

# The EU Toy Safety Directive

*This briefing has been produced by the European Parliamentary Research Service (EPRS) to assist the European Parliament's Committee on the Internal Market and Consumer Protection in its work on the implementation report on the Toy Safety Directive. The briefing aims to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of the Toy Safety Directive, drawing on input from EU institutions and bodies and from external organisations.*

## SUMMARY

The Toy Safety Directive (TSD) aims to ensure a high level of health and safety with respect to toys for children under 14 years of age and to guarantee the free movement of toys in the EU by means of provisions for manufacturers, importers, distributors of toys sold in the EU and national market surveillance authorities.

More than 10 years after its adoption in 2009, the European Commission is considering a revision of the directive in the context of the chemicals strategy for sustainability. Although the exact scope of this revision has still to be decided, the European Commission highlighted areas for further improvement in a recent evaluation of the directive.

The Commission's evaluation focused on: a general lack of monitoring data to assess the TSD's effectiveness; limit values for some chemical substances; and the question of whether limit values should apply not only to toys for children under 36 months, but also to children of all ages. In addition, the evaluation looked into the issue of market surveillance and enforcement, where resources appear to be missing and discussed the difficulties for manufacturers to comply with the 'small parts requirement' for toys intended for children under 36 months.

## 1. Background and content of the Toy Safety Directive

### 1.1. History of toy safety in the EU

From the outset in the 1980s, the harmonisation of laws, regulations and administrative provisions relating to toy safety characteristics in the EU has had two main objectives. First, the aim has been to guarantee consumer health and safety by establishing essential safety requirements applicable in all EU Member States. Second, harmonisation is intended to remove trade barriers and unequal conditions of competition within the internal market owing to differences in national legislation, thereby ensuring the free movement of toys in the EU. To meet these objectives, the Council adopted the first Toy Safety Directive in 1988.<sup>1</sup>

After 20 years of application of the 1988 Toy Safety Directive, there was a need to (i) enhance the provisions for toy safety requirements, (ii) reinforce manufacturers', importers' and distributors' responsibility for the marketing of toys, and (iii) enhance the market surveillance obligations of Member States. In 2008, following a major stakeholder consultation with more than 1 500 replies, the European Commission made a proposal for a new Toy Safety Directive (TSD) addressing these

needs. In 2009, the co-legislators adopted the new TSD, which entered into application on 20 July 2011, and on 20 July 2013 for the rules on chemicals.<sup>2</sup>

## 1.2. Main aspects of the existing Toy Safety Directive

Building on its 1988 predecessor, the TSD aims to attain the same main objectives, i.e. a high level of health and safety with respect to toys for children under 14 years of age and to guarantee the free movement of toys in the EU. The TSD aims to achieve the health and safety aspects by setting out safety requirements in relation to general and particular risks (such as chemical, physical, mechanical, electrical, flammability, hygiene and radioactivity hazards) for children.

The provisions of the TSD apply to products designed or intended, whether or not exclusively, for use in play by children under 14. The TSD **does not apply** to the following toys:

- playground equipment intended for public use;
- automatic playing machines, whether coin operated or not, intended for public use;
- toy vehicles equipped with combustion engines;
- toy steam engines;
- slings and catapults.

Moreover, Annex I referred to in Article 2(1) enumerates (in a non-exhaustive manner) products that could be confused with toys but are not toys according to the TSD.

The TSD imposes responsibilities on various actors along the toy supply chain and on national authorities to carry out market surveillance. The main responsibilities are as follows:

- **manufacturers** have sole responsibility for conducting the complete conformity assessment procedure for toys and must draw up and keep the technical documentation for 10 years after placing a toy on the market. They can carry out the conformity assessment through (i) self-verification by exclusively using referenced harmonised European standards or (ii) third-party verification by a notified body, also called EC-type examination;<sup>3</sup>
- **importers** must ensure that toys imported from non-EU countries comply with the provisions of the TSD and other relevant Community requirements, that conformity assessment procedures have been carried out and that the required conformity marking and documentation produced by manufacturers are available for inspection by the national supervisory authorities. To this end, they must keep the technical documentation for 10 years after the toy has been placed on the market;
- **distributors** must ensure that toys bear the required conformity marking and are accompanied by the required documents, instructions and safety information in a language or languages easily understood by consumers in the Member State in which the toy is to be made available on the market, and that the manufacturer and the importer have complied with the requirements;
- **national market surveillance authorities** must organise and perform surveillance of toys placed on the market and instruct notified bodies to review or withdraw the EC-type examination certificate in cases of non-conformity of a toy.

All supply chain actors must ensure the toy is traceable, take corrective action in cases of suspected non-conformity and inform national market surveillance authorities if a toy presents a risk.

Since its entry into force in 2009, the TSD has been amended 16 times to address newly identified chemical risks and to strengthen the limit values for chemicals such as cadmium, barium and lead. For nickel the existing derogation was extended to allow the use of nickel in toy components intended to conduct an electric current. These amendments were made in accordance with the regulatory procedure with scrutiny.<sup>4</sup> The European Commission is assisted by the Safety of Toys Committee when adopting implementing measures.

Toys sold in the EU must also comply with other EU legislation alongside the TSD, in particular:

- [Regulation \(EC\) No 1907/2006](#), concerning the registration, evaluation, authorisation and restriction of chemicals (REACH Regulation);
- [Regulation \(EC\) No 1272/2008](#), on classification, labelling and packaging of substances and mixtures;
- [Regulation \(EC\) No 1223/2009](#), on cosmetic products.

