

TIE POSITION: COMPLIANCE & ENFORCEMENT– EUROPEAN COMMISSION PROPOSAL

TIE views on Commission's proposal for a Regulation COM(2017) 7951 laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products

Toy safety is the toy industry's number one priority. As the voice of reputable toy manufacturers in the EU, Toy Industries of Europe (TIE) welcomes the European Commission's aims to improve the EU's system of market surveillance.

Illicit traders who ignore toy safety rules are a serious problem for the reputable toy sector. On top of the danger to children their products can pose, they also hurt the competitiveness of manufacturers who play by the rules.

As such, smart market surveillance is essential and should: 1) focus on suspected rogue traders and real safety risks; 2) assist SMEs in need of support; 3) avoid unnecessary requirements from authorities which add additional administrative burdens for companies playing by the rules whilst making it more profitable for rogue traders to ignore them.

The Proposal is a step in the right direction. In particular through:

- Creation of a Union Product Compliance Network that can strengthen coordination and the focus on real safety risks.
- Improved possibilities for market surveillance authorities to address non-compliant products sold through online sales.
- Support for Compliance Partnership Arrangements, so market surveillance can focus on rogue traders.
- Establishment of Product Contact Points in all EU Member States to provide information to companies on compliance.
- The call for Member States to provide adequate resources for market surveillance and for the proper performance of their duties.

However, for an effective system, the following improvements are essential:

- 1) **Ensure the effective participation of industry associations in the Union Product Compliance Network, especially in the Administrative Cooperation Committees (ADCOs).** Their product-specific expertise and involvement is key for reaching well-balanced decisions and ensuring correct application of rules.
- 2) **Include checks and balances before decisions by individual market surveillance authorities are applied across the EU.** An individual interpretation should not automatically apply throughout the EU, but rather a considered proportional approach agreed at EU level.
- 3) **Remove the obligation for companies to publicly share the Declaration of Conformity online.** This can be a serious burden for reputable manufacturers, will be confusing for consumers and can help make it easier for copycats and counterfeiters to cheat the system.
- 4) **Differentiate between serious risk and formal non-compliance** and respectively accompany with proportionate market surveillance authority actions.
- 5) **Avoid conflicts of interest in compliance partnership arrangements.** Fees and the involvement of commercial testing labs could jeopardise their effectiveness.
- 6) **Provide the right for companies to contest decisions of Union Testing Facilities (UTFs).** They can play a positive role in the market surveillance system, but safeguards should be in place to ensure decisions are fair and appropriate. UTFs should also refrain from any commercial activities that could enter into competition with conformity assessment bodies.
- 7) **Include safeguards to ensure the protection of confidential company data.**
- 8) **Study the feasibility of a proper EU-wide injury data system.** In particular to build knowledge on risks, in order to better target market surveillance and assist law-making and standardisation.

Toys are frequently the most notified product on the EU's Rapid Alert System, but the toys picked up in market surveillance actions do not represent the toys on the EU market more generally. 97% of notifications in 2017 related to companies outside of TIE's membership.

The number of notifications shows the attention given to toys by market surveillance authorities to check that toys meet the EU's high standards. It also highlights the risk of illicit traders making money from unsafe toys.

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Specific recommendations for improvements per Article

Article 5 – Remove the obligation for companies to publicly share the Declaration of Conformity online:

Sharing the Declaration of Conformity (DoC) with Market Surveillance authorities is important to ensure a well-functioning system. However, this should only be mandatory in a closed system between the manufacturer and the authorities. Mandatory public availability online, as proposed by Article 5, would be an unnecessary burden for reputable manufacturers. It would be likely to cause confusion for consumers and authorities as DoCs can be different for the same products (e.g. due to updates of standards) and would also make the DoC readily available for counterfeiters, non-authorised importers and copy-cats looking for official documentation. The Commission’s impact assessment did not properly address these issues.

Recommendation: Replace the obligation to publish all Declarations of Conformity online with the option that the Declaration of Conformity can be obtained from the person responsible for compliance information as specified in Article 4.

Article 7 - Avoid conflicts of interest in Compliance Partnership arrangements:

Compliance partnership arrangements as introduced by Article 7 provide an opportunity for smarter market surveillance. They can ensure that reputable economic operators have clarity on the rules they should follow and allow them to easily implement necessary corrections to ensure they are fully compliant. They also ensure market surveillance can focus resources the rogue traders. However, it should be ensured that partnerships are impartial and independent, and free from any potential conflict of interest.

Recommendations:

- Compliance Partnerships should remain voluntary from both sides and no fees should be requested.
- Authorities should not subcontract activities under the arrangements to commercial testing bodies.

Article 12 - Differentiate between serious risk and formal non-compliance:

There is a need to distinguish further between serious risk and formal non-compliance. In many cases, the proposal does not make a clear distinction between non-compliance with and without safety risk, for instance a wrongly sized CE-mark does not accord the same safety risk as a product which contains prohibited levels of phthalates. Market surveillance should first and foremost focus on products posing a risk to users. We therefore propose to include a definition of formal non-compliance with appropriate actions, a concept developed in the Toy Safety Directive (Article 45) and other EU-sectoral legislations.

