Safety of toys and repealing Directive 2009/48/EC

2023/0290(COD) - 28/07/2023 - Legislative proposal

PURPOSE: to replace Directive 2009/48/EC on the safety of toys with a Regulation to ensure its uniform application.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Directive 2009/48/EC of the European Parliament and of the Council was adopted to ensure a high level of safety of toys and their free movement on the internal market.

A Commission evaluation of Directive 2009/48/EC concluded that the Directive is relevant and generally effective in protecting children. However, it also identified a number of deficiencies that have emerged during the practical application of the Directive since its adoption in 2009. In particular, the evaluation identified certain shortcomings with regard to possible risks arising from harmful chemicals in toys. The evaluation also concluded that many non-compliant and unsafe toys remain on the Union market. Moreover, the reliance on digital technologies has led to new hazards in toys. Radio toys are to comply with essential requirements for the protection of privacy and internet-connected toys are to incorporate safeguards towards cybersecurity and protection from fraud.

Since the rules setting out the requirements for toys, in particular the essential requirements and the conformity assessment procedures, need to be of uniform application across the Union, and not give room for divergent implementation by Member States, Directive 2009/48/EC should be replaced by a regulation.

CONTENT: the aim of this proposed Regulation is to **change the directive to a regulation** with a view to simplifying the regulatory environment and to ensure uniform implementation throughout the EU of the proposed legislation.

Exclusions

The products that are not covered by the proposed regulation have been set out in Annex I, which is now a **single list**. The products exempted from the scope of the proposed regulation remain the same as in the current Directive, with the exception of slings and catapults, which are no longer excluded from the scope of the Regulation. The proposal also empowers the Commission to determine via implementing acts whether a specific product or category of products should be considered as a toy or not.

Requirements for toys

The proposal contains the obligation: (i) for toys to conform with the general and particular safety requirements; and (ii) to **affix specific warnings** when these are necessary for the safe use of the toys. While the categories of particular safety requirements in Annex II remain the same as for Directive 2009 /48/EC, the general safety requirement goes beyond protecting the physical health and safety of users, to include the **psychological well-being and cognitive development** of children.

Particular safety requirements for toys

The main categories of essential requirements for toys are set out in Annex II and they concern:

- physical and mechanical properties;

- flammability;

- chemical properties;

- electrical properties;

- hygiene;

- radioactivity.

The **chemical properties** are amended and simplified.

The generic restrictions of particularly harmful substances now include: (i) substances which are **carcinogenic, mutagenic or toxic for reproduction**; (ii) **endocrine disruptors**, (iii) **respiratory sensitisers** and (iv) substances **toxic to a specific organ**.

The possibilities for a derogation to this ban have been limited.

Obligations of economic operators

The proposal incorporates obligations for manufacturers, importers and distributors aligned with Decision 768/2008/EC, as is already the case in the current Directive. This clarifies the respective obligations, which are proportionate to the economic operators' role. The manufacturer is required to create a product passport for the toy including the relevant compliance information which will replace the EU declaration of conformity.

Presumption of conformity of toys

The presumption of conformity of toys when manufacturers apply the relevant harmonised standards or parts thereof published in the Official Journal of the European Union remains. However, in order to ensure the presumption of conformity when there are no relevant harmonised standards the Commission will be empowered to adopt common specifications. This will be a fall-back option to be used only when the standardisation bodies are not able to provide standards or provide standards that do not respond to the Commission standardisation request and the essential requirements of Annex II.

Product passport

The EU declaration of conformity is replaced by the obligation to have a **product passport** available for toys to declare compliance with the requirements of this proposed regulation. The product passport will be connected through a data carrier to a unique product identifier and meet the same technical requirements for a product passport contained in the ESPR. The reference of the product passport must be included in a Commission central registry that will be set up under the regulation on ecodesign requirements for sustainable products (ESPR) and this information needs to be indicated at customs when toys coming from outside the EU are placed under the customs procedure of release for free circulation.