## 2. European Commission reports on the TSD

### 2.1. National reports on application of the TSD

Article 48 of the TSD requires the Member States to report to the Commission every five years on application of the directive and the Commission to then draw up and publish a summary of the national reports. After the first round of Member States' reports in 2014<sup>5</sup> and the second round of Member States' reports, covering the years 2014-2018, questionnaires were also sent to EEA-EFTA countries and stakeholders in 2019.<sup>6</sup> At the time when the present briefing was drafted (mid-April 2021), the Commission had not yet published the summary of these Member States' reports.

### 2.2. The 2020 European Commission evaluation of the TSD

After a first external evaluation of the TSD in 2015,<sup>7</sup> the Commission's 2020 internal evaluation of the TSD, published in November 2020,<sup>8</sup> covered all five evaluation criteria defined in the Commission's Better Regulation Guidelines (effectiveness, efficiency, relevance, coherence and EU added value),<sup>9</sup> with a clear focus on the first three. As a general problem, the Commission's evaluation noted that 'the current data monitoring system does not seem to make it possible to clearly relate the Toy Safety Directive to effects on health protection or the internal market. The available data are often incomplete or not representative, or there are too many confounding factors'.<sup>10</sup> At the same time, the TSD 'provides for only a general reporting obligation for Member States. The TSD does not identify the indicators and related data needs for future monitoring and evaluation that could help draw a detailed picture of the directive's effects or identify impediments to its functioning'.<sup>11</sup>

Despite the increased **effectiveness** of the TSD due to stricter requirements than in the 1988 Toy Safety Directive, the Commission concluded that the TSD still presents some shortcomings, mainly relating to the health and safety objective. The Commission therefore argued that urgent action was needed to improve the directive's effectiveness, with relation to the following aspects in particular:

- specific limit values for chemicals, which apply not to all toys but only to toys for children under 36 months of age and toys that are intended to be placed in the mouth;
- possible derogations for concentrations of carcinogenic, mutagenic or toxic for reproduction chemicals (CMR), which seem to be too high;
- overly high limit values for carcinogenic nitrosamines and nitrosatable substances;
- labelling requirements for specific allergenic substances in certain 'experimental' toy sets cannot be easily updated when the related lists of allergenic substances are updated;
- possible circumvention by manufacturers of the 'small parts requirement' for toys intended for children under 36 months of age. According to the Commission, 'guidance documents and exchanges of views between market surveillance authorities have so far ensured a consistent (and protective) approach in such cases';<sup>12</sup>
- suboptimal enforcement of the general market surveillance obligation on Member States. The extent to which the new [Market Surveillance Regulation](#) will improve this situation once its provisions enter into application on 16 July 2021 remains to be seen.

On a more positive note, the TSD seems to be effective concerning its objective to guarantee the free movement of toys in the internal market. This conclusion is supported by the strong increase in intra-EU trade in toys covered by the TSD after its full entry into application in 2013. Finally, the

Commission thinks that the TSD could be even more effective if it were converted into a regulation, thereby reducing the human resources needed to address transposition at national and EU level.

The European Commission recognises the difficulties of assessing the **cost-efficiency** of the TSD, mainly owing to the challenges in quantifying the directive's benefits for the toy industry. Based on stakeholder feedback and toy market data, which shows increases in the number of toy producers and in the sector's profits, the European Commission concluded in its evaluation that the directive had not had a negative effect on the sector's competitiveness.

According to the European Commission, the TSD's **efficiency** is however limited by the fact that applicable limit values are spread over several legislative acts, complicating the identification of relevant limit values for economic operators, market surveillance authorities and other stakeholders.

While the European Commission and respondents to the public consultation are convinced of the TSD's **relevance**, national authorities have raised concerns about the slowness with which the directive has been adapted to new technical developments and also privacy and security issues associated with 'internet-connected toys'. While this slow adaptation process is explained by the need to collect sufficient data to guarantee good quality amendments, the European Commission also stressed in the evaluation that privacy and security issues are being dealt with by other EU legislation, e.g. the [Radio Equipment Directive](#).

The main issue that the evaluation identified with respect to the TSD's **coherence** are the stricter limit values for nitrosamines and nitrosatable substances that apply in Germany. In fact, in 2011, Germany asked the European Commission's permission to keep its national limit values for five elements (lead, arsenic, mercury, barium and antimony, and for nitrosamines and nitrosatable substances). While the European Commission granted this permission for nitrosamines and nitrosatable substances on account of the need to protect human health, it gave only temporary permission for lead and barium and rejected it for the other substances. The European Commission's position was confirmed by the European Court of Justice judgment in 2015.<sup>13</sup>

Finally, the European Commission did not identify any major issues with the TSD's **EU added value**. While the evaluation highlighted the directive's main areas of deficiency, it did not identify appropriate follow-up actions that could feed into the upcoming revision of the TSD. According to the European Commission, the upcoming revision must be seen in the context of the chemicals strategy for sustainability,<sup>14</sup> which suggested amending the TSD.<sup>15</sup> In the annex to that strategy, the indicative timing for the revision is 2022.

## 2.3. Stakeholder opinions during the evaluation

In the context of the recent evaluation of the TSD, the European Commission carried out three open and targeted consultations, in addition to the reports from Member States mentioned above:

- a first public consultation, open from 11 July to 8 August 2018 on the roadmap for the evaluation, prompted nine replies;
- a second public consultation on the evaluation, between 19 September and 12 December 2018, received 116 replies;
- a targeted consultation of economic operators to collect detailed data on costs and benefits related to the TSD, between 14 February and 29 March 2019, received 32 replies. The replies to this survey are not publicly accessible.

