



Raising standards for consumers



The Consumer Voice in Europe

Permanent Representations to the EU

B – Brussels

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ANEC-CHILD-2024-G-080

Brussels, 9 April 2024

Subject: The consumer perspective on the draft Toy Safety Regulation

Dear Attaché,

On behalf of BEUC – The European Consumer Organisation and ANEC, the European consumer voice in standardisation, we write to share our recommendations for how EU Member States can improve the draft Toy Safety Regulation (TSR) to ensure fair and safe play for children in Europe.

BEUC and ANEC welcome the Commission's proposal which has strong potential to greatly enhance children's protection against unsafe toys. In view of the ongoing Council discussions on a General Approach and the upcoming Working Party meetings, we enclose to this letter an annex outlining how EU Member States can further reinforce the safeguards against unsafe toys. In particular, we encourage your delegation to take the following elements into account:

- **Get the TSR scope right:** the regulatory framework for consumer safety should be based on the precautionary principle.
- **Strengthen the chemical requirements:** the non-intended presence of prohibited substances must be kept to a strict minimum while the generic prohibition should be extended to skin sensitisers.
- **Cover adequately the risks posed by smart toys:** connected toys and toys embedded with artificial intelligence should be effectively regulated, without any loophole in legislation.
- **Set out maximum noise limit values:** The establishment of sound limits should be set by the regulator and not be left to standardisers.
- **Close loopholes regarding the online sales:** as *lex specialis*, the TSR should complement the Digital Services Act and the General Product Safety Regulation. It should allow to hold online marketplaces liable for non-compliant toys sold via their platforms in case no other responsible economic operator can be identified or takes appropriate action.

Consumers legitimately expect products on the Single Market to be safe. This is especially the case for toys, as children are particularly vulnerable. We therefore hope for a swift adoption of the Council position, taking consumers' interests into account.

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Should you be interested and available for a more in-depth discussion, eventually with our respective national colleagues, we would be **delighted to schedule a meeting** in the coming days to further discuss our [position](#) on this file.

Yours sincerely,



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Encl.: TSR | How EU Member States can ensure safe and fair play for children.

TSR | How EU Member States can ensure safe and fair play for children

BEUC and ANEC strongly welcome the Commission's proposal for a Toy Safety Regulation (TSR). As highlighted in our position paper,¹ the draft text is good news for consumers. To fully ensure safe and fair play for children, we call on EU Member States to improve the TSR as outlined below.

Get the scope right

To ensure a high level of protection of children health and safety, we recommend to:

- Enshrine the **precautionary principle** in the main legal text rather than just as a reference in the recitals. Similar to the TSD, integrating the precautionary principle in the legal text will provide stronger guidance for the regulator in those circumstances where there are reasonable grounds for concern, but scientific evidence is insufficient or uncertain.
- Clarify which **products are included or excluded** from the TSR scope (Annex I) as certain software (e.g. video games or apps) and books with a play function are popular among children under 14 and clearly targeted at them. As regards scooters², we recommend deleting point 5 of Annex I and instead introducing scooters in point 3 in order to solve the overlap between the standard for toys and the one for sport equipment when it comes to scooters with weight classes from 20kg to 50kg.

Strengthen the chemical requirements

As children are particularly vulnerable to harmful chemicals, we call on EU Member States to:

- Ensure that the **non-intended presence** of prohibited substances in toys is minimised (cf. Annex II, Part III, point 5). Whereas the Commission's proposal does not foresee specific limits in this regard, a default limit of 10 mg/kg for the non-intended presence of prohibited fragrance allergens in toys was for example considered at the last Toy Safety Expert Group meeting. Likewise, the European Chemicals Agency, ECHA concludes³ that a 10 mg/kg default content limit (i.e. 0.001 % w/w) for prohibited CMR substances will ensure that their non-intended presence in childcare articles is kept to technically unavoidable trace levels. Notably, ECHA observes that this limit will enable "a practical, efficient and harmonised enforcement" of a restriction on CMR substances in childcare articles.
- Prohibit the use in toys of **skin sensitisers**. 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.⁴ An allergy developed in childhood is irreversible. Therefore, the generic prohibition in Annex II, Part III should be extended to skin sensitisers to effectively prevent children's exposure to these harmful chemicals.

¹ ANEC and BEUC. Ensuring Safe and Fair Play for Children. December 2023
[https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-168%20Ensuring Safe and Fair Play for Children.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-168%20Ensuring%20Safe%20and%20Fair%20Play%20for%20Children.pdf)

² For years, this overlap has caused problems in the classification of scooters and has led to double standardisation work. We consider that scooters are similar products to roller skates, inline skates, and skateboards, as also indicated in Annex III, point 6 of the TSR.

