

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the safety of toys'**

COM(2008) 9 final — 2008/0018 (COD)

(2009/C 77/02)

On 17 March 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and of the Council on the safety of toys.*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 July 2008. The rapporteur was Mr Pegado Liz.

At its 447th plenary session, held on 17 and 18 September 2008 (meeting of 18 September), the European Economic and Social Committee adopted the following opinion by 49 votes to 1 with 8 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC welcomes the Commission's initiative to revise the toy safety directive, although it comes rather late and is not ambitious enough.

1.2 The EESC notes that the impact assessment on which it is based dates from 2004, and did not take account of all the countries that are now EU Member States.

1.3 In view of the increasing number of alert of toys as revealed in the latest RAPEX report (2007), the EESC is surprised that the impact assessment should be inconclusive not only with regard to the link between the present directive and toy-related accidents to children, but even more with regard to the admitted lack of knowledge as to the effect of the present proposal on the number and seriousness of future toy-related accidents — something that should be the principal concern and fundamental reason for the present initiative.

1.4 Given the Commission's acknowledgement of the lack of reliable and credible statistics on accidents in the EU caused by toys, the EESC suggests that the Commission, in cooperation with the competent Member State authorities, should set up an appropriate system of statistical information on such accidents, at least as comprehensive as that already existing under some legal systems, that is accessible to all actors in the production and marketing chain with a view to preventing accidents <sup>(1)</sup>.

1.5 The EESC believes that the legal basis for the proposal should be Treaty Article 153 rather than Article 95 alone, considering that the most important concern, to protect children effectively, has primacy over simply facilitating cross-border trade in toys.

1.6 The EESC also believes that, in the light of the scope and nature of the new legislative proposal and of experience in implementing the current directive in the various Member States, and since a total harmonisation approach has been accepted, the most appropriate legal instrument would be a regulation rather than a directive.

1.7 The EESC appreciates the technically and legally coherent and well-structured form of the proposal, and generally agrees with its innovative measures, which include:

— a broader definition of 'toys' and adoption of the concept of foreseeable use bearing in mind behaviour of children;

— reinforcement of Member State surveillance measures;

— introduction of proper prevention and information rules on toy safety — warnings and signs.

1.8 The EESC regrets, however, that a number of aspects of key importance have not been covered, or only inadequately. They are:

a) unequivocal adherence to the precautionary principle;

b) more rigorous training and education of those responsible for the care of children in contact with toys;

c) clarification of certain concepts which remain ambiguous or vague, such as the concept of a toy or the extent of harm;

d) importers and authorised representatives not being on the same footing as manufacturers, clearly removing the responsibility of players in the toy distribution and sales chain in respect of compensation for harm caused;

e) conformity assessment procedure unsuited to SMEs.

<sup>(1)</sup> National Electronic Injury Surveillance System (NEISS), managed by the Consumer Product Safety Commission (CPSC), in the United States.

1.9 The Committee therefore strongly urges the Commission to revise its proposal as suggested in the present opinion, so as to make it a more credible instrument for the effective protection and safety of children when using toys.

1.10 The Committee calls upon the EP and the Council to take on board the suggestions and recommendations presented herein, and to integrate them into the legislative procedure leading up to the adoption of the new directive.

## 2. Introduction: summary of the proposal

2.1 The Commission first announced its intention to take legislative steps in the field of toy safety in the 1970s, putting forward a number of proposals that were subsequently withdrawn due to a lack of political consensus. Eventually, in the wake of the Council Resolution of 23 June 1986 <sup>(2)</sup> on consumer protection and safety, a new Commission proposal pointed, in more consensual terms, to the need for European-level harmonisation of the definition of toys, their manufacturing standards, main safety requirements, conditions for putting on the market and guarantees that they could be used by children without hazard.

2.2 Directive 88/378/EC of 3 May 1988, published at that time <sup>(3)</sup>, is one of the first legislative initiatives stemming from the 'new approach' in the field of technical harmonisation and standardisation, based on the Council Resolution of 7 May 1985 <sup>(4)</sup>.

2.3 The EESC drew up a mandatory opinion on the Proposal for a Directive presented at that time <sup>(5)</sup> which, while welcoming the proposal, regretted the long delays in its preparation, and, based on the assumption that all toys should be reliable and that children are vulnerable to risks and must receive special protection, underlined the need for the issue of toy safety to be addressed as part of the broader scope of the product liability directive <sup>(6)</sup>.

