



Raising standards for consumers

POSITION PAPER

Input on the second 5-years report on the application of the Toy Safety Directive 2009/48/EC



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1. Executive summary

According to Article 48 of Directive 2009/48/EC on the safety of toys, by 20 July 2014 and every five years thereafter, Member States have to send to the Commission a report on the application of the Directive. Member States should therefore submit their second 5-years report to the Commission by 20 July 2019.

The Directive specifies that the report should contain an evaluation of the situation concerning the safety of toys and of the effectiveness of the Directive, as well as a presentation of the market surveillance activities performed by that Member State.

The Commission has to draw up and publish a summary of the national reports.

For the purposes of drawing up the above national report, the Commission has distributed a questionnaire to Member States, similar than the questionnaire which was used for the first 5-years report in 2014.

In the context of the second 5-years report, stakeholders were also invited to submit their views on any of the issues addressed in the questionnaire.

This position paper contains the views of ANEC on the second 5-years report on the application of the Toy Safety Directive 2009/48/EC.

Although the Directive certainly brought improvements to toy safety in Europe, the following issues need to be addressed in our opinion:

- the chemical requirements for toys need to be strengthened significantly. This position is shared by several Member States. The lack of adequate provisions to exclude exposure to dangerous substances such as CMRs requires a fundamental revision of the chemical requirements of the Directive. A key point in this context is the broadening of the Comitology to set limits also for toys for children above 36 months of age (other than those intended to be placed in the mouth).
- while the comitology procedure only applies for chemicals, it should also work for mechanical and physical requirements for toys for children under 3 years of age.
- the Directive must be updated to ensure that it is in line with the new 'security for safety' concept of the general legal framework. See ANEC and BEUC¹ position on the 'Cybersecurity of connected products'².
- the Directive needs to be amended to regulate impulse noise levels in toys, and to set the limit to what is allowed for adults in industry according to Directive 2003/10

¹ The European Consumer Organisation

² [ANEC – BEUC position paper on cybersecurity of connected products \(including European Cybersecurity Act\)](#), March 2018

/EEC. We see no safety-based reason to expose children to higher levels than is allowed for adults.

- in the interest of legal certainty, specific requirements for visibility and legibility of warnings on toys (e.g. a minimum letter size) need to be introduced, in order to enable Member States to enforce these requirements in a uniform way.
- When buying toys online, consumers often don't get the required information and warnings they would find when buying toys in a physical shop.
- The Regulation on Enforcement and Compliance, proposed by the Commission in November 2017, covers toys. In this context, we reiterate the need to increase controls and market surveillance of toys; to set up a Pan-European Accident and Injury Database in order to systematically collect information about accidents and injuries that occur because of dangerous toys; to improve traceability along the supply chain, also for toys that are sold online.

2. Background

In June 2009, ANEC welcomed the adoption by the European Parliament and Council of a revised Directive regulating the safety of toys in the EU³, particularly bearing in mind that the former Toy Safety Directive⁴ dated back to 1988.

ANEC especially welcomed the provisions for:

- a better enforcement of the legislation
- Increased visibility and understanding of warnings on toys
- Stricter regulation of toys in food
- Ban of some dangerous chemical substances
- Evaluation of the safety level provided by the new legislation

However, in ANEC's opinion, several shortcomings still remained to be addressed with regard to the new legislation:

- Many dangerous substances would still be allowed in toys
- No flexibility in terms of quickly adapting the legislation to new potential risks
- The noise level of toys is not sufficiently regulated by the new legislation
- The need to improve toy standards

³ Directive 2009/48/EC of the European Parliament and the Council of 18 June 2009 on the safety of toys.

⁴ Directive 88/378/EEC of 3 May 1988 concerning the safety of toys.

3. Evaluation and effectiveness

3.1 Questionnaire to Member States

According to Article 48 of Directive 2009/48/EC on the safety of toys, by 20 July 2014 and every five years thereafter, Member States have to send to the Commission a report on the application of the Directive. Member States should therefore submit their second 5-years report to the Commission by 20 July 2019.

The Directive specifies that the report should contain an evaluation of the situation concerning the safety of toys and of the effectiveness of the Directive, as well as a presentation of the market surveillance activities performed by that Member State.

The Commission has to draw up and publish a summary of the national reports.

For the purposes of drawing up the above national report, the Commission has distributed a questionnaire to Member States, similar than the questionnaire which was used for the first 5-years report in 2014.

