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POSITION PAPER

## Toy Safety Directive evaluation and Chemicals Strategy for Sustainability (CSS): Which way forward?

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## 1 | Introduction

The European Commission published a Staff Working Document<sup>1</sup> concerning the evaluation of the Toy Safety Directive (TSD) and an associated Executive Summary<sup>2</sup> in November 2020. It is stated that *"the Directive's effectiveness is deficient in several points, in particular on chemicals"* which *"require urgent attention"* and highlights, in particular, that:

- limit values can only be set for chemicals in toys for children under the age of 36 months and toys intended to be put in the mouth (Article 46),
- according to a derogation the presence of substances which are carcinogenic, mutagenic or toxic for reproduction (CMR) is allowed up to levels used for the classification of mixtures according to the CLP Regulation (Regulation (EC) No 1272/2008) *"too high to ensure effective protection according to current scientific knowledge"*,
- limit values for nitrosamines and for nitrosatable substances *"are too high"*,
- labelling requirements for specific allergenic fragrances in certain experimental toy sets *"cannot be easily updated"*.

ANEC welcomes the conclusions of the Commission with respect to deficient chemical provisions very much. In fact, ANEC (as well as BEUC, the European Consumer Organisation) have repeatedly pointed to these shortcomings for a long time – even before the adoption of Directive 2009/48/EC. This view was supported by several Member States. For instance, a letter signed by several Ministers was sent to the Commission in April 2019 stating among other that they *"strongly believe that the Directive should be amended in order to allow limit values for toys for children also above three years of age"*.

## 2 | The way forward for chemicals in toys

From this follows that particularly Article 46 of the TSD must be changed to allow for the establishment or amendment of provisions for all kinds of chemicals and all kinds of toys using a comitology procedure.

*Note:* in ANEC's view the extended Comitology should be used to specify, where appropriate, also essential requirements for safety aspects other than chemicals (e.g. to set noise limit values).

We think it is crucially important to broaden the scope of Article 46 not just with respect to the age range of children using toys, but also to ensure that the revised clause makes it possible to deal with all kinds of chemical provisions - not just to set limits for specific substances.

<sup>1</sup> SWD(2020) 287 final, COMMISSION STAFF WORKING DOCUMENT, EVALUATION of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, 19.11.2020

<sup>2</sup> SWD(2020) 288 final, COMMISSION STAFF WORKING DOCUMENT, EXECUTIVE SUMMARY OF THE EVALUATION of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, 19.11.2020

This means, for example, to:

- establish positive lists of substances such as colourants or preservatives in line with current provisions in the Cosmetics Regulation (Regulation (EC) No 1223/2009) or requirements in the finger paint standard (EN 71-7<sup>3</sup>);
- ban certain categories of chemicals (rather than individual substances) in line with the new "Chemicals Strategy for Sustainability - Towards a Toxic-Free Environment" of the Commission published in October 2020 which foresees to use generic bans ("*generic approach to risk management*") not just for CMRs but also for e.g. endocrine disrupters as default approach for consumer products and to set low practical enforcement thresholds for them (either for content or migration/release);
- provide for the possibility to make use of restrictions in other regulations or cross-referencing in line with REACH (Regulation (EC) No 1907/2006) provisions, e.g. in the suggested restriction for tattoo inks which was already supported by RAC/SEAC all (!) substances which are banned in cosmetics (more than 1600 substances) will be also banned in tattoo inks without any assessment) whilst the suggested ban of certain fragrances which are not allowed in the Cosmetics Regulation was not possible in the TSD;
- change provisions for nitrosamines and nitrosatable substances;
- allow for the possibility to adopt labelling provisions generally (not just for certain fragrances in certain experimental toys).

### 3 | Need for other provisions and next steps

We consider that not only a change of the regulatory provisions is needed. In addition, it must be ensured that the Commission has at its disposal the necessary resources to efficiently regulate chemicals in toys (more staff, resources for assessments, etc.).

Lastly, we believe the Subgroup "Chemicals" of the EC Toy Safety Expert Group should – as a matter of priority – hold a discussion on this issue and assist the Commission in developing a proposal for the necessary changes as quickly as possible.

ENDS.

<sup>3</sup> EN71-7 'Safety of toys - Part 7: Finger paints - Requirements and test methods'



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