2.4 In the meantime, the 1988 directive was the object of a number of corrigenda <sup>(7)</sup>, of a major amendment by Directive 93/68/EEC of 22 July 1993 <sup>(8)</sup>, and of a Communication from the Commission on its implementation <sup>(9)</sup>.

2.5 Two directives on general product safety were adopted and published in 1992 and 2001, covering toy safety in generic terms <sup>(10)</sup>, the latter putting special emphasis on the 'changes made to the Treaty, especially in Articles 152 concerning public health and 153 concerning consumer protection, and in the light of the precautionary principle'.

2.6 Twenty years after the publication of the 1988 directive, the Commission is proposing a new directive on this matter, realising that the legislation in force has, in the meantime, become out-dated, that its scope and the concepts used need to be clarified and brought into line with present circumstances, that there is an urgent need to ensure that its provisions are consistent with the recently-proposed general legislative framework <sup>(11)</sup> for the marketing of goods and, most of all, that serious deficiencies and disparities have emerged in transposing and implementing the directive in the various Member States in terms of application, and that this must be resolved.

2.7 The present proposal is based on three major technical studies, to be taken as integral parts of it. Two concern the requirements and use of certain allegedly dangerous substances in manufacturing toys; the third is a general impact assessment, the final report of which dates from 2004.

2.8 In brief, the Commission is pursuing the following objectives with this proposal:

A) Enhanced safety requirements, particularly concerning:

- a) use of chemical substances;
- b) warnings and information for consumers and users;
- c) choking and suffocation risks;
- d) toys in food;
- e) definition of the general safety requirement.

B) More efficient and coherent application of the directive, by means *inter alia* of:

- a) reinforced market surveillance measures in the Member States;

<sup>(2)</sup> OJ C 167 of 5.7.1986, p. 1.

<sup>(3)</sup> OJ L 187 of 16.7.1988, p. 1. ESC opinion: OJ C 232 of 31.8.1987, p. 22.

<sup>(4)</sup> OJ C 136 of 4.6.1985, p. 1.

<sup>(5)</sup> COM(1986) 541 final (OJ C 282 of 8.11.1986, p. 4).

<sup>(6)</sup> Opinion CES 639/87, rapporteur: Ms Williams (OJ C 232 of 31.8.1987, p. 22).

<sup>(7)</sup> OJ L 281 of 14.10.1988, p. 55; OJ L 37 of 9.2.1991, p. 42.

<sup>(8)</sup> OJ L 220 of 30.8.1993, p. 1. ESC Opinion: OJ C 14 of 20.1.1992, p. 15 and OJ C 129 of 10.5.1993, p. 3.

<sup>(9)</sup> OJ C 297 of 9.12.2003, p. 18.

<sup>(10)</sup> Directive 92/59/EEC of 29 June 1992 (OJ L 228 of 11.8.1992, p. 24 — ESC opinion: OJ C 75 of 26.3.1990, p. 1) and Directive 2001/95/EC of 3 December 2001 (OJ L 11 of 15.1.2002, p. 4); the ESC adopted opinion CES 1008/2000 of 20 September 2000, rapporteur: Ms Williams (OJ C 367 of 20.12.2000, p. 34), on the proposal for the latter directive, COM(2000) 139 final. Earlier, an own-initiative opinion on the same subject had been drawn up by Ms Williams and adopted by the ESC on 8 December 1999 (CES 1131/99 — OJ C 51 of 23.2.2000, p. 67).

<sup>(11)</sup> Package of proposals COM(2007) 36, 37 and 53 final of 14.2.2007, EESC opinions INT/352/353/354 (CESE 1693/2007 of 13 December 2007, rapporteur: Mr Pezzini).

- b) information on chemicals in the technical file;
  - c) affixing of CE marking;
  - d) safety assessment.
- C) Alignment of the directive to the general legislative framework on the marketing of products
- D) Clarification of the scope and better definition of the concepts used.

### 3. General comments

3.1 The EESC welcomes the Commission's initiative, although it comes rather late, given that the directive under review is more than 20 years old and the production and marketing parameters and methods for toys have undergone substantial changes in the meantime, as have the tastes and habits of their most natural users. The EESC moreover believes that the present proposal could be more ambitious in its aims, and its provisions could take account of the concerns aroused by recent events, which have been made public and are moreover reflected not only in strongly-worded speeches and positions on the part of the Commissioner responsible for consumer protection, but also in the EP Resolution of September 2007, the tenor of which the EESC echoes <sup>(12)</sup>. It therefore regrets that the discussions with the EESC were not also accompanied by DG SANCO, which has not been directly involved in its preparation.