Annex 2 of the evaluation of TSD provides a comprehensive description of the content of these consultations and their results.<sup>16</sup>

Apart from the public and targeted consultations in the context of the TSD's evaluation, the European Commission's Better Regulation portal lists six public consultations on specific amendments to the TSD, concerning the limit values of certain chemicals, and the labelling or prohibition of certain allergenic fragrances.<sup>17</sup> Owing to the specificities of the amendments, each of

these consultations triggered only between one and four replies from stakeholders. While most replies were supportive of the Commission proposals, some raised specific questions in relation to:

- the limit of quantification of certain substances (for chromium VI, formaldehyde);
- alignment with other EU legislation (REACH Regulation No 1907/2006, Cosmetics Regulation No 1223/2009);
- food contact materials.

### 3. Expert Group on Toy Safety

The role of the Expert Group on Toy Safety is to help the Commission prepare amending directives and to establish cooperation with and between Member States, stakeholders and the Commission, in relation to toy safety. All EU Member States, as well as Norway and Iceland, are Members of the Expert Group. Non-governmental organisations, toy industry representatives, other organisations and certain third countries have observer status in the expert group.<sup>18</sup> The expert group and the European Commission also draw up guidance documents on toy safety, i.e. non-binding documents intended to provide guidelines for Member States and stakeholders to decide whether or not certain products are covered by the TSD or to make the distinction within specific product groups.<sup>19</sup> A temporary subgroup of the Expert Group on Toy Safety, consisting of members from 12 EU Member States, Norway, Toy Industries of Europe (TIE) and the European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC), deals with chemicals in toys.

Also within the Expert Group, the Administrative Cooperation (AdCo) group consists exclusively of national market surveillance authorities responsible for enforcing the TSD. It focuses on issues of market surveillance, e.g. whether or not a certain toy is covered by the TSD or if a toy falls under the more restrictive provisions for toys intended for children under 36 months of age.

The Expert Group discussed the then ongoing evaluation of the TSD at [its meeting on 13 September 2019](#). During this meeting, two Member States (Denmark and France) and the European Consumer Organisation (BEUC) declared that they were against shifting to voluntary standards for the specific limit values for chemicals used in toys intended for use by children under 36 months or in other toys intended to be placed in the mouth from the TSD. In addition, two Member States (Denmark and Austria) welcomed a possible extension of the scope of the limit values in Appendix C of the TSD to toys for children of all ages. The representative of Toy Industry of Europe (TIE) explained that the limitation of Appendix C limit values 'was not too much a concern since every manufacturer had to carry out a safety assessment on the toys to be manufactured whatever their age grade'. Finally, the subgroup on chemicals discussed the evaluation of the directive at its [meeting on 27 November 2020](#). According to the meeting minutes, one Member State (Austria) requested that the revision of the TSD start soon. Another meeting of the Expert Group took place on 24 March 2020, to discuss, among other things, the way forward following the 2020 evaluation of the TSD.<sup>20</sup> At the time when the present briefing was drafted (mid-April 2021), minutes of this meeting were not yet publicly available.

### 4. Council of the European Union

The Council of the European Union has not adopted conclusions on toys safety per se, but it has included toy safety issues under broader considerations. In its conclusions of 21 March 2021,<sup>21</sup> Council asked the Commission to implement the actions set out in the chemicals strategy for sustainability, including targeted amendments to streamline EU chemicals legislation, substituting and minimising substances of concern, and phasing out the most harmful chemicals for non-essential societal uses.<sup>22</sup> The Council highlighted the importance of limiting exposure to endocrine disruptors and to reducing the harmful effects of chemical mixtures. In that respect Council noted the need to strengthen the EU's legal framework in the area of endocrine disruptors, so that they could be identified swiftly and on time, in the framework of the regulation on classification, labelling and packaging of substances and mixtures. The Council made explicit mention of vulnerable

population groups who needed to benefit from a high and coherent level of protection across legislation. Council also called on the Commission to improve methods to determine societal costs and benefits and pointed to the importance of adequately protecting vulnerable groups, notably by adopting an overarching approach throughout all chemicals legislation. It therefore invited the Commission to assess the relevance of a cross-cutting definition for vulnerable groups.

## 5. Public perceptions

### 5.1. Petitions lodged with the European Parliament

Since the adoption of the TSD in 2009, Parliament's Committee on Petitions (PETI) has received a number of petitions relating to toy safety. While most have been closed by PETI after replying to the petitioner,<sup>23</sup> the committee consulted the European Commission on the two following petitions:

- [petition 2524/2013](#) on the sale of dangerous toys in Spain. The petitioner called for the regulation of sales of specific NERF foam darts. As the darts were covered by the TSD, the Commission drew the Spanish market surveillance authorities' attention to them so that they could proceed with appropriate tests and follow-up;
- [petition 0867/2016](#) on a ban on chemicals and heavy metals in children's toys. The petitioner called for a ban on the use of chemicals and harmful substances in toys, irrespective of the country of manufacture, and for an efficient oversight system. In its reply, the European Commission explained that restrictions with respect to heavy metals and chemical substances in toys already applied, irrespective of the country of manufacture. In addition, the Commission stated that the limit values were under constant review based on new scientific knowledge. Concerning the system of oversight, the European Commission referred to the Member States' role in the area of market surveillance and their cooperation at EU level, through notification of the European Commission in cases of serious risks posed by a toy.