In the context of the second 5-years report, stakeholders were also invited to submit their views on any of the issues addressed in the questionnaire.

ANEC focussed on the following questions, as we are of the opinion that these are the most important ones from a consumer point of view:

- In which standardisation activities (European & International) on toys did your experts participate? How often? (*question 11*)
- Are there any implementation issues that need to be addressed at national / EU level? (*question 13*)
- In general, do you consider that the TSD is effective in ensuring the safety of toys and the free movement of toys within the EU? (*question 14*)
- Since the entry into force of the TSD, what have been the main challenges in toy safety in the EU? Has the TSD been effective in tackling those? (*question 16*)
- Is the definition sufficiently clear? Has the revised definition included in the 2009 TSD been effective in reducing the "grey area" compared to the situation under the 1988 TSD? What would be the best procedure to deal with products in the "grey area"? (*question 17*)
- Annex I as well Article 2(2) of the TSD lists those products which are outside the scope of the TSD. Do you consider that these exceptions continue to be appropriate? Is there any exception that should be added to or deleted from Annex I (products that are, in particular, not considered to be toys) or Article 2(2) (toys to which the TSD does not apply)? (*question 18*)

- Do the particular safety requirements in Annex II need to be adapted, complemented or rephrased? (*question 21*)
- Are there any areas of concern on toy safety that are not covered adequately by the TSD? (*question 22*)
- Is the use of warnings as provided for in Article 11 and Annex V effective? Did the use of warnings, including the language requirements, pose any problem? Is there a need to improve or complete the warnings? (*question 23*)
- Do you think that the procedure foreseen in Article 46 for amending specific parts of the TSD has proved effective? (*question 34*)

3.2 In which standardisation activities (European & international) on toys did your experts participate? How often? (*question 11*)

ANEC, Partner Organisation of CEN and CENELEC, actively participated in the European standardisation work on toys:

- CEN TC 52 'Safety of Toys'
- CEN TC 52 WG3 'Safety of Toys: Mechanical and physical properties'
 - o CEN TC 52 WG3 TG 2 – Cords in toys (by correspondence)
 - o CEN TC 52 WG3 TG 3 – Projectiles (by correspondence)
- CEN TC 52 WG10 'Activity toys'
- CENELEC TC 61 WG7 'Electric toys' (by correspondence)

ANEC attended most of the meetings of the above committees (except those followed by correspondence) and submitted comments on draft European toy standards and amendments developed by CEN TC 52 WG3 (TGs) and WG10 during the period 2014-2018.

In addition, ANEC also followed the international work of ISO TC 181 'Safety of toys' through Consumers International and submitted comments on some draft international toy standards and amendments during the period 2014-2018.

Unfortunately, there is a general lack of consumer representation in standardization at the international level. In the toy safety area, not even the larger European countries are active at the international level, i.e. Germany, Italy, Spain and France do not participate in ISO TC 181 'Safety of toys'. This means that ISO documents are in general not discussed at national level in many European countries.

At the same time, globalization has become a buzzword also in standardization. Already in the late 1990's the toy sector felt a need to combine the American standard for toys (ASTM F 963) and the European standard for toys (EN 71) into one international standard to make it easier for the industry to export toys to the whole world. This was questioned by consumer organizations at that time as there was a fear that consumers

would end up with an ISO standard which would contain the lowest requirements from the two respective standards.

In 2009, ANEC commissioned a study which led to an ANEC position⁵ on the possible streamlining of the legal and standardization frameworks for toy safety. ANEC stressed the conclusion of the study that the convergence of the standards is dependent upon greater coherence of the legislation which governs the production and sale of toys. In achieving a greater coherence of legislation and convergence of standards, ANEC strongly requested that legislators and standardisers adopt requirements that offer consumers only the highest levels of safety possible.

During the period 2014-2018, standardization work on toys was divided between ISO and CEN in order to harmonize as far as possible. Working documents are drafted in one committee and afterwards presented to the other. As there is very little consumer influence at ISO level (hence the work is dominated by industry), the documents presented to CEN contain certain proposals that could relax the present European requirements. However, given the agreement achieved at international level, it is difficult to amend proposals in favour of the consumer interest when they reach CEN.