3.2 The EESC is surprised that the impact assessment on which the present proposal is based is more than four years old and does not cover the situation in all the Member States. Neither is it clear what account has been taken of consumers' and families' representatives or how far they were actually involved in its preparation.

3.3 In view of the Commission's criticism of the alleged shortcomings in applying the directive, the EESC is surprised that such criticism is not accompanied by initiatives taken by the Commission to ensure proper compliance with this Community law.

3.4 The EESC has difficulty in understanding how, given the acknowledged lack or deficiency of statistical data to which the Commission admits, it is possible to reach proper conclusions on either the state of affairs to be changed, or on the effectiveness of the proposed measures. It is, however, known that the toy market in Europe, estimated in 2002 to represent

EUR 17 300 million at retail prices, and with imports amounting to more than EUR 9 000 million, is a prosperous sector involving some 2 000 businesses, mostly SMEs, and directly employing more than 100 000 people <sup>(13)</sup>.

3.5 The EESC is of the view that the nature of the proposal in question requires that not only Article 95, but also necessarily Article 153, be considered as the legal basis, insofar as its scope does not relate only to the completion of the internal market, but rather concerns a particularly vulnerable category of consumer which cannot by any means be assimilated with that of the 'average consumer'.

3.6 Moreover, the fact that children are indirect consumers of toys, insofar as it is not they who acquire them, but their parents or other adults who make them available to them for their use, should prompt the Commission to take a more rigorous approach to ensuring that the need to inform and educate this class of consumer is duly reflected in the wording of its provisions.

3.7 The EESC understands the Commission's option in this case for full harmonisation, but restates its conviction that, in cases such as this one, there would be everything to gain from selecting a regulation as an instrument rather than a directive, with the obvious advantages in terms of legal certainty and without of the risks of late or defective transposition and the consequent disparities in application, as the Commission acknowledges has occurred with the present directive <sup>(14)</sup>.

3.8 Given the nature of the subject, the on-going evolution of the 'state of the art', the possibility of occasional incidents, as clearly shown in the Mattel and Fisher Price cases, and the worrying increase in the number of toy-related alerts as shown in the latest RAPEX annual report (2007), representing by far the sector with the greatest number of notifications (31 %) <sup>(15)</sup>, it might have been hoped that the present proposal would draw all the lessons from events — and particularly from the failure of post-market surveillance — making a more practicable and enforceable Directive, that could lead to a safer toy market. This would mean, in the presence of doubt, prohibiting anything which, while an adequate degree of certainty is still lacking, might legitimately be suspected of presenting a hazard, even if slight, in its use as a toy by children and bearing in mind their unpredictable behaviour: this is not, however, the case.

<sup>(13)</sup> Data from the Commission's website.

<sup>(14)</sup> Council Directive 88/378/EEC of 3 May 1988 (OJ L 187 of 16.7.1988, p. 1). It is important to note that, unlike the present proposal, in the proposal on cosmetic products (COM(2008) 49 final/2 the Commission has quite rightly set out to replace the directive with a regulation. It should also be pointed out that the amendment to the protocol on subsidiarity in the reform treaty, by removing the 'preference' for directives, represents a further argument for this approach in the future.

<sup>(15)</sup> According to the report, in summer 2007 alone, more than 18 million toys containing magnets were taken off the market, together with 2 million whose paint contained lead.

<sup>(12)</sup> Cf. the statement by Commissioner Kuneva to the EP on 12 September 2007, her statements at meetings with the Vice-President of Mattel International on 20 September 2007 and with a delegation of toy manufacturers, including Hornby, Lego and Mattel, on 9 April 2008, together with the press conference of 22 November 2007. Cf. also the EP Resolution doc P6-TA(2007)0412 of 26 September 2007.

3.9 Turning to the CE marking, the EESC would simply repeat its view expressed in a previous opinion on a common framework for the marketing of products, that *'a lack of credibility of the CE marking amounts to a lack of confidence in the whole system: market surveillance authorities, manufacturers, laboratories and certifiers, and ultimately the adequacy of New Approach legislation'* <sup>(16)</sup>.

