Toy Industries of Europe

Proposal for a new Toy Safety Regulation

Toys in Europe are safe, new rules must not risk changing that.

Introduction

The world is a better place with safe, affordable and fun toys. Toys fire the imagination and improve cognitive and motor skills. Toys play a vital role in play, which is so essential to children. As the makers of such tools for play, our members have always prioritized safety.

Reputable toy makers in the EU, despite catering for 70 million children, make up a relatively small sector with around €18 billion in sales. The sector has a huge amount of small to very small players: 99% are SMEs who are all going to great lengths to ensure children can play safely with their toys. For reputable toy makers, it is important that toys remain **fun**, that the rules are based on **sound science** to ensure a real increase in **toy safety**, that toys remain affordable and that procedures are easy to meet for businesses, who need **legal certainty**.

Instinctively, 'improving' toy safety is something everyone supports. Our members agree: we need our toys to be as safe as they can be. However, not all proposals that should in theory make a positive change, will in practice do so. It is therefore extremely important to hold the current proposal against the light and to double-check that the net balance will be a positive one. At the same time, we should not forget that the current Directive is a very good solid instrument to help manufacturers ensure they make safe toys. Toys are already much more strictly regulated than other products a child comes in touch with. At Toy Industries of Europe (TIE), we know of no compliant toys that are unsafe.

TIE is keen to contribute to the development of the EU's newest safety rules. After careful consideration of the proposal, we would like to share our initial worries about the proposal.

1. **The proposal misses the opportunity to really tackle the main source of unsafe toys on the EU market at the moment**
2. **The proposal steers away from a safety-first approach to a more ideologic approach and even unrealistic and discriminatory approach. It could instead lead to safe toys being banned or becoming more expensive due to extra costs and bureaucracy.**
3. **The proposal for a Digital Product Passport needs improvement. It is impractical and could harm reputable businesses. It will not offer a solution to the unsafe toys on the EU market;**
4. **The proposal contains timelines that are completely unrealistic. This urgency makes no sense as the TSD is a solid basis we are starting from and compliant toys currently on the market are very safe.**

About Toy Industries of Europe INPA (Transparency Register 016371114093-01)

Toy Industries of Europe (TIE) is the voice of the reputable European toy manufactures. Our mission is to promote the right of every child to play safely and securely and to promote fair practices and fair legislation, allowing responsible toy companies to continue to grow. TIE's membership includes 19 international toy manufacturers, eight European national toy associations, who represent their local manufactures, and seven affiliate members.

1. The new Toy Safety Regulation needs to tackle the constant stream of unsafe toys reaching children through facilitation of online platforms

We are grateful that the Commission is keen to improve market surveillance. No rule is worth the paper it is written on unless it is properly enforced. But the proposed 'solution' is a digital product passport (DPP). We fear this will fail. It could ease procedures for market surveillance authorities, but it is no silver bullet. A good product passport does not mean a toy is safe and if toys can be faked, so can product passports. Moreover, the number of unsafe toys in the EU that originate from outside the EU and have reached consumers through an online marketplace[1] is huge. This problem can only be tackled through strong ***prevention***, as well as corrective measures.

We call on the co-legislators to introduce a requirement to ensure that – in the case of imported toys sold online where there is no EU-economic operator responsible for their safety - the online platform shall be considered to be the importer of the toy.

Without this requirement, a serious loophole remains for online sales by economic operators not established in the EU. Someone other than the consumer/buyer has to be responsible for the toy's safety. This requirement is also consistent with the proposal for a Regulation establishing the Union Customs Code and the EU Customs Authority that places greater responsibility on online intermediaries to address the sharp increase in low-value shipments to the EU from e-commerce transactions. Indeed, placing responsibility on online platforms for both regulatory and customs matters will promote administrative efficiency and facilitate controls carried out on imported toys.

Only such a requirement can really diminish the number of unsafe toys reaching EU children from non-EU operators.

