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MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 103(2) of the Rules of Procedure

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on behalf of the Verts/ALE Group

on dangerous toys and the urgent need to revise the Toy Safety Directive

European Parliament resolution on dangerous toys and the urgent need to revise the Toy Safety Directive

The European Parliament,

- having regard to RAPEX, the EU alert system for all dangerous consumer products, with the exception of food and pharmaceutical and medical devices, for the rapid exchange of information between Member States and the Commission on measures taken to prevent or restrict the marketing or use of products which present a serious risk to the health and safety of consumers,
 - having regard to opinions of the scientific committees of the Commission and to various studies commissioned by DG Enterprise on the issue of toy safety,
 - having regard to Rule 103(2) of its Rules of Procedure,
- A. whereas the wave of toy recalls by various companies in August and September 2007, with Mattel alone recalling more than 20 million toys, has created widespread public concern about the unsafeness of toys,
- B. whereas according to RAPEX, the first 35 weeks of 2007 saw 913 notifications of product withdrawals, many of which covered whole ranges of products, as compared to 924 serious risk notifications in the whole of 2006, which represents an increase of almost 50%; whereas by far the largest single category of notification is that relating to toys, representing 32% of all notifications in the first 35 weeks of 2007 (293 out of a total of 913 notifications), which is a significant further increase on the figure of 24% from 2006,
- C. whereas, in 2006, 48% of all detected unsafe products or product ranges were manufactured in China and 17% were of unidentified origin,
- D. whereas recalls of unsafe toys are fully justified, but are merely a means of last resort that will only rarely provide effective consumer protection because, apart from the fact that they often come late, the average return rate for toy recalls is very low, meaning that the vast majority of unsafe toys normally remain in consumers' homes,
- E. whereas, according to RAPEX, there has not been a single penalty for any company that put unsafe toys on the market,
- F. whereas a prerequisite for effective consumer protection is clear regulatory provisions that ensure the safety of toys from production onwards, and whereas such regulatory provisions need to be fully implemented and enforced,
- G. whereas Council Directive 88/378/EEC on the Safety of Toys - hereafter referred to as the TSD - is a so-called 'new approach' directive as first laid down in a Council Resolution of 7 May 1985; whereas the 'new approach' restricts the legislator to adopting

'essential requirements' and delegates the adoption of specific harmonised standards to implement these essential requirements to European standards bodies; whereas these standards bodies are strongly dominated by the sectors of industry concerned,

- H. whereas the CE conformity mark only relates to the essential requirements and the standards where they exist, yet these can relate to very different aspects (e.g. mechanical safety, energy efficiency, chemical-related aspects) of the whole product or only parts of it, none of which is specified on the product,
- I. whereas actual testing for conformity with European standards by independent bodies occurs only exceptionally,
- J. whereas the CE mark does not suggest the safety of a toy or any other product and was never intended to do so,
- K. whereas, in its resolution of 16 May 2006 on 'A Strategy for the Simplification of the Regulatory Environment', Parliament stated that *'standardisation could lead to less transparency and accountability, since the elected representatives would not be involved in decision making, and participation of non-governmental organisations and other interested parties would not be guaranteed in the same way; takes the view, therefore, that standardisation should be strictly limited to harmonising measures of a purely technical nature'*,
- L. whereas, contrary to commitment, in particular the new regulatory procedure with scrutiny, Parliament currently has no right whatsoever to scrutinise decisions taken for purposes of standardisation,
- M. whereas the inadequacy of the TSD concerning the chemical safety of toys was clearly revealed at the latest in 1997, when the first soft PVC toys - certified by the manufacturers to be in conformity with the TSD! - had to be recalled due to their content of dangerous softeners (phthalates); whereas, in 2005, the Community banned the use of three phthalates that are toxic to reproduction in all toys, and of three other hazardous phthalates in all toys that can be put into the mouth¹; whereas it is difficult to understand why only three substances that fall into the category of substances that are carcinogenic, mutagenic or toxic to reproduction are banned in toys, and not all of them,
- N. whereas the case of soft PVC toys, the very high number of recent toy recalls and the significant flaws of the TSD with regard to its inadequate essential requirements and harmonised standards, as documented in various opinions of scientific committees of the Commission and studies by the Commission, have clearly shown that the new-approach-based TSD has failed to ensure adequate safety of toys, in particular concerning their chemical safety (see annex),
- O. whereas the Commission undertook to address the issue of fragrances in toys in the framework of the revision of the TSD²,

