covered by the Toy Safety Directive, carries CE Marking. Does this mean a toy bed is safer than a baby’s bed? How can the consumer understand such logic?

As mere reference for market surveillance authorities, the CE marking should be relegated to the technical documentation and the Digital Product Passport accompanying the toys.

### 3.6. Improving market surveillance

#### Our recommendations in a nutshell

1. Ensure accuracy of DPP information
2. Adequately equip authorities, including for compliance checks
3. Ensure free and easy access to the DPP by consumers

Although the DPP can in theory increase transparency of product information about toys, how the tool will be implemented in practice remains to be seen. As the information that it must contain will differ depending on the type of users – such as market surveillance authorities or consumers – **safeguards will need to be put in place. These should prevent the DPP data from being changed, outdated, incorrect, or even fake.**

<sup>26</sup> <https://www.beuc.eu/press-releases/new-eu-labelling-requirements-chemicals-benefit-consumers>

Another important aspect to keep in mind is the limited human, technical and financial resources which already characterise the work of many customs and market surveillance authorities, as demonstrated in a recent study of the European Parliament<sup>27</sup>. Since the DPP may potentially increase the number of alerts and suspicious toys that they will have to deal with, **the overall capacities of customs and market surveillance agents must be increased**. This is not only valid in view of using the DPP but also as regards the number of controls to verify the accuracy of the information. In this context, we insist that DPP checks must never replace actual compliance tests.

**From a consumer information perspective, the access to the DPP should be free and easy**, e.g. not require downloading or installing specific apps, or registering with a password. In this regard, it is also key to ensure that economic operators will not track or profile consumers and that they will not analyse any usage data for purposes other than what is absolutely and strictly necessary for providing information about toys.

### 3.7. Closing loopholes regarding the online sales of dangerous toys

#### Our recommendations in a nutshell

1. Require online marketplaces to check toy listings against dangerous products databases such as the EU Safety Gate.
2. Ensure that online marketplaces can be held liable for product compliance when no other economic operator can be identified or takes appropriate action.

Online marketplaces play an essential role in today's supply chain: by offering their own products or acting as intermediary between consumers and third-party sellers, they represent a major gateway through which we find, compare, choose, pay and get products delivered. Still, the number of illegal and unsafe activities on online marketplaces is worrisome as regularly reported by consumer organisations<sup>28</sup>, national authorities and industry.

While the Digital Services Act (DSA) and the GPSR have introduced new rules to better regulate the online sales of goods, they do not reflect the responsibility and liability which should fall on online marketplaces when it comes to product safety.

The TSR should ensure that no loopholes remain when children's protection is at stake. This is especially relevant when toys are sold by third-party sellers and come from outside the EU. Research by the Dutch consumer organisation Consumentenbond<sup>29</sup> shows that the internal compliance procedures put in place by some online marketplaces are not efficient, and that requiring traders to self-certify that they only sell safe products simply does not work.

<sup>27</sup> [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)754190](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)754190)

<sup>28</sup> [https://www.beuc.eu/sites/default/files/publications/unsafe\\_and\\_illegal\\_activities\\_online.pdf](https://www.beuc.eu/sites/default/files/publications/unsafe_and_illegal_activities_online.pdf)

<sup>29</sup> See research and article by the Dutch consumer organisation Consumentenbond <https://www.consumentenbond.nl/nieuws/2023/onveilige-producten-makkelijk-te-verkopen-via-amazon.nl-en-bol.com>

**In view of filling the gaps in the cascade of responsibility and liability for toy safety, online marketplaces should be defined as economic operators<sup>30</sup> and be given importer-like status.** In practice, this means for instance that in case of a problem with a toy, they should be required to carry out product recalls. With this should come an obligation to perform ex-ante and ex-post checks against a dangerous products database, such as the EU Safety Gate, in order to prevent the sales of dangerous toys on their interfaces.

Requiring more from online marketplaces will also help to address the limitations of the notion of “authorised representative” as first introduced by the Market Surveillance Regulation and then extended to all products by the GPSR. According to these legislations, toys that are manufactured outside the EU will have to bear the name and contact details of any natural or legal person established within the Union, and who received a written mandate from a manufacturer to act on its behalf in relation to specified tasks. However, we consider that the concept will not fully solve the issue of the online sales of dangerous toys. For instance, one could imagine that the mandate received from the manufacturer has been terminated while the name of the (old) authorised representative still appears on the products or the online listing. More fundamentally, the concept could be cheated and is limited only to the provision of information regarding product safety or compliance with legislation. In case a toy should pose a certain risk and must be subject to withdrawal and recall from the market, the effective implementation of such measures would still depend on the identification of other economic operators, and on their willingness and capacity to take appropriate action.

Unless more obligations are imposed on online marketplaces, such gaps in the legislation will negatively impact the effective enforcement of EU rules as well as the protection of children and other consumers.

### 3.8. Improving governance

#### Our recommendations in a nutshell

1. Collect data about toy-related accidents or injuries in a more coordinated and systematic way.
2. Shorten the transition period.
3. Strengthen penalties in case of repeated infringement of legislation.
4. Further support the evaluation of the legislative framework.

In view of improving the overall regulatory framework for toy safety, ANEC and BEUC consider that more needs to be done as regards a) the reporting of toy-related accidents and injuries, b) the period by which consumers will be able to fully-benefit from the new rules and c) the penalties applicable in case of repeated infringements of the regulation. The provisions governing the evaluation of TSR should also be strengthened, so the process relies on reliable and appropriate information, and the results are shared with the public.

<sup>30</sup> The definition of online marketplaces should moreover follow the one of the Omnibus Directive 2019/2161. By referring to the sale of products, the one in the GPSR is inconsistent with its scope which also must cover safety of products which are supplied to consumers for free. Online platforms also advertise, sponsor, rank or otherwise promote products. These products may be dangerous and influence consumers’ decisions.

As highlighted in recent reports<sup>31</sup>, data on injuries are scarce and unevenly collected among countries, making it hard to assess the impact of toy safety regulatory frameworks, including the one in place in the EU. As market surveillance is generally poorly resourced, it is of utmost importance for authorities to have a tool at their disposal to identify problems.

**ANEC and BEUC call for a revitalisation of the European Injury Database (EU-IDB), to support Member States in collecting and sharing data on injuries involving consumer products**, based on a common methodology and with the aim of achieving a high quality, representative and up-to-date data sample for the entire Single Market. Such a system would contribute to an improved safety of toys and consumers by informing future regulatory work, standards, product designs and public awareness campaigns. Moreover, the costs of creating and maintaining such a system would be more than offset by reductions in healthcare costs. The Single Market Programme could provide a sound financial base for the pan-European surveillance of product-related injuries.

**In relation to transition periods, ANEC and BEUC consider a shorter timeline is required to guarantee that children will benefit from the proposed new safeguards as soon as possible.**

Similar to article 51 of the current TSD, we strongly recommend that the penalties shall not only be effective, proportionate and dissuasive. **When an economic operator previously committed infringements of this Regulation, the penalties must be increased.**

As the TSR proposal does not include any requirement for national authorities to submit regular reports, **the Commission should be empowered to ask Member States to provide information on the application of the Regulation** (see for comparison Article 48 of the TSD). In view of informing the evaluation of the Regulation, it is also important for the Commission to draw up a summary of the main findings and to make it available to the public. The report shall assess whether the Regulation achieved the objective of ensuring a high level of protection of health and safety of children when using toys.

END

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<sup>31</sup> Navigating child product safety: Perspectives from experts on international challenges and priorities in regulation and research <https://www.sciencedirect.com/science/article/pii/S1326020023052809>