2. The new Toy Safety Regulation needs to focus on toy SAFETY

The TSR should be about keeping toys **safe** and keeping children safe when playing with them. If the proposal goes through, the TSR could lead to safe toys being banned or becoming more expensive (due to extra costs and bureaucracy) and thus less desirable for the consumer who may prefer cheaper (non-compliant) toys.

2.1 Stay focussed on safety, do not include psychological or mental health

Toys are the tools of play and as such, have a positive impact on children. In order to meet the TSR's requirements, toy manufacturers should not need to make an assessment of possible impacts on mental health, well-being or cognitive development. These assessments will always be too subjective. The current text can be used to cast doubt on the sale of toy guns or swords, teddy bears in rainbow colours or a squishy toy in the shape of a naughty emoji. These

[1] For illustrations of the influx of unsafe toys through online marketplaces, please see Toy Industries of Europe, European Consumers Organisation, British Toy & Hobby Association

considerations reflect personal, but also cultural, religious and ideological values, which will differ even within countries and between individuals, let alone within the EU.

The current text gives toy manufacturers no legal certainty that their toys comply with the TSR. It assumes that 27 Member States will all make the same assessment whereas this type of assessment is extremely subjective and may very well differ between different market surveillance authorities within one Member State. There are no clear legal norms, or harmonised standards, which could be used by manufacturers and market surveillance authorities to make this complex and difficult assessment.

We strongly discourage extending the scope of the general safety requirement to cover the psychological and mental health, as well as the well-being and cognitive development of children

2.2 Noise requirements should concern only those toys designed to emit a sound

Noise limits should only have to apply to toys that are designed to emit a sound. Otherwise, we risk having to measure the noise made by the classical 'hammer and peg' bench, the 'click' of a toy gun or pen, the sound Jenga blocks or Kapla wooden planks make when they fall down, the sound of a domino that falls, the rolling of a skateboard, the bouncing of a basketball, etc… The problem is not that these examples would not pass the noise test but that they would need to be tested at all.

Market surveillance authorities will also struggle to enforce such requirements as the sound level is determined by external factors (does a block fall on the floor, or a carpet…?).

Every extra test adds extra cost to the toy, we call on the co-legislators to avoid unnecessary testing and focus on real problems.

2.3. There are too many requirements for issues that pose no risk to the safety of the child

- The current specific chemical substances limits that are especially designed for toys for very young children and toys to be used in the mouth have been extended to all toys. This goes against scientific reasoning. We understand the request to also have specific limits for older children but it is illogical to copy-paste all the current limits and apply them to toys for children of all ages. Most of the existing limits take into account the way under-3-year-olds play with toys and are based on the body weight of a baby[2]. An 8-year-old plays in a completely different way. Using the same limits as for babies makes sense for a few specific cases such as preservatives and flame retardants. But for other substances, we need the limits to be set at different levels for the two categories of children. A more scientific approach would be to introduce two tables, one with the limits for below-3-year-olds and one with the limits for all other toys. Otherwise, toymakers will need to evaluate potential migration for certain of these substances after 3 hours per day of 'mouthing' the toy for the wheels of a toy bicycle or a skateboard, for the internal mechanism of a toy blaster gun etc…
- The generic bans for harmful substances should consider the form under which a substance is classified. For example, if only the powder-form of a certain substance is harmful, there is no need to ban materials where the substance is not present in that form (eg embedded into a plastic material). Otherwise, ECHA will be wasting resources

[2] Certain limits are based on 3 hours mouthing per day and calculated based on a body weight of a one year old children (10 kg)

on scientific opinions to demonstrate the safety of materials where the substance is not present in the form classified as harmful. It will also waste resources for market surveillance authorities that have to enforce these bans.