In this case, the EESC urges the Commission to harmonise the final text of the present proposal with the text adopted for all the proposals concerning the above-mentioned common framework <sup>(17)</sup>.

3.10 The EESC fully supports the EP's suggestion for the introduction of a European toy safety label, that would be awarded by independent third-party bodies, and regrets that the proposal has not fully responded to all the suggestions set out in the EP's resolution of September 2007; the EESC also echoes the concerns of SMEs, not that the toys they manufacture and sell might be less safe, but — as is also discussed in the above-mentioned opinion — relating to the proportionality of the measures used in the conformity assessment procedures, especially for non mass-produced products or products produced in small quantities <sup>(18)</sup>.

3.11 The EESC considers that all substances duly recognised as potentially dangerous, must be completely removed from toy manufacturing, within a framework that is proportional, balanced and workable for responsible manufacturers, as well as being enforceable by the authorities.

3.12 The EESC welcomes the recent Commission Decision on 'magnetic toys', but is surprised that this question was not even touched upon in the present proposal for a directive: the

<sup>(16)</sup> Opinion CESE 1693/2007 of 13 December 2007, rapporteur: Mr Pezzini (INT/352-353-354) where, in point 5.2.11, it is emphasised, with clear relevance, that:

*'The best way to boost the standing and importance of the CE marking, as defined in Council Decision 93/465, is through a radical shake-up of the marking itself, which would involve:*

- making it clear that it should not be used or regarded as a marking or labelling system for purposes of consumption, nor a guarantee of quality or certification or approval by independent third parties, but only as a declaration of conformity with product requirements and a technical document that the manufacturer or the importer has an obligation and full responsibility to produce for the authorities and the consumer;*
- rationalising the various procedures for assessing conformity;*
- strengthening legal protection of the CE marking by registering it as a collective mark, which means that the public authorities can act swiftly to clamp down on abuses, while keeping open the possibility of additional national markings;*
- strengthening market surveillance mechanisms and border customs checks;*
- getting producers and consumers to look into the pros and cons of a possible voluntary code of conduct on the efficacy of the proliferation of European and national quality marks and labels —voluntary or otherwise — and how they mesh with the CE marking.'*

<sup>(17)</sup> COM(2007) 36, 37 and 53 final of 14.2.2007.

<sup>(18)</sup> Opinion quoted in footnote 16, points 5.2.7.1 and 5.2.9. See also the EESC opinions on policy measures for SMEs (INT/390), rapporteur: Mr Cappellini, and on cosmetic products (INT/424), rapporteur: Mr Krawczyk.

Commission's reaction does not seem strong enough given the seriousness of the hazards and accidents that have already occurred with this type of toy, amounting only to a call for the Member States to ensure, each in its own way, that a 'warning' is attached.

3.13 The EESC thinks that there grounds for a more precise definition of the level and nature of penalties, as the Commission has already done in fields where the harm caused by improper behaviour is considerably less from a social point of view.

3.14 More generally, the EESC regrets that an opportunity has been missed here to put the protection of European children on at least the same level as exists, including at the manufacturers' initiative, in some Member States and other countries, where certain types of toy are quite simply banned, as pointed out in a study recently commissioned by the EP <sup>(19)</sup>.

3.15 The EESC is aware of the fierce competition at international level in the toy industry. It therefore urges the European Commission, the European Parliament and the Council to take account of the sector's competitiveness when introducing modifications in the course of the legislative process of adopting the present directive. Safety standards for toys must not be lowered at the expense of consumer protection, especially for children, but international trade rules must be observed strictly so that European companies can compete under equal conditions.

3.16 Lastly, the EESC calls upon the Commission to be aware of social concerns relating to toy manufacturing, especially in third countries where young children are employed under atrocious working conditions and for long hours, daily handling toxic, highly dangerous products, and to adopt a clear stance in favour of eco-toys and ethical toys.

#### 4. Specific comments

##### 4.1 Article 1 and Annex I — List of products that are not considered as toys

The EESC acknowledges the Commission's intention to update the definition of a 'toy', so that it can be applied to all products that are not designed exclusively for play purposes.

<sup>(19)</sup> *Study on Safety and Liability Issues Relating to Toys* (PE 393.523), authors: Frank Alleweldt — Project director; Anna Fielder — Lead author; Geraint Howells — Legal analysis; Senda Kara, Kristen Schubert and Stephen Locke.