Finally, when there are divergent opinions on the scientific base for the decisions to be taken in the standards' committee for toys, the manufacturers' view prevails instead of the precautionary principle. This was the case during the development of an amendment on acoustics to the toy standard EN 71-1:2011. The amendment was approved in July 2013 despite opposition from ANEC. The amendment is not giving children adequate protection against hearing impairment caused by impulse noise from toys and was not elaborated according to the precautionary principle. See further explained under point 3.9.3.

3.3 Are there any implementation issues that need to be addressed at national / EU level? (question 13)

- Some producers avoid complying with TSD by claiming that their products are not toys, while they are clearly used as such (e.g. footballs tested by the Danish Consumer Council).
- Authorities don't collaborate enough at EU level nor at national level: it can have impact on the enforcement of safety requirements (ex. imported / counterfeited toys). Evidence gathered by consumer organisations is under-used: on several occasions, no recall or RAPEX notification was made after authorities were warned about products found dangerous.
- No procedure is foreseen for a flexible modification of the TSD in response to market changes/new risks.

⁵ ANEC position on the possible streamlining of the legal and standardization frameworks for toy safety, <http://www.anec.eu/attachments/ANEC-SG-2010-G-007%20+%20annex.pdf>

- More and more toys can now connect to the Internet. While the TSD obliges manufacturers to put safe toys on the market, the 'safety' concept is too narrow. After consumer organisations expressed concerns about connected dolls, the response was in no country the same.
- Some authorities have problems to enforce the presentation of warnings as requirements are not specific enough.
- Specific requirements are also still missing to better regulate noise levels.
- Children are still exposed to hazardous chemicals, because limit values have not been established or because existing limit values are too high /poorly enforced. Scientific evidence should be taken into account.
- It's not possible for consumers to fully see which chemicals are used. They should be better informed about chemicals of concern.
- Many toys slip controls because consumers order them online from outside the EU (ex Wish.com). The same rules must apply to toys sold in regular shops and online.

3.4 In general, do you consider that the TSD is effective in ensuring the safety of toys and the free movement of toys within the EU? (question 14)

3.4.1 Effectiveness

The TSD certainly brought improvements to toy safety in Europe, e.g.

- a better enforcement of the legislation
- Increased visibility and understanding of warnings on toys
- Stricter requirements for the safety of toys in food products
- Ban of some dangerous chemical substances
- Evaluation of the safety level provided by the new legislation

On the other hand, the TSD is NOT effective in ensuring the safety of toys and the free movement of toys within the EU as it still permits the use of many dangerous chemicals, such as carcinogenic, allergenic and hormonal disrupting substances, despite the potential risks to children's health. See also below under points 3.8 and 3.9.1.

In addition, experience shows that warnings on toys are often too small, hidden by other text, hidden under crumples in the packaging, etc. It is sometimes difficult to discover and read the warning(s), also with corrected vision. Therefore, consumers might not detect it and children are not always protected properly. We understood that some authorities have had problems to enforce the presentation of warnings on toys because there are no specified requirements in the Directive and the belonging standards. See further explained below under point 3.10.

3.4.2 Free movement

The TSD helped to ensure the free movement of toys throughout the EU to a large extent. The legislation on the Single Market allows for the free movement of goods, thus providing European consumers with greater choice and lower prices including when it comes to the purchase of toys. The TSD also contributed to a free movement of toys by harmonizing rules and procedures for placing them on the EU market while aiming that toys do not put children at risk.

However, some limitations can still be observed and be explained by the fact that:

- Member States may have a different interpretation of the Directive and a different approach to the implementation of the text. The way the TSD is enforced also suffers from a lack of consistency: national authorities not only have different resources to enforce the legislation, but also different approaches to enforcement (ex. in the number of controls performed or in the methodologies used for toy testing, for imposing fines, etc). In some cases, this is also explained by the lack of specific provisions (ex. on warnings and chemicals) or by the complicated or ambiguous nature of some provisions which prevent legal certainty.
- Some economic operators, especially those belonging to the category of small and medium-sized enterprises or those operating from third-countries, may have a limited knowledge and understanding of the Directive or its specific requirements.

3.5 Since the entry into force of the TSD, what have been the main challenges in toy safety in the EU? Has the TSD been effective in tackling those? (question 16)

Market changes and new risks: the TSD does not foresee any specific procedure to allow for the easy and flexible modification of the Directive in response to market changes (e.g. new toys) or new risks. See below under 3.9.4.

Connected toys – cybersecurity – Internet of Things: More and more toys can now connect to the Internet. The Toy Safety Directive doesn't ensure that connected toys are both safe and secure before being able to be placed on the Single Market. See below under 3.9.5.

