



Bureau Européen des Unions de Consommateurs
- The European Consumers' Organisation

BEUC/594/2004



European Association for the
Co-ordination of Consumer Representation
in Standardisation

ANEC2004/CHILD/059
November 2004

Revision of the Toy Safety Directive

Key issues from an ANEC and BEUC perspective

This document outlines the major issues which should be taken into account in the revision of the Toy Safety Directive from an ANEC and BEUC point of view. The comments relate to the draft issued by the Commission in April 2004.

Two aspects are considered of primary importance:

1. The implementation of a **Committee Procedure (Comitology)** in order to allow for flexible adjustments of the Directive by detailing essential requirements (e.g. to establish limit values for chemicals, noise, speed and so forth). In addition, this procedure can be used to determine the products which fall inside or outside the scope of the Directive and to determine those toys for which an EC type approval (third party testing) is needed.
2. A considerable strengthening of the **chemical requirements** contained in the Directive.

1. Extended role of the Committee Procedure (Comitology)

Justification

A Comitology to specify essential requirements is needed for 3 reasons:

- There is clearly a need to have a more flexible instrument that allows to react quickly on market changes (new products) or new identified risks and which allows to establish requirements (specify essential requirements) without having to revise the whole Directive which is a long process involving the Parliament and the Council.
- Highly political issues should be resolved at the political level and not shifted to the Standards Bodies. This is highly relevant for the establishment of limit values for chemicals, but also regarding other limits such as for noise or speed of toys which are not self-propelled.
- It is essential to have an alternative option to standardisation. The only option which is available now to challenge poor standards is the standards safeguard procedure which can be quite time consuming and may not lead to satisfactory results in a reasonable time frame. The availability of an alternative option may increase the willingness of the standards committees to seek a full consensus with all stakeholders and thus strengthen the position of consumer protection advocates.

The Commission is reluctant to introduce this proposed change because it would mean a significant change of the "New Approach". One of the arguments of the Commission was that the European Parliament might object to such an approach.

Stakeholder involvement

From a consumer's perspective it is essential to include the major stakeholders in a future Comitology. At present, consumers, as well as industry, are represented in the Toy Safety Experts Group (Expert Group on the implementation of Council Directive 88/378/EEC on the approximation of the laws of the Member States concerning the safety of toys). However, at present, this group is of purely informative nature and is not embodied in the Directive. Hence, the Committee Procedure which allows only participation of representatives of Member States needs to be complemented by a Consultative Committee which includes the representatives of interest groups (CEN, CENELEC, ANEC, BEUC, TIE, et.). Also in this case, a model is already available: the European eco-labelling system. In other words, it is suggested to keep the existing structure with parts of the meetings which are only accessible by representatives of Member States and other parts which are open to the stakeholders mentioned above but to require this in the Directive.

Function 1 – detailing essential requirements

Essential requirements are by their nature more or less vague principles, which cannot be directly enforced. The major function of the committee procedure would be to add the necessary level of detail, where needed, by establishing specifications which are included in a technical annex that can be updated in a short period of time. One obvious application would be the establishment of limit values for chemicals. Whilst the draft Directive by the Commission foresees to ban certain chemicals such as CMR substances, it will not be possible to include a full set of requirements by the time the Directive will be approved. First, there are chemicals which need further evaluation and research to determine the problematic ones (e.g. endocrine disrupters). Second, there are a number of chemicals which fall in danger classes other than those mentioned in the draft (e.g. toxic, corrosive, irritant, etc.) for which limits may be needed based on a case by case decision. Also there may be chemicals which must be restricted which do not fall in any of the danger classes (the plasticizer DINP may serve as an example here).

Without a Committee Procedure such limits can only be established through the revision of the Directive or by transferring the tasks to the standards bodies.

Detailed specifications/limits may be needed also in other areas. The establishment of noise limits may be a good example in this context. Within CEN it was not possible to establish a safe limit for impulsive noise emitted by toy cap pistols after years of debate involving an enormous amount of resources. Even after Germany and Austria had triggered the safeguard clause, CEN's Toys Committee refused to establish safe limits and could be established only after strong political pressure from the Commission. Speed limits for electrically propelled toys could also be established. At present there are no speed limits for such toys for children above 3 years in the European standard.

Of, course, some of these tasks may be allocated to the European Standards Bodies. But it should be based on a case by case, decision and efficient measures to take corrective action must be available.

Function 2 – determining the scope of the Directive

Experience shows that it is often not clear whether a product falls within the scope of the Toy Safety Directive or not. The discussions on scooters, bicycles or floating seats may be recalled in this context.

For some of these borderline products, there are no clear boundaries that follow from the scope or definitions given in the Directive and there is often no “true” answer to the question whether or not an item needs to be considered as a toy. Such issues can only be solved by taking a more or less arbitrary decision. As an example, it is useful to draw the line between toy bicycles and others by establishing a maximum saddle height. Similarly, one can define a maximum user weight to differentiate between scooters for sports and toy scooters. But it does not help to exclude, as an example, “sports equipment”. It is essential to establish the boundaries!