### 5.2. Relevant stakeholder websites

#### Toy Industries of Europe (TIE)

Toy Industries of Europe (TIE) – which represents national toy associations and toy corporations – has repeatedly raised concern over online market places, where unsafe toys are sold and may reappear on different platforms after being taken down.<sup>24</sup> Recently TIE pointed out that toys flagged on the safe gate, formerly RAPEX, a EU-wide alert system that warns consumers about dangerous goods, come overwhelmingly from illegal – often untraceable – traders.<sup>25</sup> For TIE the problem is that operators are able to ignore the EU's strict toy safety rules, which damages responsible competition. In its 2020 position paper,<sup>26</sup> TIE called for more preventive action to stop illegal toys from being listed on platforms at all, and for EU regulatory intervention, including through the upcoming digital services act, together with the revised EU General Product Safety Directive. TIE proposed new obligations for online marketplaces to: (i) verify that the manufacturer had carried out the appropriate conformity assessment and drawn up EU-compliant technical documentation; (ii) collect and verify contact information for sellers prior to allowing the seller to open an account; (iii) react effectively each time unsafe toys were discovered on their platforms, and prevent the re-emergence of similar unsafe products; and (iv) notify consumers and market surveillance authorities to prevent a child from being harmed by playing with an unsafe toy. In December 2020, TIE stated that unfortunately the digital services act proposal would not be sufficient to stop unsafe goods from being sold or address the problem of reappearance on other platforms or other sellers of dangerous products initially taken down.<sup>27</sup> TIE has pointed out the ineffectiveness of self-regulation as proven by the limited results of the EU product safety pledge, but hopes that, with the adoption of the new Regulation on Compliance and Enforcement, authorities will target traders who have no intention of following the rules and take proportionate and dissuasive action to deter them from placing unsafe toys on the market, whether online or in bricks and mortar shops.<sup>28</sup>

On 14 October 2020,<sup>29</sup> while supportive of the chemicals strategy for sustainability, TIE stressed the need to be wary of stricter regulation if rather than having a positive impact on toy safety it merely increased costs for reputable brands, making it more profitable for those who ignored the rules.

## European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC)

In 2019 the European Association for the Coordination of Consumer Representation in Standardisation (ANEC) proposed to amend the TSD on several key points.<sup>30</sup> Regarding chemicals, ANEC proposed to strengthen the chemical requirements for toys significantly, including adequate provisions to exclude exposure to dangerous substances such as CMRs, and broadening of the comitology procedure to set limit values for toys for children above 36 months of age (other than those intended to be placed in the mouth).

Considering the lack of flexibility and adaptability of some of the TSD rules, ANEC proposes that the comitology procedure be also used for mechanical and physical requirements for toys for children under 3 years of age. It has also advocated for a revision to take into consideration new technological and scientific developments, especially on the cybersecurity of connected products.

Advocating for full respect of the precautionary principle, ANEC has reiterated the need to amend the directive to regulate impulse noise levels in toys, and to set the limit to what is allowed for adults under [Directive 2003/10](#) of 6 February 2003 on minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (noise).

Under Article 11 of the TSD, manufacturers must mark warnings on toys in a clearly visible, easily legible, understandable and accurate way. ANEC notes that some authorities face problems in enforcing this provision because of the lack of specified requirements in the directive and the related standards. This is why in the interests of legal certainty, ANEC has specific requirements on the visibility and legibility of warnings on toys (i.e. minimum letter size) to enable Member States to enforce these requirements in a uniform way. ANEC has also reiterated the need to increase controls and market surveillance of toys; to that end it has proposed to set up a pan-European accident and injury database, to systematically collect information on accidents and injuries that occur because of dangerous toys; and to improve traceability along the supply chain, also for toys sold online.<sup>31</sup>

## European Consumer Organisation (BEUC)

BEUC has expressed its position in the broader context of the general safety of products.<sup>32</sup> For BEUC, consumers should not be exposed to harmful chemicals.<sup>33</sup> This is one of its five priorities and concerns toys as well.<sup>34</sup> BEUC has pleaded for an integrated policy on chemicals in products, better protection of vulnerable groups, and a response to known policy gaps, such as combination effects or endocrine disruptors.<sup>35</sup> As regards toys safety, BEUC shares most of ANEC's positions; the associations have often issued joint public positions or press releases, for instance that of 9 April 2019 supporting the establishment of a pan-European accident and injuries database,<sup>36</sup> or another on the need to step up surveillance of online market places.<sup>37</sup> A joint press release on 4 February 2020 called for increased online market place liability.<sup>38</sup>

## Voluntary agreement between the Commission and relevant stakeholders

From November 2007 to May 2008, the European Commission conducted a stocktaking exercise to review the strengths and weaknesses of safety measures in the toy supply chain, including toy recalls. One of the final recommendations was to assess what businesses themselves do throughout the chain to ensure product safety.

In this context several retailers and traders organisation signed a voluntary agreement with the Commission,<sup>39</sup> in which they committed to share their members' knowledge and best practice and support enhanced compliance via various mechanisms, the end objective being to ensure that EU toy safety requirements are fully understood and correctly implemented across the supply chain. In

May 2008, TIE also signed a [voluntary agreement](#) with the European Commission, entailing similar commitments. TIE insisted on sharing best practice in a practical, targeted and effective manner. It also recommended that a multi-stakeholder forum continue to be held to allow TIE, the European Commission and other relevant stakeholders to continue to assess business safety measures in the toys supply chain and reporting on and evaluating those measures once a year.

### 5.3. European Economic and Social Committee (EESC)

In 2008, the EESC was consulted on the Commission proposal for the TSD and adopted its [opinion](#) on 18 September 2008. It welcomed the proposed revision of the 1988 Toy Directive but also stressed a number of aspects it considered important to cover in the TSD, e.g. explicit implementation of the precautionary principle with regard to chemical properties through the prohibition of all potentially dangerous substances. In general, the EESC considered that the most appropriate legal instrument for toy safety would be a regulation rather than a directive. The EESC also seemed concerned that the lack or deficiency of statistical data could negatively affect efforts to assess the potential effectiveness of the TSD. The latter two points concern areas that have also been discussed in the 2020 Commission evaluation.

