

The New EU Toy Safety Legislation

BEUC and ANEC welcomed the adoption by the European Parliament and Council in June 2009 of a revised Directive regulating the safety of toys in the EU¹, particularly bearing in mind that the present Directive² dates back to 1988. However, many shortcomings still remain to be addressed with regard to the new legislation.



What has been improved?

Better enforcement of the legislation

Market surveillance authorities have been granted increased powers to check whether products on the EU market are safe. Under the new legislation, they are obliged to cooperate more among themselves, as well as with the Commission and EU agencies. Moreover, Member States are allowed to adopt a precautionary approach when taking actions intended to protect consumers' health and safety from potentially dangerous products. This means that Member States' authorities may take actions against toys they suspect of being potentially dangerous, even if the actual number of accidents or their level of severity is low.

Increased visibility and understanding of warnings on toys

Warnings must be accurate and legible and be preceded by the word "Warning" in order to draw consumers' attention. Warnings - such as minimum or maximum ages for use - must be clearly visible on products at the point of sale in order to allow consumers to choose the most appropriate toy for their child.

Stricter regulation of toys in food

Specific requirements for the safety of toys in food products have been introduced in the legislation. The sale of toys firmly attached to food, such as a toy a child can access only if he/she eats the lollipop around it (the so-called "party lollipop"), will be prohibited in the EU. Toys attached to a food product less firmly - such as candy lipsticks - will also be banned. Toys contained or 'embedded' in food products (e.g. in a chocolate egg or a packet of crisps) will have to be contained in a separate packaging that should not present any choking risks.

Ban of some dangerous chemical substances

Chemical substances classified as carcinogenic, mutagenic and/or toxic for reproduction³ according to the EU legislation will be banned in toys, as will many allergenic fragrances⁴.

Planned evaluation of the safety level provided by the new legislation

Three years after the entry into force of the new Directive, each Member State will have to submit a report to the Commission on the national situation concerning the safety of toys, the effectiveness of the new legislation and the performance of market surveillance. On the basis of these reports, the Commission will be required to monitor all developments relating to the implementation of the new legislation and assess whether it provides a sufficient level of safety for children. The Commission will have to report back to the European Parliament one year after submission of Member States' reports at the latest.

¹ Directive 2009/48/EC of the European Parliament and the Council of 18 June 2009 on the safety of toys.

² Directive 88/378/EEC of 3 May 1988 concerning the safety of toys.

³ Such as some phthalates, benzene, toluene, naphthalene, trichloroethylene, nickel monoxide, carbon monoxide and cadmium.

⁴ Such as coumarin, geraniol, oakmoss extracts, alanroot oil and treemoss extracts.

What is still missing?

The noise level of toys is not yet sufficiently regulated

The new legislation states that toys which emit sound should not pose any hearing impairment risk to children. Unfortunately there is no maximum safe level of sound (in decibels) for sound-emitting toys. A noise limit will only be defined in the coming years by the industry-dominated standards bodies.

Many dangerous substances will still be allowed in toys

Many dangerous chemicals will still be allowed in toys. Many allergenic fragrances will be authorised in toys simply provided that the name of the fragrance is labelled on the toy⁵ while others will be allowed without any labelling obligation. Substances which are dangerous for the hormonal system⁶ will also continue to be used in toys without any restrictions despite the potential risks to children's health.

Most toys will not have to be checked by an independent third-party

The directive does not foresee obligatory EC-type examination (independent third-party testing) for certain categories of toys, not even toys that have caused serious accidents in the past or toys aimed at the most vulnerable of children (those under 3 years of age). This is a major flaw considering that the system of CE Marking on toys is not a guarantee of safety, even though the majority of parents think of it as such. It is simply a mark affixed by a producer in order to **claim** the product complies with the EU legislation. It does **not** require any independent third-party checking of the product's compliance and safety.

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

The new Directive 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.

A two-step implementation

Two years will be needed before all toys sold on the EU market are required to comply with the new legislation and can thus be considered "safer" than before (i.e. by June 2011). Two additional years will be needed before toys containing some of the most dangerous chemicals are eliminated from the market, along with those sound-emitting toys posing risks to hearing (i.e. not until 2013).

The need to improve toy standards

The Toy Safety Directive is a so-called 'New Approach Directive' setting essential safety requirements for the safety of toys in Europe. Standards organisations (such as CEN and CENELEC) are responsible for developing standards to support these essential requirements. Now that the Directive has been revised, the supporting standards need to be adapted⁷ and others developed (to support the new essential requirements for chemicals in toys for instance). The process will have to be closely monitored to ensure that consumers' views will be taken into account.

⁵ Such as citronellol, D-limonene, linalool.

⁶ Such as Bisphenol A and some phthalates including DEHP and DBP.

⁷ Including the most relevant standards for toys: EN 71, EN 50088 and IEC 62115.