Recommendation: Introduce the concept of formal non-compliance.

Article 12 & Article 22 - Include safeguards to ensure the protection of confidential company data:

Article 12.4 suggests that market surveillance authorities shall make available “any information” that they deem relevant for the general public. We believe that a balance between public information and confidential company information should be ensured. Article 22 obliges authorities to supply a requesting authority from another Member State any information deemed relevant by the requesting authority. We believe it should be specified that authorities shall observe the principle of confidentiality and proportionality where necessary in order to protect professional and commercial secrets or to preserve personal data.

Recommendation: When providing information for mutual assistance and when making information available for the general public, national authorities should observe the principle of confidentiality as appropriate.

Article 20 - Provide the right for companies to contest decisions of Union Testing Facilities (UTFs):

We welcome the proposed creation of UTFs by Article 20 albeit we would urge caution in ensuring checks are put in place against their potentially large influence in decision making. UTF’s could play an important role in improving testing of products, especially for Member States lacking testing resources. However, we have some concerns related to the wide range of powers of the UTFs. Although in some cases, their opinions are of an

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advisory nature, they are likely to be widely influential, this should be balanced with appropriate procedures, including the possibility for those companies impacted to contest decisions.

UTFs should also refrain from any commercial activities that could enter into competition with conformity assessment bodies

Recommendations:

- Include an appeal procedure against decisions of Union Testing Facilities.
- Union Testing Facilities should refrain from any commercial activities that could enter into competition with conformity assessment bodies

Article 25 – Include checks and balances before decisions by individual market surveillance authorities are applied across the EU:

The wording of Article 25.3 implies that a local authority's decision in one Member States immediately applies in all other Member States. This is problematic as in many cases, interpretations of toy safety legislation, such as age-grading or whether a product is a toy or not, operate in a grey-zone with different interpretations available. Authorities in other Member States should use the decision of a local authority with the arguments put forward by the manufacturer to make their own evaluation in their own territory, as is currently the case further to a Rapid Alert System notification. The proposed Union Product Compliance Network should be used to develop balanced and well considered interpretations, with the involvement of stakeholders. Article 25.3 would supersede this balanced approach.

Recommendation: Involve the Union Product Compliance Network when applying decisions on non-compliance in one Member State in other Member States.

Article 33 - Ensure the effective participation of industry associations in the Union Product Compliance Network, especially in the Administrative Cooperation Committees (ADCOs):

Toy safety legislation is developed in such a way that it is open to interpretation in order that it can remain relevant and appropriate in the context of new developments. The toy industry is a very innovative sector and, on many occasions, there will be a need for an interpretation of the legislation as it applies to a particular product or group of products. At EU-level, guidance documents have been developed with the involvement of Member States and relevant stakeholders to promote a common approach by enforcement authorities. Market surveillance authorities discuss such approaches within ADCOs, which bring together market surveillance authorities from all Member States.

We acknowledge that some of the discussions within those groups will necessarily take place behind closed doors among authorities only. However, it is important that relevant business associations have the opportunity to provide their expertise and interpretation before a common approach is agreed on. The outcome of discussions in ADCO can have important implications, for example, if the decision on age grading or whether a product is considered a toy is different from the interpretation if the brand owner. Business associations (or individual brand owners if it concerns a particular product) should be able to present a case before a non-concerted and unilateral decision is made.

It is also important that relevant business associations are duly informed of the outcomes of ADCO discussions. This will ensure that sectors are effectively aware of the approach and can follow the recommendations. Since the toy sector is subject to fast-moving trends, it is important that the sector is involved and informed as early as possible.

Recommendations:

- Relevant business associations should have the possibility to provide input on common approaches to be adopted by ADCOs.
- Relevant business associations should be informed of the outcome of discussions within the ADCOs.

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New Article – Study the feasibility of a proper EU-wide injury data system.

TIE supports an EU-wide harmonised injury data system, provided it is populated with correct data. Accurate injury data is essential for evidence-based consumer safety policy and practice in the EU. It can inform setting of priorities of market surveillance and standardisation and help to improve product design. However, such a system should adequately reflect the real causes of accidents. The involvement of a product in an accident does not mean the accident or injury are caused by the product. For example, if somebody trips over a toy left on the staircase. An effective system should also have appropriate funding and resources. An underfunded system could lead to inaccurate or non-useful data being recorded and policy decisions driven from the data would be rendered ineffective.

Recommendation: Request the European Commission to assess the feasibility and work on a proposal for an effective EU-wide harmonised injury data system.

About Toy Industries of Europe

Toy Industries of Europe (TIE) is the voice of reputable toy manufacturers in the EU. TIE was founded in 1991 and today represents 12 international companies, 9 national toy associations and 6 affiliate members. TIE provides its expertise and knowledge about toys and the sector to members, stakeholders, and policymakers and provides a neutral platform for discussion and exchange. TIE's main focus is ensuring that toys are safe for children, other issues covered by TIE include responsible communications, ethical manufacturing, environmental sustainability, intellectual property rights and market access and promote the value of play and the importance of toys in helping children develop and grow.

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