Online shopping of toys: poses a challenge for market surveillance and enforcement activities, and also let consumers confused as to whether they are shopping within or outside the EU. Clarifying the definition for "placing on the market" and who is responsible in the supply chain is important to ensure traceability and enforcement. Some improvements may be expected from the proposed Regulation on Enforcement and Compliance which seeks to overhaul market surveillance rules for harmonized products, including for toys. It would be of utmost importance to make a legal representative in the internal market obligatory.

3.6 Is the definition sufficiently clear? Has the revised definition included in the 2009 TSD been effective in reducing the “grey area” compared to the situation under the 1988 TSD? What would be the best procedure to deal with products in the “grey area”? (question 17)

Some producers avoid complying with TSD by claiming that their products are not toys, while they are clearly used as such (ex. footballs tested by Forbrugerrådet Tænk).

Also, it is sometimes difficult for MS & stakeholders to distinguish between what has to be considered as a toy product or not (ex. soother holders which are only soother holders and those having a play function).

The detailed provisions in the TSD have not helped reduce the grey area between toys and non-toys.

The overlap with sports and other recreational equipment (which falls within the scope of CEN TC 136) remains a problem. For trampolines for instance, it is unclear which kind are covered by the TSD (e.g. in-ground trampolines, bouncing facilities). In June 2014, CEN TC 52 'Safety of Toys' had also sent a letter to the Commission (document CEN TC 52 N1802) regarding the potential overlap in requirements for toy scooters for children over 20 kg and scooters that are sports equipment. In this respect, we propose a change to Annex I of the TSD. See below under point 3.7.

3.7 Annex I as well Article 2(2) of the TSD lists those products which are outside the scope of the TSD. Do you consider that these exceptions continue to be appropriate? Is there any exception that should be added to or deleted from Annex I (products that are, in particular, not considered to be toys) or Article 2(2) (toys to which the TSD does not apply)? (question 18)

Concerning scooters, ANEC proposes to delete the 5th para in Annex I and to introduce scooters in the 3rd para, to be in line with similar sports equipment (roller skates, inline skates, skateboards).

Annex I should also indicate which kind of trampolines are not considered as toys.

3.8 Do the particular safety requirements in Annex II need to be adapted, complemented or rephrased? (question 21)

Significant shortcomings of the Directive such as the lack of adequate provisions to exclude exposure to dangerous substances such as carcinogenic, mutagenic and reprotoxic substances generally, and particularly in toys intended for use by children under 36 months or in mouth-actuated toys, can be solved only by a **fundamental revision of the chemical requirements**.

The chemical requirements for toys need to be strengthened significantly. This position is shared by several Member States. A key point in this context is the broadening of the Comitology to set limits also for toys for children above 36 months of age (other than those intended to be placed in the mouth).

In June 2014, ANEC published the [Position paper 'Hazardous chemicals in products - The need for enhanced EU regulations'](#). Starting from the need for a systematic approach to chemicals in products to be developed, the paper proposes that overarching principles be established to cover all types of products, with product specific requirements being elaborated as well as provisions on monitoring and market surveillance. The paper prioritizes actions and the identification of requirements for several product groups.

For toys, the ANEC paper makes the following suggestions:

- Requirements for CMR substances shall be significantly strengthened to protect children's health. Current limits are based on high thresholds which are based on the rules for classification of mixtures according to Regulation 1272/2008/EC on classification, labelling and packaging of substances and mixtures (CLP) allowing e.g. up to 1% of a category 2 carcinogen or up to 3% of a category 2 substance toxic for reproduction. At a minimum the generic content based CMR limits should be reduced to 0,01% with stricter limits for certain CMR substances where required (in particular, CMR substances without threshold).
- Substances of Very High Concern (SVHCs) included in REACH Annex XIV shall be prohibited in toys using a low threshold. The latest scientific evidence on possible cocktail or low-dose effects of chemicals should be taken into account. A systematic approach should also be adopted for hormone disrupting chemicals.
- The adopted limits for PAHs in REACH (entry 50 of Annex XVII) shall be reduced as regards toys and child use and care articles from 0,5 mg/kg to 0,1 mg/kg and the list of PAH substances covered should be extended.
- In the long run an approval system (positive list system) shall be established for toys' materials intended for use by children under 36 months, or in other toys intended to be placed in the mouth based on current legislation in the field of food contact materials.
- Only non-allergenic fragrances shall be used in toys. Requirements for allergenic fragrances need to be considerably strengthened taking into account among other the findings of the 2012 opinion by SCCS concerning "Fragrance allergens in cosmetic products", adopted in June 2012⁶, which stated that many more fragrance substances than those identified in the SCCNFP opinion of 1999 (on which the respective provisions of the Cosmetics Regulation are based, and which formed the basis of the TSD requirements) have been shown to be sensitizers in humans. ANEC appreciates that the Commission has already taken first steps to strengthen the current provisions. A further evaluation taking into account in particular the identified established contact allergens in animals (table 13-2) and likely contact allergens (table 13-3) could be useful. As an initial measure, toys consisting of mixtures should carry a full ingredient declaration similar to food & cosmetics. Full declaration should be given for toys for children under 3 years and for toys to be