More recently, the EESC referred to certain aspects of toy safety in two opinions. In its 2018 [opinion](#) on the European strategy for plastics in a circular economy, it highlighted the importance of making sure that secondary, i.e. recycled, raw materials did not contain toxic substances used in raw materials not intended for use in children's toys. Finally, in a 2019 [opinion](#), the EESC stressed a lack of coordination between sectoral EU legislation that it considered had led to incoherence in the approach vis-à-vis the provisions on endocrine disruptors.

## 6. European Parliament positions

### 6.1. Resolutions

Although there is no recent resolution addressing toy safety, several resolutions on consumer policy focus on safety requirements for products on the EU market, including the health impact of chemical substances and endocrine disruptors, and refer to toys. All these resolutions point to the need for a horizontal approach to tackle emerging challenges – in particular those stemming from e-commerce and new technologies – and call for harmonisation of EU legislation with special attention to sectoral legislation such as the TSD.

In its [resolution](#) of 18 April 2019 on a comprehensive EU framework on endocrine disruptors, Parliament welcomed the Commission communication of 7 November 2018 (COM(2018) 734), in particular its recognition of the adverse effects of endocrine disruptors (EDCs) on human health and the environment, including mixture effects, its objective of minimising overall exposure, and the need for a horizontal approach to identifying EDCs. However, Parliament regretted the lack of a concrete action plan and timeline for the next steps, and delays in conducting the announced Commission fitness check to assess whether the relevant EU legislation on EDCs had delivered on its overall objective of minimising exposure to these substances. Parliament noted that key legislation such as the TSD still lacked specific provisions on EDCs and noted failures in the registration, evaluation, authorisation and restriction of EDCs under the REACH Regulation. It stressed that EDCs were a class of chemicals of equivalent concern to substances classified as carcinogenic, mutagenic or toxic for reproduction (CMR substances), and should therefore be treated identically in EU legislation. The TSD (and the Cosmetics Regulation) placed restrictions on categories of known and presumed CMRs but also suspected ones. It was therefore essential to identify suspected EDCs. Parliament called on the Commission to draft legislative proposals no later than June 2020 and add specific provisions on EDCs to the TSD, similar to those on CMR substances.

Parliament's [resolution](#) of 10 July 2020 on the chemicals strategy for sustainability echoed the resolution of April 2019 on a comprehensive EU framework on endocrine disruptors with regard to

toy safety, and called explicitly for legislative proposals to insert specific provisions on EDCs into the legislation on toys. The resolution pointed to the need for the Chemicals Strategy for Sustainability to achieve coherence and synergies between chemicals legislation, occupational safety and health (OSH) legislation and related EU legislation, including specific product legislation such as the TSD.

In its [resolution](#) of 12 February 2020 on automated decision-making processes: ensuring consumer protection and free movement of goods and services, Parliament, recognising that the emergence of products with automated decision-making capabilities presented new challenges, urged the Commission to bring forward proposals to adapt the EU's safety rules for products covered by specific EU legislation that sets harmonised requirements, including the TSD.

Parliament's [resolution](#) of 25 November 2020 on addressing product safety in the single market was adopted against the backdrop of the coronavirus crisis. Parliament stressed that the safety of all products was of paramount importance, whether they are sold online or offline and are imported from outside the EU. Parliament once more pointed out the need to adapt product safety rules to the new market realities and the digital transition by tackling emerging risks and threats to consumer safety. Parliament asked the Commission to ensure a consistent approach towards product safety in all sectoral legislation, such as the TSD, in order to achieve the highest level of consumer safety. The resolution listed key issues to be addressed horizontally, including compliance with safety rules, effective market surveillance by national authorities, and access to safe products on online marketplaces, traceability and recalls of unsafe products.

## 6.2. MEPs' questions

In the years following the directive's entry into force, the presence of **dangerous chemical substances** in toys drew MEPs' attention; examples include questions [E-008648/2015](#), [E-006599/2014](#) and [E-006484/2014](#) at a time when some of the chemical substances were not fully banned. In 2015 in a written reply to question [E-004466/2015](#) by Jeppe Kofod (S&D, Denmark), who noted that the procedure to phase out dangerous chemicals was taking too long, Commissioner Karmenu Vella explained that the Toy Safety Directive's chemical provisions were regularly adapted to scientific progress, in accordance with the provisions of the REACH Regulation. MEPs have also questioned the enforcement of toy safety standards; e.g. [E-001982/2017](#), [E-001933/2018](#) and [E-003979/2018](#).

A few questions have been raised about the **economic impact on specific industries of stricter limit values** on chemical substances. For instance, Jens Geier (S&D, Germany) ([E-010030/2015](#)) asked about measures envisaged by the Commission to protect – in this case – pewter-figure producers against strict limit values for lead and its compounds. Whereas the Commission did not at the time envisage exemption from the REACH Regulation's restriction on lead, it noted that pewter figures that were collectors' items for adults continued to be exempt from the TSD. The Commission had asked the European Chemicals Agency (ECHA) to develop guidelines on the implementation of the restriction. See also [P-001711/2019](#) and [E-000823/2017](#).