¹ OJ L 344, 27.12.2005, p. 40

² OJ L 68, 8.3.2006, p. 39

- P. whereas despite the clear evidence about the failure of the essential requirements and the corresponding standards adopted in standardisation to ensure adequate safety, in particular for migration of certain dangerous substances, they still remain unchanged,
- Q. whereas the Commission, fully aware of the failure of the TSD, has been working on its revision since 2001, but has still not adopted any legislative proposal,
1. Calls on the Commission to present a legislative proposal for a complete revision of the TSD before the end of the year;
 2. Calls on the Commission, in the revision of the TSD, either to resort to the 'old approach' or to follow the approach that was adopted in Directive 2005/32/EC establishing a framework for the setting of ecodesign requirements for energy-using products¹, in which specific measures for the implementation of the key requirements are to be adopted under committee procedure using the regulatory procedure with scrutiny, thus allowing Parliament a certain level of control over the implementation of toy safety provisions, to be complemented by clear prohibitions of certain hazardous chemicals;
 3. Agrees with the opinion of the Commission's Scientific Committee on Health and Environmental Risks of 29 May 2007 that substances that are carcinogenic, mutagenic or toxic to reproduction as well as very toxic compounds should not be used in toys, and calls on the Commission to propose an unconditional prohibition of these substances in toys;
 4. Calls on the Commission to include a prohibition of the use of all fragrances, sensitisers and endocrine disruptors in its proposal for a revised TSD;
 5. Calls on the Commission to propose specific provisions concerning inedible toys in food when revising the TSD;
 6. Stresses that the CE mark, given the self-regulatory character of the system for its use, was never intended to be, and indeed cannot be, an EU-wide safety mark, and considers any attempts to turn it into a symbol intended to inspire consumer confidence to be highly inappropriate and misleading;
 7. Calls on the Commission to take urgent action to tackle the problem of dangerous products of unidentified origin; stresses that importers must have the same responsibility as EU manufacturers and therefore calls on the Commission to ensure firstly that each manufacturer importing into the Community has a legal representative in the EU, and secondly that the producer, or the legal representative of any importer, is clearly and unambiguously indicated for any product placed on the market;
 8. Calls on the Commission to include an obligation on Member States to lay down penalties for non-compliance in the proposal for a revised TSD;
 9. Calls on the Commission to include monitoring and reporting in RAPEX, in order to make it possible to measure the effectiveness of all product recalls; considers that 'silent

¹ OJ L 191, 22.7.2005, p.29

recalls' without any public alert are inappropriate in all cases where products have already been sold;

10. Calls on Member States to make available sufficient resources to be able to undertake comprehensive and effective checks to ensure full compliance with the provisions of the old and the new directive, including effective and dissuasive penalties in cases of non-compliance;
11. Calls on the Chinese authorities and the authorities of any other country that wishes to export toys to the EU to take appropriate action to improve production standards, market surveillance and enforcement mechanisms so as to ensure full product safety throughout the entire production chain, including the withdrawal of export licences for repeat offenders;
12. Instructs its President to forward this resolution to the Council and Commission.

Annex

- On 12 November 2003, the Commission's Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) strongly criticised a report by the European Committee for Standardisation (CEN) on the 'Risk assessment of organic chemicals in toys', stating that *'the overall scientific quality of the risk assessment report is poor'* and that *'there are numerous inconsistencies and errors in the report'*, concluding that the report is *'not useful for the initial purpose; it does not provide a suitable basis for setting standards'*¹.
- On 22 June 2004, the CSTEE found that the current limit values for inorganic chemicals in the Annex to the TSD appear to be based on a scientific opinion of 1985, that this opinion contains incorrect assumptions and that the proposed limit values need *'to be updated to take into account revision of TDIs [Tolerable Daily Intakes] and ADIs [Acceptable Daily Intakes] since 1985'*².
- On 22 June 2004, the CSTEE furthermore made numerous criticisms of the standard on the test method for limit values of bioavailability of certain hazardous elements, inter alia that *'the standard does not take mouthing into account'* and concluded that *'the standard does need to be updated to reflect advances in science since 1994'*³.
- In October 2004, a study commissioned by DG Enterprise on the 'Impact of the Revision of Council Directive 88/378/EEC on the Safety of Toys' identified the following areas *'where the TSD may not have achieved its objectives: the definition of toys; linked to this, the labelling of toys; the adequacy of harmonised standards and gaps in essential requirements; and enforcement'*⁴.
- In August 2006, a study commissioned by DG Enterprise on 'Chemicals in Toys'

¹ http://ec.europa.eu/health/ph_risk/committees/sct/documents/out203_en.pdf

² http://ec.europa.eu/health/ph_risk/committees/sct/documents/out235_en.pdf

³ http://ec.europa.eu/health/ph_risk/committees/sct/documents/out235_en.pdf

⁴ http://ec.europa.eu/enterprise/toys/documents/toys_final_report_without_annexes.pdf

pointed to the lack of transparency of standards on chemicals in toys by stating that '*in contrast to EN 71-3 the derivation of migration limits is made transparent in this report*'¹.

- On 29 May 2007, the Commission's Scientific Committee on Health and Environmental Risks (SCHER) stated in its opinion on 'CEN's response to the opinion of the CSTEE on the assessment of CEN report on the risk assessment of organic chemicals in toys' that '*SCHER does not accept the procedure to define action limits for MCR [substances that are mutagenic, carcinogenic or toxic to reproduction] and very toxic compounds. Such compounds should not be present in toys...*'²

¹ http://ec.europa.eu/enterprise/toys/documents/study_on_bioavailability.pdf

² http://ec.europa.eu/enterprise/toys/documents/toys_final_report_30_july_2007.pdf