⁶ Scientific Committee on Consumer Safety: Opinion on fragrance allergens in cosmetic products, June 2012, SCCS/1459/11.

placed in the mouth. Some companies such as the biggest Danish retailer COOP already lead by good example.

- Sensitizers other than allergenic fragrances shall be also addressed.
- Migration limits in the TSD for nitrosamines and nitrosatable substances in toys intended for use by children under 36 months, or in other toys intended to be placed in the mouth (0,05 mg/kg for nitrosamines and 1 mg/kg for nitrosatable substances), are inadequate as the Commission itself has admitted in its response to the German request to maintain the more stringent national values of 0,01 mg/kg and, respectively, 0,1 mg/kg). Hence, the limits shall be reduced.
- Endocrine disrupting chemicals (EDCs) shall be addressed in toys. TSD lacks provisions to identify & regulate EDCs. For the time being a product specific approach to tackle EDCs in toys is urgently needed to better protect children and to ensure coherence with e.g. the Medical Devices Regulation (cf. art. 10). Evidence links EDCs to severe diseases & disorders (ex. infertility, cancer) as acknowledged in the COM Communication on endocrine disruptors. A definition of (potential) EDCs based on WHO definitions should be introduced to facilitate their identification & ultimately regulation. As TSD prohibits the use of known, presumed & suspected CMR substances, we suggest a consistent approach to be applied for EDCs. Once a harmonised classification for EDCs is available, the classes of EDCs which are of particular concern shall be eliminated.
- Biocides used in toys were exempted from the authorization requirement for biocides when the Regulation "concerning the making available on the market and use of biocidal products" (No 528/2012) was approved. This means that biocides used in toys do not need to be authorized. This is a serious omission. Either an approval system for biocides shall be introduced in the TSD, or the exemption for toys in the biocidal products regulation shall be removed.
- Chemicals falling in other classes of dangerous substances such as "very toxic", "toxic", "harmful", "corrosive", "irritant" or non-classified (or not yet classified) substances which pose health hazards shall be covered.
- Specific requirements shall be established for additional substances such as colourants, monomers, solvents, etc. using existing provisions in voluntary instruments such as Oekotex standards or Eco-label criteria as a departure point.
- A standardisation request for the revision of the outdated standards EN 71-9, -10 and -11 dealing with organic chemical compounds in toys shall be issued by the Commission.
- Nanomaterials shall not be used in toys unless endorsed by a scientific committee.
- Persistent, bio-accumulative and toxic chemicals (PBT), as well as very toxic and very bio-accumulative (vPvB) chemicals, are substances of very high concern and shall be prohibited.
- Deviations from the above suggested rules shall be possible based on an assessment by a scientific committee.

- The Directive shall include a procedure (such as Delegated Acts) which allows the adoption or modification of limits for chemicals in all kinds of toys for all kinds of substances including generic limits for groups of substances in a fast and flexible way (without having to change the whole piece of legislation in the European Parliament and the Council).
- Sufficient resources shall be made available by the Commission and the Member States to systematically identify, assess and regulate chemicals in toys. The Commission shall provide an annual working plan for the systematic evaluation.

Combined exposure to chemical substances from multiple sources is overlooked. Current legal requirements only oblige manufacturers to perform a safety assessment of the product in isolation. As a result, risks arising from multiple exposures to the same chemical used in different toys, or from different chemicals acting in combination, may be underestimated. Existing risk evaluation methods overlook possible low-dose effects and non-monotonic dose-response relationships. A more precautionary approach is needed. Possible solutions include: introduction of an additional assessment factor (MAF); clearer mandate for risk managers to take potential combination effects into account. Research is needed to modernize existing risk assessment methods.