From the outset most questions have concerned toys **imported from third countries**. Marlene Mizzi (S&D, Malta) ([E-006571/2014](#)) asked what types of measures had been taken to test and prevent dangerous products, and in particular children's toys, from entering the European market. Commissioner Neven Mimica replied that enforcement and market surveillance was the responsibility of the Member States, although preventive measures were also implemented by the Commission, including exchange of information, training courses and online information. He also noted reactive measures at the points of entry to the EU or through market surveillance, reported in the RAPEX rapid alert system. In response to the written question of Mara Bizzotto (NI, Italy) ([E-011214/2014](#)) on measures to increase the security of border controls, Commissioner Pierre Moscovici stated that the Commission's aim was to ensure a coordinated approach by market surveillance authorities via the Toy Safety Administrative Cooperation Expert Group. He noted that since toys on the EU market were overwhelmingly imported from China, there had been close cooperation between the Commission and China since 2006. The RAPEX-China system, China's

General Administration for Quality, Supervision, Inspection and Quarantine (AQSIQ) was regularly informed about dangerous products of Chinese origin notified in the RAPEX system and was expected to take follow-up action. The Commissioner added that a 'guideline for action on cooperation for strengthening EU-China toys safety' had been concluded with AQSIQ, with the aim of securing a high level of safety of toys manufactured in China. When Frédérique Ries (ALDE, Belgium) 2016 ([E-008151/2016](#)) asked what types of control the Commission had set up, in partnership with national authorities, to ensure that the bans in force for some phthalates were applied, Commissioner Elżbieta Bieńkowska insisted on the importance of a coordinated approach between national market surveillance authorities and national customs. In 2018 Virginie Rozière (S&D, France) and Guillaume Balas (S&D, France) ([E-001221/2018](#)) enquired more specifically about enforcement of the ban on chemical substances.<sup>40</sup> Commissioner Bieńkowska noted the core responsibility of the Member States in enforcing the REACH Regulation even though a number of enforcement activities were coordinated at EU level, including the Forum, a body of the ECHA. She also pointed out that some high levels of non-compliance for certain restrictions could be explained in part by the fact that these controls were targeted at articles expected to have higher non-compliance rates. She said that the Commission would be exploring ways to strengthen collaboration between customs and chemical national inspectors, also at EU level. According to the Commissioner the traceability of the origin of products concerned not only chemicals but all types of products.

The increasing volume of **sales online** shed a new light on the problem. Under the previous legislature, several MEPs asked what the Commission proposed to do to prevent online sales of toys that did not comply with EU safety standards. For instance, Ismail Ertug (S&D, Germany) ([E-000856/2019](#)) noted that it is increasingly common for online sales platforms (such as Amazon) to make products available in the EU that do not meet EU standards, and asked if the Commission had already taken countermeasures. The Commission explained that Member States were primarily in charge of taking appropriate measures while the Commission continued to support them. Nicola Caputo (S&D, Italy) ([E-003979/2018](#)) also asked about measures the Commission would take to ensure that the TSD was applied more effectively, in this case on the presence of a forbidden chemical substance in slimes. Ms Bieńkowska insisted on the role of national market surveillance authorities.

Under the current legislature, citing recent findings that most toys sold in marketplaces did not meet European standards, Anne-Sophie Pelletier, Leila Chaibi, Emmanuel Maurel, Younous Omarjee, Manon Aubry, Manuel Bompard (The Left, France) ([E-003979/2020](#)) asked what the Commission intended to do to strengthen **market surveillance**. Commissioner Thierry Breton replied that the new [Market Surveillance Regulation](#) would fundamentally reform the market surveillance of non-food products, including toys, by enabling strengthened controls and ensuring that only compliant products were sold in the EU. He highlighted one of the novelties of the regulation whereby certain products would not be allowed to be sold to EU consumers without an economic operator established in the EU and responsible for the EC declaration of conformity. More recently, Cindy Franssen (EPP, the Netherlands) ([E-000078/2021](#)) asked how the Commission would ensure that non-compliant toys did not enter the European market through imports. She asked if the Commission would re-assess the existing standards in a stricter manner (in this case for phthalates) and extend the restrictions to others. Mr Breton insisted that the Commission was striving to coordinate and strengthen enforcement activities in the EU, including between customs and chemical inspectors and that the new Market Surveillance Regulation would strengthen controls at the external EU borders. He highlighted that more than 4 000 import controls on chemicals governed by the REACH Regulation were carried out annually, including on phthalates in toys, and that intelligence on the subject was shared.<sup>41</sup> He added that since July 2020 the REACH Regulation restricted the placing on the market of all articles (with very few exceptions), including toys, containing numerous phthalates.<sup>42</sup> Cindy Franssen 2021 [E-000085/2021](#) also asked about the functioning of the recent **Union Product Compliance Network**.<sup>43</sup> Mr Breton replied that the Union Compliance Network had been operational since 1 January 2021 and had held its first meeting on 22 January 2021, noting that it would meet regularly to discuss implementation of the Surveillance Market Regulation.

In July 2020 Deirdre Clune (EPP, Ireland) ([E-004171/2020](#)) asked in the context of the future **digital services act** whether the Commission intended to place additional requirements on platforms and if so on which ones. In his reply Mr Breton explained that a new framework for online platforms in the context of the digital services act package should increase the safety of users online by modernising and harmonising procedures and platform responsibilities, setting clear obligations to address illegal goods and content disseminated online.<sup>44</sup> He mentioned the Commission preparation of a proposal to revise the General Product Safety Directive,<sup>45</sup> scheduled for mid-2021, to tackle the safety issues of products sold on online channels.

**Connected toys** have become a new source of concern. In 2019, Mairead McGuinness (EPP, Ireland) ([E-001958/2019](#)) noted that many toys that can connect to the internet can be easily hacked, putting children at risk, and asked the Commission what measures it had taken to ensure children's safety. Rachida Dati (EPP, France) ([E-001470/2019](#)) and Roberta Metsola (EPP, Malta) ([E-002054/2019](#)) raised similar concerns, to which the Commissioner jointly replied noting cross sectoral regulations such as the [Radio Equipment Directive](#), the [Cybersecurity Act](#) and [Directive 2013/40/EU](#) on attacks against information systems, whose scope of application is sufficiently broad, in principle, to encompass connected toys and other devices.