³ ECHA. 2023. Investigation report to support the Commission on the preparation of a restriction proposal for the use and presence of CMR 1A or 1B substances in childcare articles based on REACH Article 68(2).
https://echa.europa.eu/documents/10162/17233/rest_cmrs_childcare_articles_investigation_report_com_en.pdf/4422f4aa-e862-1ff0-fb6e-dfeab480c12f?t=1699423889558

⁴ T. Diepgen et al. 2016. Prevalence of contact allergy in the general population in different European regions. *British Journal of Dermatology* 174(2).

- Extend the proposed limit value for **nitrosamines and nitrosatable substances** to all toys. Nitrosamines are strong carcinogens, and children's exposure to these substances (e.g. from balloons) should be kept to the lowest technically achievable level.⁵ Extending the limit value to all toys will ensure that children of all ages are guaranteed the same high level of protection, in line with the reasoning set out in Recital 22.
- Close 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 therefore recommend to prohibit the use in toys of biocides.
- Get the **TSR-REACH interface** right. Substances prohibited in consumer articles under REACH should not be allowed in toys (cf. Article 46.7). Where REACH restricts the presence of substances in toys, it is however imperative that the most protective limit value prevails. For example, REACH prohibits the presence of certain endocrine disrupting phthalates in toys and childcare articles above 1 000 mg/kg for each substance individually or in total. This limit is notably higher than the more recent limit recommended⁶ by ECHA for these substances in childcare articles. As such, it is crucial to ensure that a REACH restriction does not preclude more protective limit values from being established under the TSR, more so as REACH does not require the Commission to systematically evaluate – and revisit as relevant – limit values for prohibited substances in toys (cf. Article 46.9 of the TSR).

Address the risks posed by smart toys

Digitally connected products – including toys – can present new risks for children. We therefore urge Member States to ensure that the TSR protects their health and well-being, by:

- Establishing in **Article 5** (product requirements) and **Article 21** (safety assessment) that digitally connected toys must not present a risk to children's psychological and mental health, well-being and cognitive development. This should reflect the WHO definition of health, which could serve as benchmark. Alternatively, this could be included in a new definition of 'harm'.
- Incorporating **cybersecurity** in Article 21 to emphasise that toys must comply with the Cyber Resilience Act.
- Specifying the categories of toys in Article 21 which must be **subject to EU-type examination** based on the principle "the higher the risk, the higher the conformity assessment module". This should notably be the case for toys embedded with Artificial Intelligence (AI) as their classification as high-risk AI systems under the AI Act cannot depend on the choice of the manufacturer to apply harmonised standards or not.

⁵ Indeed, a [2018 market investigation](#) by the Dutch consumer protection authorities demonstrated that it is already today possible for balloon manufacturers to comply with the proposed limit. Notably, the Dutch authority observed that "Nitrosamines and nitrosatable substances can be generated during the latex production process if certain compounds (carbamates) are added to accelerate the process. Because nitrosamines are carcinogenic substances, they pose a health risk. Alternative accelerators are available, making this risk an avoidable one."

⁶ i.e. 50 mg/kg for each phthalate and 100 mg/kg for total phthalates. See ECHA. 2023. Investigation report to support the Commission on the preparation of a restriction proposal for the use and presence of CMR 1A or 1B substances in childcare articles based on REACH Article 68(2). https://echa.europa.eu/documents/10162/17233/rest_cmrs_childcare_articles_investigation_report_com_en.pdf/4422f4aa-e862-1ff0-fb6e-dfeab480c12f?t=1699423889558

Set out maximum noise limit values

To ensure that sound emitting toys do not impair children's hearing, we call for the establishment – through a Delegated Act – of maximum limit values in Annex II, Part I, point 10. As there is no safety-based reason to expose children to higher levels than those allowed for adults in the workplace, inspiration could be taken from the provisions Directive 2003/10/EEC on the protection of workers.

Close loopholes regarding the online sales

To ensure effective enforcement of EU rules as well as equal protection of children and other consumers in offline and online sales, we call on EU Member States to:

- **Define providers of online marketplaces as economic operators** in Article 3 which will acknowledge the important role played by them when intermediating the sale or promotion of toys between traders and consumers.
- Require in Chapter II that without prejudice to the prohibition to conduct general monitoring as established under the DSA, providers of online marketplaces perform **ex-ante and ex-post checks against dangerous products databases** to prevent the sales of dangerous toys on their platform. In addition, online marketplaces should be required to check that a digital product passport exists.

Ensure that providers of online marketplaces put **effective corrective measures** like product recalls in place, when a toy sold on their platform presents a risk and no other economic operator takes appropriate action. In such cases, providers of online marketplaces should offer the consumer an effective, cost-free, and timely remedy pursuant to Article 37 of Regulation (EU) 2023/988.

Improve governance

In view of improving the overall regulatory framework for toy safety, we recommend to:

- Include in Article 52 an option for increasing **penalties** where an economic operator has repeatedly been found non-compliant with the TSR requirements.
- Maintain in Article 54 that the **sell-off period** for toys placed on the market in conformity with the TSD should not exceed 12 months.
- Require in Article 55, that the 5-year reports drawn up by the Commission as part of the **TSR evaluation** should be accompanied by a public summary.

END