Greater transparency through disclosure obligations on the presence of chemicals of concern in toys is also urgently needed to bring the TSD in line with other EU laws, e.g. on cosmetics or detergents.

3.9 Are there any areas of concern on toy safety that are not covered adequately by the TSD? (question 22)

3.9.1 Many dangerous substances are still allowed in toys

Directive 2009/48/EC still permits the use of many dangerous chemicals, such as carcinogenic, allergenic and hormonal disrupting substances, despite the potential risks to children's health. During the revision of Directive 88/378/EEC, ANEC and BEUC repeatedly expressed strong concerns about the inadequate chemical requirements proposed by the Commission. Directive 2009/48/EC was adopted in 2009 after 8 years of discussion. The insufficient chemical requirements entered into force only in July 2013.

As a result of the growing criticism from various stakeholders, including ANEC, as well as several Member States, the Commission established a working group on chemicals in toys (formally a subgroup of the Commission's Expert Group on Toy Safety) with the aim to make proposals within the legal framework for improving the chemical requirements of the Directive. The Directive includes a limited Comitology procedure which allows to change the limits for allergenic fragrances and elements (points 11 and 13 of Part III of Annex II), and to "adopt specific limit values for chemicals used in toys intended for use by children under 36 months or in other toys intended to be placed in the mouth" according to its article 46. This subgroup - with ANEC participation - first met in November 2010.

ANEC appreciates that some progress has been made and that the Commission – based on advice by the Subgroup Chemicals – has reduced limits for some elements and has introduced some requirements in Appendix C (limits for certain flame retardants, for bisphenol A, formamide, preservatives) used in toys intended for use by children under 36 months, or in other toys intended to be placed in the mouth, based on article 46(2). Some further restrictions are in discussion e.g. for formaldehyde or aniline. Nevertheless the progress seems to be too slow and the process should be accelerated (e.g. by providing sufficient resources).

There are, of course, several REACH restrictions applicable to toys (e.g. on phthalates or PAHs), but much more needs to be done to protect children adequately from chemicals in toys.

3.9.2 Visibility and understanding of warnings on toys

See below under point 3.10.

3.9.3 The noise level of toys is not sufficiently regulated by the new legislation

The TSD states that toys which emit sound should not pose any hearing impairment risk to children. Unfortunately there is no maximum safety level of sound (in decibels) for sound-emitting toys in the legislation.

An amendment on acoustics to the toy standard EN 71-1:2011 was approved in July 2013 despite opposition from ANEC.

For impulse noise, which can give immediate and irreversible damage to hearing, the research presented in the proposal in order to justify higher levels than allowed for adults, according to the EU workplace legislation, is scientifically too vague. The maximum limit for cap firing toys, 125 dB L_p C *peak* at 50 cm distance, corresponds to 151 dB measured at the ear. This exceeds with 14 dB what is allowed for adults in workplaces according to the so called Noise Directive 2003/10 /EEC. During the discussions, the evidence brought forward by the toy industry (and experts commissioned by them) that the higher levels might be harmless was challenged by the Swedish expert Prof Stig Arlinger (commissioned by the Swedish Consumer Agency). In a case like this - when experts have different opinions on the hazard or risk - the precautionary principle should be used and the most restrictive limit prescribed in the standard.

ANEC urges that the Toy Safety Directive be amended to regulate noise levels in toys, and to set the limit to what is allowed for adults in industry according to Directive 2003/10 /EEC, namely 110 dB L_p C *peak* at 50 cm distance. We see no safety based reason to expose children to higher levels than is allowed for adults.

For continuous noise, instead of proposing levels for which it is known that there is no risk for permanent damage to the human ear, independently of the duration of exposure, the amendment is based on risk assessments which depend on assumptions of average exposure times, average or "typical" duration of play. Children's playing behaviour can vary and is not known in each individual case. Despite strong opposition from ANEC, the levels for close to the ear toys have been increased from 5dB to 16 dB compared to the preceding standard.

The amendment is in our opinion not in accordance with the intention of recital 27 of the TSD, nor with the provisions of mandate M/445. It is not giving children adequate protection against hearing impairment caused by noise from toys and has not been elaborated according to the precautionary principle.