- We understand the extension of the ban of CMRs[3] to also cover endocrine disruptors (EDs) (despite a lack of evidence of TSD-compliant toys that pose a risk). However, the text does not differentiate between those EDs that are harmful to health and those that are harmful to the environment. Those where the concern is environmental should not be banned through toy safety legislation. If there is an environmental concern, this should be addressed through horizontal legislation. This will ensure that:
    - The ban actually has an effect. Toys are a miniscule contributor to possible EDs that may harm the environment.
    - There is less discrimination between toys and other consumer products. While it is acceptable that other consumer products are not as safe as toys, there is no reason why other products should not be as green as toys.
    - Toys do not unnecessarily disappear or become too expensive. If only substances used in toys have to meet very stringent requirements, there will only be very limited and very expensive supply of these substances. Toy manufacturers – especially SMEs – rely on suppliers who cater for many different sectors. If most consumer products need these alternative substances, they will become more easily available and will be less expensive.
- The extension of the ban of CMRs to also cover substances that target organ toxicity category 1 is not based on sound science. These effects are already fully covered by the chemical safety assessment. Classifications for specific target organ toxicity are usually associated with a specific route of exposure (eg inhalation, ingestion). If this route of exposure can be ruled out for the toy in question, it is difficult to see any scientific justification for a full ban of the substance.
- The extension of the ban of substances that are respiratory sensitization category 1 makes sense when the substance is volatile and can be inhaled. There is no scientific justification for banning respiratory sensitization category 1 when these substances do not present an inhalation exposure as there is no safety risk involved at all.
- The removal of the derogation to allow CMR substances below the level for CLP classification is a big concern, especially for SME companies.
    - The TSD evaluation and the Impact Assessment have shown no single example where a concern with CMRs could not be addressed through the TSD or other legislation such as REACH. The CLP thresholds provide companies with a way to demonstrate compliance. Reputable suppliers of raw materials have that level of knowledge, they also need to have that for other sectors. Demonstrating compliance if the CLP thresholds are no longer used will become a lot more difficult (and costly) and we seriously question whether market surveillance will be resourced sufficiently to enforce this rule.
    - The removal of this derogation can also present difficulties for toy manufacturers addressing the sustainability challenge. For instance, where they have replaced virgin plastic material with recycled supplies. If they then use only materials that are compliant food contact materials, they can be certain that any contaminating substances present are ok. Under the new text, this will

[3] CMR: carcinogenic, mutagenic and reprotoxic substance

not be possible anymore. To have more certainty, they will need to return to using virgin plastics only.

- The inaccessibility derogation from the TSD is now limited only to electric and electronic components and batteries. This implies that for instance the mechanical bell inside a rattle – which is not accessible – also needs to comply with the same substance restrictions as other accessible parts. Or an internal screws in a child's swing or trampoline, or a non-electrical musical feature in a soft filled toy etc.. This is not based on scientific evidence. No exposure equals no risk when components are not accessible.

3. *The Digital Product Passport has serious flaws and will not keep unsafe toys out of children's hands*

It takes dedication and expertise – and often extra investment - to produce toys that comply with the strict EU toy safety rules. But it is still too easy to sell a non-compliant, unsafe toy in the EU. If reputable manufacturers are forced to invest extra to comply with new rules (which may not even deliver extra safety), their products will likely become most expensive while the cheaper – illegal and unsafe – alternative will remain on the market, becoming more attractive to the public.

The European Commission has understood this challenge and is introducing the digital product passport (DPP) as a 'solution'. ***We agree the DPP may be a facilitating factor for market surveillance authorities but we do not think it will provide a real solution to keep unsafe toys from the market.*** If rogue traders can fake toys, they will surely be able to fake the digital passport requirements. At the same time, especially for the SMEs in the sector (99%), this comes with a lot of extra administration.

We also fear that market surveillance may change their focus from the testing of the toys they find suspicious to the checking of the database and that this will result in a 'tick the box' exercise.