The EESC would however point out that the current definition of toys is not adequate to the scope of the objectives set, as not only does it not permit the updating needed to keep abreast of developments on the technology market, but it also establishes a list of products that do not fall within the directive's scope. The appropriateness of such products, particularly decorative objects for festivities and celebrations, imitation jewellery, games using sharp-pointed missiles, products intended for use for educational purposes in schools and other pedagogical framework and sports equipment, is questioned.

The basis for establishing special arrangements to protect product users depends effectively on the nature of the user, and particularly their vulnerability. Users do not distinguish the purpose of every object that may be presented to them — the products themselves are often seen as toys by children, their parents and even the traders who catalogue and sell them as toys. In consequence, the Committee does not understand why toys used for educational purposes in schools do not fall within the scope of the directive, since there is no difference concerning the nature of the user.

The EESC highlights the need for all equipment and products that are accessible and may potentially be used as toys by minors under the age of 14 to be included within the protective scope of the directive, in keeping with the precautionary principle.

The EESC therefore urges the Commission to review the definition set out in Article 1 and the list, in order to make them compatible with each other.

#### 4.2 Articles 2 to 5

The EESC thoroughly disagrees with the distinction made between manufacturers and importers, since European Parliament and Council Directive 2001/95/EC on general product safety puts importers on the same footing as manufacturers, where the latter do not have a representative in the Member State. Maintaining the present distinction not only fails to duly uphold users' right to compensation in respect of harm (because liability falls exclusively on the manufacturer), but also does not properly harmonise Community laws, inevitably jeopardising the principle of certainty in legal matters.

The EESC therefore considers that for the purposes of applying the present directive, authorised representatives and importers (where there are no official representatives of the manufacturer) should be considered as manufacturers, contrary to the aim of the present directive which only puts them on the same footing when toys are marketed in their name or using their trademark or they have made some change to the nature of the product, even if not affecting the production process.

The EESC opposes the distinction, in terms of liability, between authorised representatives and manufacturers. The EESC is concerned that retaining this rule may prevent consumers' rights from being upheld and specifically the right to compensation in respect of harm in situations where only an authorised representative is established in the Member State.

The EESC generally supports retaining those provisions of the directive currently in force that share liability among all those involved in the marketing chain.

Regarding the definition of harm, the Committee considers that this should cover situations that arise in the long term and are the direct consequence of confirmed accidents.

#### 4.3 Article 9

The EESC welcomes the amendment to paragraph 2 of this article, stipulating that the foreseeable use of the toy, bearing in mind behaviour of children, is to be taken into account in assessing its hazards (although it would point out that recital (16) could be interpreted in the opposite sense).

The EESC believes however that there should be an obligation on manufacturers to foresee possible uses of their products that may be inappropriate, but would reasonably be acceptable to children. Moreover, retaining the foreseeability criterion is contradictory when the explanatory memorandum emphasises the need for the frequently unpredictable behaviour of children to be taken into account when designing toys.

The EESC disagrees with the wording of paragraph 3, since the provision not only establishes an irrebuttable presumption, but also introduces vague and undefined criteria, such as the concepts of 'foreseeable' and 'normal' which, in the final analysis, rules out any obligation on the manufacturer to keep up to date with scientific and technical experiments in the specialist field, as the fact that his product is available on the market is a corollary of the maintenance of general product safety <sup>(20)</sup>.

The duty to prevent product defects does not in fact end once the product is placed on the market. The manufacturer, or his local representative, if any, is duty-bound to monitor and observe toys continuously, so that defects that were unknown and could not be known at the time of their entry into circulation can be discovered, along with defects caused by wear and tear, fatigue or premature ageing of the toy.

<sup>(20)</sup> See in this connection the judgment of the Court of Justice of the European Communities of 29 May 1997 (case C-300/95, European Court Reports 1997, page I-02649).

#### 4.4 Article 10

The EESC welcomes the Commission's intention to require warnings to be clearly, visibly and legibly displayed at the point of sale, in order to ensure that users have effective prior information. It however considers that these warnings should appear not only on the packaging, but also on the products themselves.

The Committee however considers that the warnings displayed at points of sale should contain not only information on the minimum and maximum ages of users, but also indications as to the appropriate weight of children for the use of certain toys, and on the need for the product to be used only under the supervision of those responsible for their care.

The Committee also emphasises that warnings should be worded in a way appropriate to the users, and in keeping with their particular sensibilities.