3.9.4 No flexibility in terms of quickly adapting the legislation to new potential risks

The TSD does not foresee any specific procedure to allow for the easy and flexible modification of the Directive in response to market changes (e.g. new toys) or new risks. Such a procedure would avoid the protracted legislative process of co-decision or an exclusive reliance on standards procedures. In practice, the procedure could be used for example to 1) modify the scope of the Directive; 2) identify toys for which third-party testing is necessary; 3) ban certain dangerous toys or set limit values for chemicals in toys or a speed limit for toys that are not self-propelled. The Toy Safety Directive includes a restricted committee procedure for only certain purposes⁷.

We call for broadening Art. 46, e.g. to establish specific requirements for chemicals including limit values for all kinds of toys (and other requirements detailing the ESR of the TSD).

While the comitology procedure only applies for chemicals, it should also work for mechanical and physical requirements for toys for children under 3 years of age.

See also below under 3.11.

3.9.5 Connected toys

More and more toys can now connect to the Internet. Most connected products presently available in the Single Market are designed and manufactured without even the most basic security features embedded in their software. In order for consumers to trust the Internet of Things, consumers must be assured that the connected products they purchase, or services they use, are secure and protected from software and hardware vulnerabilities. For this to happen security by design and by default must become a priority.

To this end, the Toys Safety Directive (and other legislation) must be revised to ensure that connected toys are both safe and secure before being able to be placed on the Single Market.

It is important to change the concept of safety and the definition of "safe toy" in order to unequivocally cover Internet connecting toys and related security threats.

⁷ e.g. to establish limits for toys intended to be used by children up to 3 years of age or intended to be placed in the mouth, elements or fragrances

3.10 Is the use of warnings as provided for in Article 11 and Annex V effective? Did the use of warnings, including the language requirements, pose any problem? Is there a need to improve or complete the warnings? (question 23)

A number of warnings to be used on toys are presented in Annex V of the Toy Safety Directive 2009/48/EC (TSD).

Toys shall be safe by design, but toys that are safe to be used by one age group can be dangerous to be used by another age group. For example, it is not possible to totally forbid the selling of toys that contain small parts or small balls (choking hazard). Instead, small parts/balls are forbidden in toys intended for children under three years (who tend to put everything in the mouth) but allowed for toys intended for children over three years. Consequently, there should be a warning on toys not intended for children under three that contain small parts/balls.

Warnings on toys are therefore very important to consumers. But can the warning(s) be easily seen and read by the parent or caregiver?

Experience shows that warnings on toys are often too small, hidden by other text, hidden under crumples in the packaging, etc. It is sometimes difficult to discover and read the warning(s), also with corrected vision. Therefore, consumers might not detect it and children are not always protected properly.

We understood that some authorities have had problems to enforce the presentation of warnings on toys because there are no specified requirements in the Directive and the belonging standards, like e.g. a minimum letter size. This creates a lot of confusion on the market. A concrete letter size is only defined in the explanatory guidance document.

Article 11 of the TSD states that toy manufacturers shall mark warnings on toys in a clearly visible, easily legible, understandable and accurate way.

It is important, in the interest of legal certainty, that the Commission introduces specific requirements for visibility and legibility of warnings on toys (e.g. a minimum letter size), in order to enable Member States to enforce these requirements in a uniform way.

3.11 Do you think that the procedure foreseen in Article 46 for amending specific parts of the TSD has proved effective? (question 34)

As we mentioned above under 3.9.4, the TSD does not foresee any specific procedure to allow for the easy and flexible modification of the Directive in response to market changes (e.g. new toys) or new risks. It only includes a restricted committee procedure for only certain purposes.

We call for broadening Art. 46, e.g. to establish specific requirements for chemicals including limit values for all kinds of toys (and other requirements detailing the ESR of the TSD).

At the European Commission's Toy Safety Experts Group – Subgroup Chemicals on 29 October 2018, the results of a test carried out by DK's EPA on squishies showed the issue cannot be solved using Comitology to establish requirements in Appendix C, as

the toys are not intended for children below 3 years. This example clearly shows the need to change article 46 to broaden the Comitology.

While the comitology procedure only applies for chemicals, it should also work for mechanical and physical requirements for toys for children under 3 years of age.

3.12 Further details

Further details and input can be found in the ANEC reply to the Public Consultation on the Evaluation of the Toy Safety Directive, December 2018.

END



ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and the use of standards, as well as related legislation and public policies.

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