The most important thing is that the decisions are made and that the results are publicly available. The current practice to prepare guideline on the application of the Directive (e.g. on scooters or floating seats) lacks transparency. It is therefore useful to include lists of products which are excluded from the Directive, no matter if the product meets the definition of a toy (=has a play value) or not in an annex which can be updated at any time by using the Committee Procedure and which is accessible for anybody. The current draft uses this approach only for articles without play value (non-toys).

It should be noted that such an approach would be beneficial also from a trade perspective because it helps to avoid different interpretations by the Member States leading to different enforcement practices in Europe (toy bicycles are an example).

Function 3 – determining the toys for EC type approval

It is suggested to introduce an obligation to use the EC type approval for certain categories of toys under all circumstances. At present this is only foreseen in case a manufacturer does not follow a standard or the standard does not exist for a certain risk.

The criteria for this may include:

- toys which, for functional reasons, cannot be designed to eliminate all risks
- toys which, in case of a failure, can lead to severe health impacts of a child
- toys for small children which deserve particular protection
- toys which have caused severe accidents in the past
- toys which have raised considerable concern in enforcement activities

The toys for which EC type approval is needed can be determined by using the Committee Procedure.

2. Chemical requirements

The following describes the key consumer demands in the field of chemicals in toys. Whilst the current draft (April 2004) contains some quite acceptable elements, the provisions overall must be considered as insufficient.

CMR chemicals

In contrast to the current draft, the exclusion of category 3 CMR chemicals from toys must be vigorously called for. Children need special protection and the application of the precautionary principle would not be compatible with the acceptance of chemicals in toys which may have serious health implications even if the adverse effects have not yet been fully scientifically proven. Further, it should be noted that the provisions of the Cosmetics Directive exclude CMR chemicals of category 3 (Article 4b):

“The use in cosmetic products of substances classified as carcinogenic, mutagenic or toxic for reproduction, of category 1, 2 and 3, under Annex I to Directive 67/548/EEC shall be prohibited.

To that end, the Commission shall adopt the necessary measures in accordance with the procedure referred to in Article 10(2). A substance classified in category 3 may be used in cosmetics if the substance has been evaluated by the SCCNFP and found acceptable for use in cosmetic products”.

There is no reason why less stringent rules should apply to toys. Exceptions for category 1 and 2 substances shall not be granted.

PBTs and vPvBs

Persistent, Bioaccumulative and Toxic compounds as well as very Persistent and very Bioaccumulative substances shall not be allowed in toys. These substances are of concern by themselves and do not need any further additional hazard characterisation to be banned (as in the Commission draft). Toxicity is already part of the PBT definition and vPvBs are of high concern (according to REACH) irrespective of any toxic properties. Once dispersed into the environment they cannot be called back and will be present in the environment for many years. If then it turns out that they have adverse effects one cannot do anything about it!

Sensitising substances

Not just substances that are classified as causing skin sensitisation according to Directive 67/548/EEC shall be forbidden, but also those causing sensitisation by inhalation.

Fragrances

Fragrances which are forbidden or which must be indicated in the list of ingredients when certain concentration limits are exceeded according to the Cosmetics Directive 76/768/EEC shall not be used in toys. This means that more stringent rules should apply for toys than those foreseen in the Cosmetics Directive. It does not seem to be useful to inform (warn) children about the fragrances contained in toys above certain concentration levels as required by the Cosmetics Directive. Instead, these substances must be banned.

Toy cosmetics

With the exception of fragrances (see above), toy cosmetics shall comply with the performance requirements of the Cosmetics Directive.

Metals

Instead of bioavailability the content of heavy metals must be regulated. Justification:

- It is necessary to consider the environmental implications. The absolute content of metals can be quite high even if the bioavailability and migration requirements (EN 71-3) are complied with.
- Requirements for the content of certain metals in packaging have been established in the Packaging Directive which are more stringent than required for toys. The absurd consequence is that the packaging of a toy may be less contaminated than the toy itself.
- The metal load should be as low as possible also for health reasons.
- Low metal levels can be easily accomplished technically.

Endocrine disrupters

The future Toy Safety Directive must contain an obligation that substances with endocrine disrupting properties are evaluated with respect to their use in toys. The restrictions shall be approved by making use of the Comitology (see above).

Other substances of concern

It shall be possible that to establish limits for any other substances of concern to human health or environment by using the Committee procedure (see above).

Toys intended for children up to 3 years of age and mouth actuated toys

The Commission's approach requires that only chemicals, already approved for use in materials in contact with food, should be used for toys intended for children under 36 months and other toys intended to be put in the mouth. However, the legislation for food contact materials cannot be used directly because the migration conditions are different. Children suck and chew toys which may lead to significantly higher releases from toys compared to static migration tests employed in the food contact area. It should also be taken into account that the above mentioned Directive does not provide for full harmonisation. It gradually replaces national approvals which are still valid for a number of substances. One would have to establish that only substances approved at the European level including the given restrictions are acceptable. Exceptions should only be possible after full evaluation by the CSTEE (or who ever will be in charge of such evaluations in future).