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### **ANEC/BEUC Fact sheet**

#### **Mandatory EC-type examination for certain types of toys**

##### → Background

The existing Toy Safety Directive 88/378/EEC has shown that the Supplier's Declaration of Conformity (where the CE mark is affixed by producers without any independent third-party check) is not sufficient to ensure a high level protection for children. If a toy is claimed to be manufactured in compliance with the EU harmonised standards supporting the EU Directive, no further assessment is needed before the toy is placed on the market. This possibility remains unchanged in the proposed revision of the Directive.

At present, EC-type approval is only required when the manufacturer does not follow a standard or when no standard exists for a certain risk. However, as shown by the Mattel recalls of more than 22 million toys in 2006 and 2007, many toys that bear the CE Marking are still found not to be in conformity with the European toy legislation and thus unsafe on the EU market. In this context, it is crucial to make EC-type examination obligatory for certain categories of toys (e.g. magnetic toys). The comitology procedure, described in a separate ANEC/BEUC factsheet, could help to identify and select these categories, which could thus be listed in an annex to the directive.

A 2007 study requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) on "Safety and liability issues relating to toys" even recommends going beyond and have regular audits of manufacturer production systems to complement EC-type examination, as EC-type examination performed only on prototypes does not guarantee safety. Product checks at random intervals performed by a notified body are another option that could be introduced in order to make sure that the manufacturing process assures compliance of the product.

Finally, the situation in the US seems to go in the same direction. Independent third-party examination may soon become obligatory for all toys for children under six years of age in the US as established in the Consumer Product Safety Reform Act passed by the Congress and Senate. The two bills are now undergoing a 'reconciliation process' to become law. Moreover, the recent

requirement of the US Senate for a public database of complaints to be established is sound and should be implemented in the EU.

→ Our proposals for amendments

## **CHAPTER IV**

### **CONFORMITY ASSESSMENT**

#### *Article 18*

#### *The applicable conformity assessment procedures*

1. Before placing the toys on the market, manufacturers shall use the conformity assessment procedures identified in paragraphs 2 and 3 to demonstrate that the toys comply with the essential safety requirements set out in Article 9 and Annex II.
2. If the manufacturer has applied the harmonised standards the reference number of which has been published in the *Official Journal of the European Union* covering all the relevant safety requirements for the toy, the manufacturer shall use the procedure of internal production control as set out in Module A of Annex I to Decision [...].
3. The toy shall be submitted for EC-type-examination as referred to in Article 19 combined with the conformity to type procedure set out in Module C of Annex I to Decision [...] in the following cases:
  - (a) when harmonised standards, the reference number of which has been published in the *Official Journal of the European Union*, covering all relevant safety requirements for the toy, do not exist;
  - (b) when standards as referred to in point (a) exist but the manufacturer has not applied them or has applied them only in part;
  - (c) when standards as referred to in point (a) or any of them have been published with a restriction.;
  - (d) when the manufacturer considers that the nature, design, construction or purpose of the toy necessitate third party verification.
4. **The products listed in Annex I Part II) shall be submitted for EC-type examination.**

#### *Justification:*

*The current system of CE Marking (affixed by producers without any independent third-party check) on toys does not always guarantee the safety of products. however, certain categories of toys deserve special attention and should in particular undergo mandatory EC-type examination (independent third-party testing).*

## ANNEX I

### **I. LIST OF PRODUCTS THAT, IN PARTICULAR, ARE NOT CONSIDERED AS TOYS WITHIN THE MEANING OF THIS DIRECTIVE (ARTICLE 2 (1))**

...

### **II. CATEGORIES OF TOYS WHICH SHALL BE SUBMITTED FOR EC-TYPE EXAMINATION (Article 18 (4))**

1. toys intended for children under three years (e.g. rattles);
2. toys which, for functional reasons, cannot be designed to eliminate all risks (e.g. toys with high accessible surface temperature, magnetic toys);
3. toys which, in case of a failure, can lead to severe health impacts of a child (e.g. a toy containing a laser);
4. toys which have caused severe accidents in the past (c.f. Rapex notifications);
5. toys which have raised considerable concern in enforcement activities.

The Commission will, for each category, establish a list of relevant toys in accordance with the regulatory procedure with scrutiny referred to in Article 46(2).

#### *Justification:*

*Certain categories of toys deserve special attention in terms of safety for children. As examples:*

1. *a toy intended for children under three deserves special attention as these children represent the most vulnerable group – they tend to put everything in their mouth.*
2. *a toy iron which has a high accessible surface temperature is an example of a toy falling under the second category of toys*
3. *in case of a failure, the speed limit of electrically driven ride on toys could go up, or a laser in a toy could become accessible to a child, etc*
4. *although not all RAPEX toy notifications are linked to severe accidents, most of them are notified because they are non compliant with the legislation and standard. Many of them have the POTENTIAL to cause accidents. Toys with small parts (which are the majority of the notifications) can cause serious accidents.*
5. *examples within this category are toy experimental sets, toys darts with suction cups and toys with magnets. Although a standard is lacking for toys with magnets, an EC-type certificate is not always asked for.*

*The comitology procedure with scrutiny could help to identify and select the categories of toys to be submitted for EC-type examination. (See also ANEC/BEUC factsheet on comitology.)*

**END.**