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The Consumer Voice in Europe

ANEC AND BEUC WRITTEN STATEMENT

EP IMCO Hearing on "Toy Safety", 19 September 2023

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Summary

ANEC - the European consumer voice in standardisation and BEUC - the European Consumer Organisation, strongly welcome the European Commission's proposal to revise the Toy Safety Directive. As the provisions included in the draft text represent a major step forward for the protection of children and only a few aspects need to be improved, we call on the European Parliament to swiftly adopt its position in view of having a negotiating mandate before the deadline posed by the European elections.

In particular, we welcome that the proposal¹:

- Turns the current Directive into a Regulation.
- Aligns the current EU toy safety rules with the provisions of the Market Surveillance Regulation and the General Product Safety Regulation.
- Combines a generic risk assessment approach that automatically prohibits the most harmful substances in toys (i.e. carcinogenic, mutagenic and reprotoxic substances but also known and suspected endocrine disruptors, chemicals that affect the respiratory system or that are toxic to a specific organ) with a specific risk management approach that empowers the European Commission to set limits for other substances of concern in all toys.
- Establishes a clear procedure and strict conditions for the setting up of derogations, which must be subject to regular review.
- Extends the safety requirements that toys must comply with, to the psychological and mental health, well-being and cognitive development of children.
- Introduces a Digital Product Passport for toys (DPP) as this tool has potential to facilitate the work of market surveillance and customs authorities when detecting non-compliance with EU legislation.
- Grants new powers to the European Commission to adopt technical specifications in the absence of relevant harmonised standards, when the standardisation process is blocked or when there are delays in the establishment of appropriate harmonised standards. In this regard, we also welcome that the European Commission will be able to specify/amend certain provisions of the TSR and to address emerging risks.
- Requires information to consumers and communication with them to take account of the needs of persons with disabilities.

For the reform to succeed, ANEC and BEUC insist on the above-mentioned elements to be secured and we further recommend to:

- **Reintegrate the precautionary principle in the legal text:** The precautionary principle is a pillar of consumer protection and can guide the regulators in situations where there are reasonable grounds for concern, but scientific evidence is insufficient or uncertain.

¹ This document gathers our preliminary analysis and recommendations. A more detailed position paper will be published once we have further discussed with the experts from our networks.

- **Strengthen the chemical provisions:** when it comes to the adoption of derogations, we recommend reinforcing the obligation in Art. 49 (opinions from ECHA) to consider exposure from toys and all other sources. Likewise, ECHA should be required to consider potential combination effects in its opinions. The new limits for nitrosamines and nitrosatable substances should also be extended to all toys.
- **Further improve market surveillance and enforcement of the legislation,** by ensuring that the DPP will work in practice and that the TSR will work well with other horizontal and sector specific legislation under development (i.e the reform of the EU customs). From a consumer perspective, we agree that access to the DPP should be free; it should also be made easily accessible, e.g. not require to download or install specific apps, to register or to process personal data. In this regard, it is also key that economic operators will not track or profile consumers and that they will analyse any usage data for purposes other than what is absolutely *and strictly* necessary for providing information about the product.
When adopting implementing acts that will determine the specific and technical requirements related to the DPP, it will be essential that the European Commission ensures safeguards, for instance against the fact that the uploaded information could be incorrect/fake. In this context, we stress that document checks are not always a guarantee of actual compliance of the toy with safety requirements and we call on national authorities to be equipped with the necessary human/technical/financial resources, not only in view of using the DPP but also of stepping up controls. It is finally key to foster cooperation at different levels and to create a legal basis for the systematic collection of accidents and injury data in order to better inform/prioritize the work of legislators, enforcement authorities and standardisers.
- **Cover the digital risks brought by smart toys,** whether connected toys or toys including Artificial Intelligence (AI). Recital 14 of the TSR proposal explains that safety requirements regarding e.g. cybersecurity and protection of personal data should not be set out in the TSR as they are addressed in other instruments, such as the Delegated Act for the Radio Equipment Directive, the proposals for a Cyber-Resilience Act (CRA) and for an AI Act. However, the level of child protection offered by these other pieces of legislation is uncertain as the RED Delegated Act should be replaced by the CRA, which like the AIA, is not finalized yet. Moreover, these instruments do not address toys specifically. Based on the reasoning that the issue of digital risks is similar to the issue of chemical risks (i.e. there are general rules on chemicals and there are specific rules on chemicals in toys), digital risks should be covered in the TSR.
EC-type examination for such products and other categories of toys should be included to ensure that there is no loophole in EU legislation.
- **Close loopholes regarding dangerous toys sold online:** since the concept of authorised representative and the DPP will not be enough to tackle the problem posed by the online sales of non-compliant and dangerous toys, we ask for the role of online marketplaces in the supply chain to be better acknowledged. In line with our recommendations for other pieces of (horizontal) legislation like the GPSR and the Digital Services Act, we ask for online marketplaces to be defined as economic operators, to verify the identity of the responsible person for toys sold on their platform, as well as to detect, remove and prevent the (re)appearance of non-compliant toys. They should finally be held liable for safety issues when no other economic operator can be identified or takes appropriate actions.

- **Regulate impulse noise levels in toys:** there is no safety-based reason to expose children to higher levels than what is allowed for adults in industry (see provisions included in Directive 2003/10/EEC). Limits which have a direct effect on the health and safety of consumers (children) shall be set by the legislators, not by the standardizers.
- **Make toy labels and warnings work for consumers and enforcement purposes:** experience shows that warnings on toys are often too small, hidden by other text, hidden by the packaging, etc. It is important in the interest of legal certainty, to introduce specific requirements for the visibility and legibility of warnings on toys (e.g. a minimum letter size, text/background contrast). This will enable Member States to enforce these requirements in a uniform way.
As toy manufacturers will be able to replace the word 'Warning' with a pictogram, a single/specific example must be defined, to avoid consumers to be confused by a proliferation of pictograms.
We recommend the CE marking to be removed from the toy or its packaging. Since it is not intended for consumers and its appearance can be misleading, it should be relegated to the technical file/DPP.
In addition, the obligation to include in the label a full ingredient list should be extended from cosmetic toys to all toys that are substances or mixtures, such as slimes, and finger paints: this would enable consumers to make informed purchasing choices while also facilitating enforcement efforts.
- **Reduce significantly the transition periods** that have been proposed after the entry into force of the legislation.

END