## 7. International context

Against the backdrop of the large share of toys sold in the EU that are manufactured in China, the European Commission and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) published common guidelines in 2006 on cooperation to strengthen EU-China toy safety.<sup>46</sup> The main objective of these guidelines is to help Chinese manufacturers to get a better understanding of EU toy safety requirements and to provide the basis for conformity of all toys with EU toy safety legislation and standards. This objective should be reached by actions such as information exchange on up-to-date and easy-to-use information materials on EU safety rules and standards and on EU safety gate (formerly RAPEX) notifications on unsafe toys. The guidelines also envisage regular monitoring of their effectiveness in the context of the annual meeting of the EU-China working group on toy safety. However, no information on monitoring activities with respect to the guidelines is publicly available.

Following the adoption of the TSD in 2009, the European Commission together with the United States Consumer Product Safety Commission also carried out information events for Chinese toy manufacturers. According to the [European Commission website on toy safety](#), the latest event took place in September 2015. The European Commission is also supporting a partnership project between the EU and China, called SPEAC (Safe non-food consumer products in the EU and China), implemented by a consortium led by GIZ International Services (Germany). SPEAC is an information and training programme designed to raise awareness about EU consumer protection and non-food product safety requirements in China. The project is running from November 2019 to November 2022, funded by the Foreign Policy Instrument (FPI) and led by DG JUSTICE. Meetings between the Commission and Chinese manufacturers take place on a monthly basis. The product priorities of this project are toys and the juvenile product sector. Training materials and recordings of the webinars are available on the [SPEAC website](#). The latest event took place in April 2021.

In 2012, to provide information on mandatory and voluntary consumer product recalls at international level, the Organisation for Economic Co-operation and Development (OECD) launched an [online portal](#) with details of product recalls from countries in Europe, Asia, Australia, Canada and the United States. To help consumers make informed decisions when buying toys online, the OECD launched an [awareness campaign](#) in November 2020 on the safety of toys sold online.

## MAIN REFERENCES

[Directive 2009/48/EU](#) of 18 June 2009 on the safety of toys.

Evaluation of Directive 2009/48/EC on the safety of toys, [SWD\(2020\) 287 final](#), European Commission, November 2020.

## ENDNOTES

- <sup>1</sup> [Council Directive 88/378/EEC](#) of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys.
- <sup>2</sup> [Directive 2009/48/EC](#) of 18 June 2009 on the safety of toys.
- <sup>3</sup> Notified bodies are organisations designated by EU Member States to assess the conformity of toys. The coordination group of notified bodies under the Toy Safety Directive aims to harmonise their practices and publishes – voluntarily applicable – guidelines on the [European Commission toy safety guidance website](#).
- <sup>4</sup> This procedure empowers the European Parliament and EU Council to block a measure proposed by the Commission if it (i) exceeds the Commission's implementing powers, (ii) is not compatible with the aim or content of the legal act, or (iii) exceeds the EU's powers or remit. For more detail on this procedure, see: [EU monitor website](#).
- <sup>5</sup> [Commission summary of Member States' reports on the application of the Toy Safety Directive 2009/48/EC](#), European Commission, 29 June 2015.
- <sup>6</sup> In addition to Member States, EEA-EFTA countries, the European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC), the European Consumer Organisation (BEUC), the notified bodies, and Toy Industries of Europe (TIE) received questionnaires on the application of the TSD in the 2014-2018 period. See the [minutes of the Expert Group on Toy Safety](#), 14 March 2019, Brussels.
- <sup>7</sup> Evaluation of Directive 2009/48/EC on the safety of toys, [final report](#), European Commission, 2015.
- <sup>8</sup> Evaluation of Directive 2009/48/EC on the safety of toys, [SWD\(2020\) 287 final](#), European Commission, November 2020.
- <sup>9</sup> Better Regulation Guidelines, [SWD\(2017\) 350](#), European Commission, 2017.
- <sup>10</sup> Evaluation of Directive 2009/48/EC on the safety of toys, [SWD\(2020\) 287 final](#), European Commission, November 2020, p. 94.
- <sup>11</sup> *ibid.*
- <sup>12</sup> *ibid.*, p. 92.
- <sup>13</sup> Judgment in [Case C-360/14 P](#) – Germany v Commission, European Court of Justice, July 2015.
- <sup>14</sup> Communication on Chemicals Strategy for Sustainability – Towards a Toxic-Free Environment, [COM\(2020\)667 final](#), European Commission, October 2020.
- <sup>15</sup> See [minutes of the Safety of Toys Committee](#), 24 November 2020, Brussels.
- <sup>16</sup> For a comprehensive description of the consultations, please see also Annex 2 of the Evaluation of Directive 2009/48/EC on the safety of toys, [SWD\(2020\) 287 final](#), European Commission, November 2020.
- <sup>17</sup> The following six specific public consultations on TSD amendments are accessible on the Commission website:
- 2017 public consultation on [Amendment of the Toy Safety Directive to adapt the migration limits for chromium VI](#);
  - 2019 public consultation on [Toy safety – setting EU limits for dangerous substances \(formaldehyde\)](#);
  - 2019 public consultation on [Toy safety – setting EU limits for aluminium \(update\)](#);
  - 2020 public consultation on [Toy safety – labelling allergenic fragrances](#);
  - 2020 public consultation on [Toy safety – prohibited allergenic fragrances \(update\)](#);
  - 2020 public consultation on [Toy safety – limit values for chemicals used in toys – aniline](#).
- <sup>18</sup> For the full list of member and observers, see the [website of the Expert Group on Toy Safety](#).
- <sup>19</sup> For the list of guidance documents, see the [European Commission website on guidance on toy safety](#).
- <sup>20</sup> See [agenda of the Expert Group on Toy Safety](#), 24 March 2021.
- <sup>21</sup> Council conclusions – [Sustainable chemicals strategy of the Union: Time to deliver](#).
- <sup>22</sup> The strategy specifically sets out to ban the most harmful chemicals in consumer products, including toys, unless they are deemed essential for health, safety or the functioning of society, or if no alternative is available.
- <sup>23</sup> The following petitions were closed by the PETI committee after replying to the petitioner:
- petition 1466/2010 on toys imported from Asia and in particular from China;
  - petition 1338/2011 on EU law for the safety of toys, especially the use of dangerous softeners;
  - petition 0576/2012 concerning conformity checks for children's toys.
- <sup>24</sup> In a July 2020 [press release](#), TIE called for EU rules to make online marketplaces responsible for selling unsafe products. TIE's position was based on the findings of a test study that found that of almost 200 toys bought from third party sellers on four online marketplaces in Europe, 97 % did not comply with strict EU toy safety rules and 76 % of those tested had defects that made them dangerous for children; see [executive summary](#).
- <sup>25</sup> See [public statement](#) of 2 March 2021. Illegal toys represented 26.9 % of notifications in total for 2020. TIE notes that 10 % of toys notified in 2020 were the result of the toy sector's own investigations into the safety of toys sold by third parties via online marketplaces and represent over one third of notifications linked to the online space in the report; see the [EU safety gate report for 2020](#).
- <sup>26</sup> TIE [position paper](#) of 14 May 2020.
- <sup>27</sup> TIE has insisted that 'marketplaces – who benefit from the sales they facilitate – must take on some responsibility in protecting children from dangerous toys entering the EU', see [TIE media statement of 17 December 2020](#).