The EESC renews its call for training initiatives for parents and child carers to be encouraged, alerting them to the precautions and risks arising from the use of toys. However, the fact that children's safety is ultimately the responsibility of their parents, guardians, carers, teachers, etc. cannot be used as a pretext to diminish the responsibility on the part of manufacturers, importers and retailers for the complete safety of toys.

Bearing in mind the fact that labels are often worded in languages others than the national ones, the EESC is of the view that paragraph 3 should make it compulsory for the warnings and safety instructions to be presented in the official language of the Member State where the toys are placed on the market, rather than the simple possibility it presently introduces.

#### 4.5 Articles 12 and 26

Although it accepts the need to retain the presumption of conformity, the EESC feels that it would be more in keeping with the 'state of the art' to reverse the burden of proof in the event of a harmful incident.

#### 4.6 Article 17

The EESC highlights the Commission's decision to require manufacturers to carry out an analysis of the hazards arising from the use of the toy, instead of only allowing an analysis only of the risks inherent in its use. The Committee however considers that this analysis should cover the entire lifecycle of the toy, regardless of whether or not harmful situations arise, thereby avoiding cases such as the Mattel one.

#### 4.7 Article 18

The EESC considers that the conformity assessment procedure should be applied to all categories of toys, and not only in the cases listed in paragraph 3, ensuring use of uniform criteria and introducing a European safety label, as proposed by the EP <sup>(21)</sup>.

Moreover, given that this is a technical area in which specific practical knowledge or statistics on accidents caused by virtue of product use are lacking, the EESC emphasises the need for the Commission to flesh out the precautionary principle in the present proposal, in exactly the same way as in the January 2000 White Paper on food safety <sup>(22)</sup>.

#### 4.8 Annex II — Particular safety requirements

##### Part I — Physical and mechanical properties

The EESC believes that the scope of the third paragraph of point 4 should be extended to children under 60 months, since it is still possible at this age that children might use the toy without due prudence and precaution by putting it in their mouths, even if this was not the manufacturer's intention at the design stage.

The EESC also considers that the following aspects have not been covered:

- product packaging, and specifically situations in which toys are packaged in plastic bags;
- the possibility of certain toy components becoming loose and being swallowed by children;
- the characteristics of toys if broken.

##### Part III — Chemical properties

While welcoming the proposed changes, the EESC would draw attention to the need to implement, with immediate effect, the precautionary principle with regard to chemical properties, since World Health Organisation studies have shown that exposing children to these products can lead to chronic illnesses that continue to affect children over the age of three.

<sup>(21)</sup> EP resolution of 19.9.2007 on dangerous toys (document P6-TA(2007)0412) of 26/9/2007.

<sup>(22)</sup> COM(1999) 719 final of 12.1.2000.

The Committee therefore highlights the need for all CMR substances — including those coming under category 3, provided that they have been duly recognised as potentially dangerous — to be prohibited, not only from the design of the product itself, but from all the internal component materials, in keeping, moreover, with the directive on cosmetic products. The EESC would also alert the Commission to the excessive laxity regarding not only the permitted migration limits, but also endocrine interruptors, which can stunt normal child development.

With regard to the use of allergenic substances, the EESC recommends that the Commission prohibit the use of all fragrances and sensitisers, since they may contain not only allergenic substances — that should clearly be banned — but also other substances that have direct implications for children's immune systems.

To be realistic in terms of workability and given the structure of the toy industry, with a vast majority of SMEs, and the substantial changes that this Directive brings, especially in the field of chemical properties, the EESC would like to recommend a 5 year transition period.

Lastly, the EESC draws attention to the need to ensure the compatibility of the present proposal with health safety rules,

especially regarding the materials used in toys for children of less than 36 months. The Committee therefore urges the Commission to authorise only the same substances that are allowed for materials in direct contact with food products, for the design of such toys.

#### Part IV — Electrical properties

The EESC considers that the annex should contain specific rules on products requiring the use of batteries, and particularly mercury batteries.

#### 4.9 Annex V — Warnings

The EESC considers that there should be specific warnings concerning special conditions for children with certain physical or mental disabilities, so that parents or carers are aware in advance of the risks inherent in the use of the toy.

Regarding the use of toys in food, the EESC considers that there should be a specific indication, displayed in a visible and indelible way, that the food contains a toy, making this visible regardless of how it is packaged.

Brussels, 18 September 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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