Another issue is that the DPP is not introduced for all types of products at the same time. It is still unclear how exactly this should be implemented by companies. Also, a lot of the information manufacturers need to put in the DPP is information that is already available elsewhere. For instance, the address, lists of allergenic substances, the CE-mark, etc... A decision needs to be made where this information sits best. ***There should be no useless duplication.***

The proposal stipulates that the information in the DPP shall be accessible to all: market surveillance authorities, customs, distributors, consumers. From and IP-point of view, this could seriously damage reputable businesses. Toy manufacturers would be sharing information that would facilitate fast copying of their toys.

We call for the Digital Product Passport to be safer from an IP-point of view. Some parts should be easily visible to the general public but some parts should remain privileged information for market surveillance authorities, for whom the passport was first constructed.

The proposal obliges manufacturers to list all 'substances of concern' in the DPP. There is limited use for a consumer to have a list of ingredients or a list of substances of concern. ***The***

average consumer will not be able to understand this and will see some substances as 'dangerous', not understanding that any potential concern has been taken away by good safety assessments. Rogue traders will in any case not list the relevant substances - giving the impression to consumers that their products are safer. Market surveillance authorities do not have the means to tests for several thousands of substances to verify if these lists in the DPP are correct.

4. *Reputable toy makers should be given sufficient time to adapt to the new rules*

The deadlines in the proposal are unrealistic. They also risk leading to the unnecessary destruction of many toys, which goes against sustainability efforts.

30 months are given as a transition period for the coming into effect after publication of the text. Two-and-a-half years may seem like a long time but it is not in this case. Especially as crucial elements needed for the compliance with the Regulation will not be ready for some time:

- The digital product passport (DPP) and the underlying IT systems, such as the European Commission's central registry, need to be built from scratch. This also includes a range of EU standards, implanting acts and implantation of other new EU legislation such as the new Union Customs Code and the Ecodesign rules (ESPR). There is no clear timeline yet for all of this. Will Member States have their IT systems ready in time to start working with the DPP?
- All EU toy safety standards that toy makers need to prove compliance with the Regulation will need to be amended. The Commission will need to mandate CEN/CENELEC to start working on the standards. Just writing out one standardisation request and having it approved and published can take a year at best, much longer usually. The subsequent discussions and approval of a standard typically take around 36 months to 48 months (as shown in the current standardization request M/589).
- In the case we need to ask ECHA to approve the use of substances ('exemptions') such as metallic nickel in railway tracks of a toy train, there are extensive procedures in place that take time. As an example: the EU Scientific Committee started investigating our request for an exemption for the use of titanium dioxide and metallic cobalt in October 2020 (TIE request to the Commission initiated in October 2019) and there is still no final adoption of the exemptions.

We need all of these elements to be in place before we can even *start* making our toys on the basis of them. Typically, from concept to launch onto the market, a manufacturer needs 18 to 24 months. Next to the toy, also the packaging needs to be updated.

We call for a transition period of more than 54 months to be able to meet it.

The reason for the short transition periods is difficult to understand as there is no urgency. The current TSD works well and ensures that compliant toys are safe. The lack of the usual 'grandfather clause' (allowing the further sale of products complying with the old rules as long as they were placed on the market before the new legislation becomes applicable) also makes

no sense. This position is only defendable in case of a real safety crisis. There is not. This will have enormous consequences.

Only few toys are real '*fast moving* consumer goods'. The 12-month cut-off date for toys complying with the old rules to stop being sold can have two results:

- either retailers stop buying toys that are compliant with the current rules 12 to 18 months before the deadline. This gives toymakers a lot less time to adapt to the new rules: **impossible**;
- or millions of toys that are still on the shelves when the 12 months end will have to be destroyed. From a **sustainability** point of view, this is nonsense.

We call for the 12-month maximum sell-through period to be removed so after the end of the transition period, safe, compliant toys can continue to be sold.

There is no risk that toy makers will shortly before the cut-off date still try to flood the market with TSD-compliant toys as this will seriously increase stock and keeping stock is extremely expensive.

11 September 2023