- <sup>28</sup> TIE [statement](#) of 27 April 2019.
- <sup>29</sup> TIE [statement](#) of 14 October 2020.
- <sup>30</sup> ANEC [input](#) on the second five-year report on the application of the Toy Safety Directive 2009/48/EC.
- <sup>31</sup> ANEC [position paper](#).
- <sup>32</sup> On safety concerns for products sold online including toys see [BEUC press release February 2020](#).
- <sup>33</sup> The BEUC Director General stated, with reference to the chemical strategy for sustainability, that the plan was promising, it was now necessary for the EU to walk their talk and ensure that loopholes such as on endocrine disruptors in cosmetics, toys and food packaging are closed without delay. See [BEUC press release October 2020](#).
- <sup>34</sup> See [2018 BEUC report on consumer priorities for the 2019 European Parliament elections](#).
- <sup>35</sup> [BEUC letter of 2 November 2020 to Commissioner Virginijus Sinkevičius](#).
- <sup>36</sup> 'An existing database that centralises information from across Europe on non-compliant products would be expanded by adding information about accidents and injuries that are suspected to have been caused by products', [joint ANEC-BEUC press release of 5 April 2019](#).
- <sup>37</sup> For example, every company selling products, such as toys, online directly to consumers in the single market would need a contact person in the EU who could act on behalf of the manufacturer if a product breached EU safety laws. This person would have to provide authorities with information about a product or organise a product recall.
- <sup>38</sup> [BEUC press release of 7 July 2020](#).
- <sup>39</sup> [Voluntary agreement](#) between the European Commission and Eurocommerce, the European Retail Round Table, Toy Traders of Europe and the European Promotional Products Association.
- <sup>40</sup> The MEPs referred to an [ECHA report](#) issued in February 2018 and prepared by the forum. The forum, a body of the ECHA, aimed to enhance enforcement of the REACH Regulation. The report notes that of all the products tested by the agency, the non-conformity rate for toys was particularly worrying: for instance 20 % contained large quantities of phthalate, an endocrine disruptor banned since 18 December 2006 under the terms of Regulation (EC) No 1907/2006, and 14 % of used products tested contained asbestos.
- <sup>41</sup> [Report](#) on the pilot project on cooperation with customs in enforcement of REACH restrictions and CLP labelling.
- <sup>42</sup> The Commissioner mentioned phthalates DEHP, BBP, DBP or DIBP. He also noted that this restriction was adopted following the assessment of all available evidence. REACH further restricts the phthalates DINP, DIDP and DNOP in toys and childcare articles.
- <sup>43</sup> Regulation (EU) 2019/1020(4) on market surveillance and compliance of products. The provisions providing for the establishment of a Union Product Compliance Network entered into force on 1 January 2021. The purpose of the network is to serve as a platform for structured coordination and cooperation between enforcement authorities of the Member States and the Commission, and to streamline the practices of market surveillance within the Union, thereby making market surveillance more effective (Article 29 (2)).
- <sup>44</sup> [European Commission press release of 15 December 2020](#): the Commission has proposed a comprehensive set of new rules for all digital services, including social media, online market places, and other online platforms that operate in the European Union: the [digital services act](#) and the [digital markets act](#).
- <sup>45</sup> Directive 2001/95/EC on general product safety, OJ L 11, 15 January 2002.
- <sup>46</sup> [Guideline for Action on Co-operation for Strengthening EU-China Toys Safety](#) between the Directorate-General for Enterprise and Industry of the European Commission (DG ENTERPRISE), the Directorate-General for Health and Consumer Protection (DG SANCO) of the European Commission and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ).

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