



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



European Association for the
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REVISION OF THE TOY SAFETY DIRECTIVE

Preliminary views from ANEC and BEUC

General

ANEC and BEUC would like to see a fundamental reform of all “New Approach” Directives with a view to strengthen the position of non-industrial stakeholders. We therefore would like to refer to the ANEC **Position paper on the Council Resolution of 28/10/99 on Standardisation in Europe**. A copy of the paper is enclosed.

We would like to highlight the following points from the position paper:

Clause II.A "European Standardization Monitoring System"(page 7-8)

To ensure that European standards are consensus-based and reflect the needs of all stakeholders including consumers, the establishment of a European standards monitoring system outside the standards bodies could be considered.

Measures need to be taken to ensure that the standards provide a high level of protection, which cannot be taken for granted under the given circumstances as industry often dominates the decision making.

In the European standardisation system as it is today, public authorities have to wait until a standard is completed before being able to trigger the safeguard clause if a standard is deemed insufficient and does not comply with the technical requirements set out in the respective directive. Interventions, however, should be made possible at an earlier stage, e.g. during the enquiry stage of the standards-making process.

For this purpose, the European Commission and Member States might consider the establishment of a European standardisation monitoring system outside the standards bodies providing evaluation of a mandated standard. Such a monitoring system could be based on a two-step approach. Whilst the first check would be carried out as soon as the draft standards are available, a second check would be involved once the standards have been finalized, but before their references are published in the Official Journal of the EU. Both steps would ensure that the (draft) standards are consensus-based, i.e. consumers or other groups representing the public interest do not fundamentally disagree with the standards. The standards bodies would be obliged to respect any decisions of the European Commission and the EU Member States resulting from the monitoring system.

In the same context, BEUC and ANEC call for free access of consumers to the various fora, which are already involved in monitoring the European standardisation process. Most notably, this applies to the European Commission's Committee on Standards and Technical Regulations, Committee 98/34, but also to the standing committees pertaining to the various directives, e.g. for toys and construction products.

Moreover, in some cases the European standards bodies failed to elaborate adequate standards in compliance with the essential requirements of directives. As a result Member States had to intervene by making use of the safeguard clause. Nonetheless, Technical Committees of the standards bodies were reluctant to revise the standards in an appropriate manner even though the European Commission supported Member States. Therefore, instruments are needed allowing for an alternative to standards as a last resort.

There should be also a provision to allow the Commission co-operation with the Member States and the stakeholders including consumers to adapt the essential requirements without having to change the Directive itself. This should also include the possibility to set limit values (e.g. for chemicals or in the field of acoustics) if the standards bodies fail to set adequate limits.

Clause IIIA - Consultation of stakeholders including consumers when mandates are issued (page 10)

Whenever the European Commission launches mandates for standards of public interest, consultation of stakeholders has to be guaranteed.

ANEC and BEUC are convinced that the drafting of standardisation mandates of public interest should be done in consultation with all stakeholders, especially consumer representatives and experts from consumer organisations across Europe.

Clause IIB – Improved market surveillance (page 8)

To ensure a uniform application of the European standards across Europe, we call for improved market surveillance and a single European certification mark.

The most stringent standards in the world serve no purpose unless they are applied in practice. Many elements help ensure that standards are respected. Market surveillance, market forces stimulated by the publication of consumer information, certification and labeling schemes all play their part. Developments at the European level are increasingly important to ensure that there is a uniform application of the European standards throughout the EU.

ANEC and BEUC call for improved market surveillance in the internal market and strongly supports a single European quality mark, which has to fulfill specific requirements such as third party testing and precise information in order to provide transparency on safety, performance and environmental aspects of the product.

Comments in relation to the articles of the Directive

Article 1: Definition of toy

It is not so important whether an item is a toy or not. The important thing is that a quick decision in this respect is taken at the European level and that the decision is communicated to the interested parties. This calls for a provision in the revised Toys Directive to enable the Commission to up-date the list of items not regarded as toys in co-operation with the Member States and the stakeholders including consumers. A positive list of toys could be helpful as well.

A better delineation between toys and non-toys is needed (grey-area products). The delimitation between toy and non-toy should be based on clear and detailed criteria, if necessary. For instance, a list of products not considered as toys could contain an entry: bicycles with a saddle height over X mm. It is insufficient to put "sports equipment" on the list of products not regarded as toys. Instead, it is necessary to define the boundary between toys and sports equipment. For instance, toy trampolines

up to a load of Xkg, sports trampolines above a load of Xkg; toy scooters with a maximum height of the handle bar of X mm, scooters for adults above that value etc.

