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ANEC/BEUC Fact sheet

The Precautionary Principle should be introduced in the Toys Directive

→ Background

The precautionary principle aims at dealing with the risk to human health and the environment in cases where the level of risk is not insignificant and where there is scientific uncertainty. The precautionary principle is an established principle in Community Law. It is applied in environmental regulation as well as in other related policy areas such as product safety¹, public health and food².

In the General Product Safety Directive (GPSD), the precautionary principle is mentioned in recital 1 and Article 8.2. Unlike in the EU general food law, there is no proper definition of the precautionary principle in the GPSD. However, it is generally understood as to allow legislators to take risk management measures to ensure the high level of health protection where the possibility of harmful effects on health is identified but scientific uncertainty persists.

Applied in the toy safety area, the precautionary principle would imply that legislators could take protective measures e.g. appropriate action against a toy even though accident data is incomplete or uncertain. Legislators would not any more have to wait for complete evidence of the existence and the gravity of certain risks.

In Art. 37 of the Proposal for a revised Toy Safety Directive, only reference is made to Art. 8 of the GPSD thus including the precautionary principle into the Toys Directive. In addition, the precautionary principle is mentioned under point 3.1.4 of the explanatory memorandum to the Commission proposal as follows:

"... it is appropriate to proceed to an assessment of the hazard inherent in toys in food on the basis of the precautionary principle..."³.

However, these provisions are not satisfactory and may lead to misinterpretation and a lack of legal certainty for economic operators.

¹ Directive 2001/95/EC on General Product Safety.

² Recitals (20) and (21) and Article 7 of Regulation 178/2002/EC laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

³ Reference is made in a footnote to "Commission Communication COM (2000) 1, 1.2.2000".

→ Our proposals for amendments

Article 1
Subject-matter and scope

1. This Directive lays down rules on the safety, and the free movement in the Community, of products designed or intended, whether or not exclusively, for use in play by children under 14 years of age, hereinafter "toys" in accordance with the precautionary principle.

Justification

As children are a vulnerable consumer group, the introduction of the precautionary principle is justified. This is of particular importance with respect to exposure to chemicals.

Applied in the toy safety area, the precautionary principle would imply that legislators could take protective measures e.g. appropriate action against a toy even though accident data is incomplete or uncertain. Legislators would not any more have to wait for complete evidence of the existence and the gravity of certain risks.

Article 9
Essential safety requirements

1. Member States shall take all measures necessary to ensure that toys may not be placed on the market unless they comply with the essential safety requirements set out, as far as the general safety requirement is concerned, in paragraph 2, and, as far as the particular safety requirements are concerned, in Annex II.

Member States should take the precautionary principle into due account.

Justification:

The General Product Safety Directive (Art 8.2, 1st para) states that the precautionary principle should be taken into due account when the competent Member States Authorities take market surveillance measures against a product. Since child safety is concerned when it comes to toys, the Toy Safety Directive should provide a level of safety which is at the very least as high as the GPSD.

Article 17
Safety assessments

Manufacturers shall, before placing a toy on the market, carry out an analysis of the chemical, physical, mechanical, electrical, flammability, hygiene and radioactivity hazards that the toy may present and an assessment of the potential exposure to them. **The absence of an accident history should not automatically be taken as a low presumption of risk.**

Justification:

It may not always be possible to base risk reduction measures or product specifications on clear scientific evidence of harm due to a lack of scientific data or poor accident statistics, in particular in the case of chemical risks. As children represent a vulnerable consumer group, a precautionary approach needs to be taken.

The absence of an accident history, a small number of accidents or a low severity of accidents with a certain toy or product should therefore not be taken as an automatic presumption of a low level of risk. This is even more justified considering the uncertainty and data gaps that exist about possible non-acute health effects to children from chemicals used in toys.

END.