If an item is not considered as a toy, the Commission department responsible for this type of product should be notified about this, in order to ensure that it is considered to issue a mandate for this product under the relevant Directive, e.g. under the General Product Safety Directive. It should be avoided that there is no specification for the non-toy if the product constitutes a risk.

It would be useful if it was made clear by the European Commission that EU- legislation, whether it is the Toy Safety Directive or the General Product Safety Directive, can be used for any product that presents risks to children, irrespectively if this product is classified as a toy or not. We should not lose sight of the overall objective, which is to put safe products on the market for all consumers, no matter which administrative arrangements there are in place and no matter under which Directive a consumer product falls.

As regards Article 1, concerning the definition of toys, ANEC and BEUC do not believe that a change is needed. However, some illustrative examples including a rationale might be useful.

Article 2: Safety requirements

It must be clarified that foreseeable use, "bearing in mind the normal behaviour of children", means a worst case scenario, the use of a toy which most likely leads to a dangerous situation. The current wording is not adequate because it can be interpreted in the opposite way. Normal use or behaviour is not the worst case and there are different opinions about the meaning of "normal".

The term "third party" has also caused problems as industry has claimed that other children are not third parties. We therefore suggest to replace "third parties" by "other children".

Article 3: Essential safety requirements for toys (also Annex II of the Directive)

The **precautionary principle** needs to be introduced in the new Toy Safety Directive. This is of particular high importance with respect to exposure to chemicals but also relevant to other hazards. In a number of cases it will not be possible to base risk minimisation measures or product specifications on clear scientific evidence of harm due to a lack of scientific data or poor accident statistics. As children are a vulnerable consumer group, the introduction of this principle is justified.

The absence of an accident history, a small number of accidents or a low severity of accidents with a certain toy or product shall not be taken as an automatic presumption of a low level of risk. This should be added to the text of the Directive.

As already mentioned under "General", there should be a possibility to add, modify or specify in detail essential requirements in a flexible way after adoption of the Directive.

ANEC and BEUC ask for a **better and more comprehensive wording** of the essential requirements.

At present there are no requirements concerning noise in the Directive. The inclusion of a **particular safety requirement for hearing damage and noise emitted by toys** is needed (acoustics should be covered by a particular safety requirement). This acoustics requirement should cover continuous and impulsive noise. Having in mind the discussions within CEN regarding noise limits for cap firing toys, we recommend that such limits should be included in the Directive rather than relying on CEN standard committee for toys. The noise limits should be included in the Directive in the same way as in Directive 86/188/EC, which is the Council Directive on the protection of workers from the risk related to the exposure to noise at work. ANEC and BEUC are of the opinion that children deserve the same protection against noise exposure as adults.

We are concerned at the narrow interpretation that is being put upon **suffocation** in point (e) of the physical and mechanical properties in the essential safety requirements. In our opinion this should not only be blocking of the external airways but also choking. Children over 36 months are also at risk under certain perfectly foreseeable circumstances, when toys are intended to, or enticing to be put in the mouth, sucked, licked, or blown at. For example toys combined with foodstuff, plastic darts with suction cups which children lick on to fix them to their target, etc ... For these categories of toys, protection for children over three years old need to be addressed in the standards, and should be covered in the Directive. Accidents have happened to children more than three years old.

Concerning **flammability**, we are very concerned about the toy standard dealing with flammability. This standard does not at all cover what is mentioned in "2. Flammability" of the Directive.

The section dealing with **chemical properties** should be completely revised in line with the precautionary principle. Five key elements should be considered:

1) The exposure to potentially dangerous chemicals shall be minimised taking into account other sources of exposure. As a general rule, the acceptable limit of a chemical in toys should only be by 10 % of the overall tolerable daily intake (10 % of the TDI values).

2) Only those chemicals should be used in toys for which sufficient toxicological data are available and which have been fully assessed. The current principle is that all chemicals can be used until somebody is able to prove that exposure to these chemicals constitutes a risk. In practice this means that many chemicals are used without any evidence that they do no harm. The principle of using only approved/evaluated chemicals should be applied in particular to children below three years of age. An approval system could be envisaged.

3) The principle of transparency

There should be an obligation for manufacturers to disclose all ingredients of toys to the public. A labeling requirement for certain chemicals such as preservatives or colorants should be included.

4) Environmental requirements should be incorporated in line with the general Community policy to reduce environmental impacts and in line with the developments in the field of Integrated Product Policy. This could mean to limit the content of chemicals rather than using bio-availability figures for metals.

5) The new revised chemical policy must provide the minimum basic safety requirements for all sectorial directives, e.g. the Toy Safety Directive.

The revised Toy Directive should state that the requirements of the Cosmetics Directive are applicable to cosmetics for dolls as well (with the exception of the formal provisions).

A new requirement should cover **ethical/psychological issues**. For instance, this should disallow toys which promote racism or violence.

At present there are **specific age related requirements** only for children below 36 months. It would be useful to include specific requirements also for other age groups or to foresee the possibility for including such requirements.

A possibility should be added to make particular requirements for other age groups like 10 months, 18 months, 6 years, 8 years etc. ...

Articles 3-7 Enforcement

During the last two decennia, the quality and safety of toys has improved thanks to the Directive and the European standards.

Nevertheless, we do not believe that enforcement in Europe works as it should work. Hence, there is a need to define more clearly the obligations of the Member States. This could include minimum requirements regarding the number of tested products in a country and reporting obligations. Ideally there should be a European Enforcement Agency for Toy Safety.

We receive market surveillance reports from members every year, which indicate problems with dangerous toys. Part of the toys that are taken as samples are not in compliance with the European toy standards.

Concern has to be expressed as well at the continuing poor levels of compliance with the requirements of the Directive concerning the application of the CE marking. Market surveillance reports show time and time again that there is still a significant number of toys on the market which either do not bear the CE mark at all or fail to comply with the standards and the essential safety requirements despite bearing a CE mark. Such widespread failure of toys on the market to comply with the legislation will only serve to considerably undermine consumer confidence in the single market.

A survey amongst our members showed that local authorities do not have adequate resources, enough time, a large enough budget or suitably qualified staff to police the CE marking scheme. It's a reactive rather than a proactive process of enforcement.

The results of every toy control should be made public. These results are interesting for consumers, but also for the media.

Article 5: Harmonised Standards/Type examination

It has become a habit in the standardisation institutions that the technical committees define transitional periods when a new standard is developed. This means in effect that they determine when the old standard does not give a presumption of conformity to the essential requirements any longer. Normally these transitional periods are very long in conformity to industry wishes. It would be more appropriate that these transitional periods are defined by the Commission and the Member States in consultation with the stakeholders, including consumers. This should be explicitly stated in the Directive. The term "placed on the market" should be explained, in order to avoid confusion about transitional periods.

It is far from being clear under which circumstances the EEC type examination must be followed. It does not seem to have been used frequently. The clause should be more precise. A mechanism should be installed by which definitive answers are given quickly as to whether a toy is covered by the standards or not. If it is not, then a type examination is needed immediately. Decisions of that kind need to be published in the OJEC.

Article 6, 7: Safeguard

The use of the safeguard clause with respect to inadequate standards is a lengthy and heavy procedure, which is only applicable after the finalisation of a standard (which might have taken many years). Even if the use of the safeguard clause has been found to be justified, it takes another couple of years to revise the standard. Sometimes the standardisation committees refuse to deal with an issue in an adequate way (e.g. noise limits for toy cap pistols). A much more flexible instrument for intervention is needed: see also under "General", Clause II.A. A quick and flexible update should be possible, not only for the essential requirements, but also for the non-toys list.

Annex I : Products not regarded as toys

We would like to refer to our comment under Article 1, and would like to include the following examples:

A definition of **toys and playground equipment** is needed. Currently products are sold as toys (CE marked), which are used as playground equipment. The requirements and test methods in EN 71-1 are not sufficient for products used as playground equipment.

A definition of **fashion jewellery for children** is needed. Currently, there are many types of children's jewellery sold in toy shops and CE marked. At present, they are excluded from the Toy Safety Directive and should, for this reason, not be sold and labelled as toys. Because of the somewhat unclear situation at present, a definition is needed.

Annex IV : Warnings (also Article 11 of the Directive)

ANEC and BEUC are of the opinion that the requirements of the Directive for the presentation of warnings should be completed.

All warning labels on toys are introduced with the word "Warning", except for the most important one: "not for children under 36 months". This is an inconsistency that should be corrected. The symbol "Not suitable for children under three years" is often used without a written explanation of the hazards or risks.

The warnings are often too small and too difficult to read. It can also be confusing to the consumer if a warning is presented in many different languages. Many toys are sold without a packaging and are exposed in display packages where the warning is only on the display package but not on the toy. Sometimes there is no leaflet or instruction for use, which the consumer can take with him. Warning labels should always be placed on the toy, or on its packaging, in such a way that the consumer can read the information before purchase. We are especially concerned that the size and presentation of the warning should not adversely affect the consumer's perception of the message it purports to convey.

It should be possible to ask for warnings for age groups older than three years.
