

2008/0018(COD) - 18/06/2009 Final act

PURPOSE: to lay down rules on the safety of toys and on their free movement in the Community, and to repeal Directive 88/378/EEC.

PROPOSED ACT: Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys (text with EEA relevance).

CONTENT: following a first reading agreement reached with the European Parliament, the Council adopted a directive aimed at reinforcing the safety of toys in the internal market. The new directive, which replaces directive 88/378/EEC, **updates and completes current Community rules** to take account of technological developments of toys and new scientific knowledge, in particular as concerns safety issues that were unknown when the original Toys Safety Directive was adopted. In accordance with the existing legislation on marketing of products, economic operators placing toys on the EU market will have responsibility of ensuring that these toys comply with Community legislation in order to ensure a high level of protection of consumers and of the environment. The new legislation reinforces market surveillance and essential safety requirements for toys, in order to ensure that toys sold to consumers in the EU are safe.

This directive is the first specific directive following the principles of the new legislative framework for market surveillance and CE marking agreed last year. The provisions on chemicals are adapted to meet the requirements of the regulation on the classification, labelling and packaging of chemical substances and mixtures.

The main elements of the Directive are as follows:

Scope: the Directive shall apply to products designed or intended, whether or not exclusively, for use in play by **children under 14 years of age**

. The products listed in Annex I shall not be considered as toys within the meaning of this Directive. Moreover, it shall not apply to: (i) playground equipment intended for public use; (ii) automatic playing machines, whether coin operated or not, intended for public use; (iii) toy vehicles equipped with combustion engines; (iv) toy steam engines; (v) slings and catapults.

Obligations of manufacturers: manufacturers shall, inter alia: (i) ensure that toys have been designed and manufactured in accordance with the requirements of this Directive; (ii) draw up the required technical documentation and carry out the applicable conformity assessment procedure; (iii) keep the technical documentation and the EC declaration of conformity for a period of 10 years after the toy has been placed on the market; (iv) ensure that their toys bear a type, batch, serial or model number or other element allowing their identification; (v) indicate their name, registered trade name and the address at which they can be contacted on the toy; (vi) ensure that the toy is accompanied by instructions and safety information in a language or languages easily understood by consumers; (vii) immediately take the corrective measures necessary to bring a non-conforming toy into conformity, to withdraw it or recall it and immediately inform the competent national authorities of the Member States in which they made the toy available.

Obligations of importers and distributors: they shall, inter alia: (i) ensure/verify that the toy bears the required conformity marking, that it is accompanied by the required documents and by 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 has complied with the requirements set out in the Directive; (ii) ensure that, while a toy is under their responsibility, storage or transport conditions do not jeopardise its compliance; (iii) immediately take the corrective measures necessary to bring a non-conforming toy into conformity, to withdraw it or recall it.

In particular, importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the toy and carry out sample testing of marketed toys, investigate, and, if necessary, keep a register of complaints, of non-conforming toys and toy recalls.

Essential safety requirements: Member States shall take all measures necessary to ensure that toys are not placed on the market unless they comply with the essential safety requirements as regards physical and mechanical properties, flammability, chemical properties, electrical properties, hygiene and radioactivity. Manufacturers shall, before placing a toy on the market, carry out an analysis of these requirements and an assessment of the potential exposure to the hazards that the toy may present.

In particular, **stricter rules**, responding to consumer concerns, will apply as regards hazards caused by certain **chemical substances** (in particular carcinogenic, mutagenic or toxic for reproduction (CMR) substances and **fragrances** used in toys, as well as **noise** from toys. The Directive also restricts the use of heavy metals in toys and strengthens the measures to prevent choking and suffocation.

Warnings: the directive also complements and reinforces existing provisions on clearly legible warnings for toys in order to reduce inherent risks when they are used. The warnings shall be preceded by the words 'Warning' or 'Warnings', as the case may be. The manufacturer shall mark the warnings in a clearly visible, easily legible and understandable and accurate manner on the toy, on an affixed label or on the packaging. A Member State may, within its territory, stipulate that those warnings and the safety instructions be written in a language or languages easily understood by consumers. Toys shall not bear one or more of the specific warnings set out in Part B of Annex V where that warning conflicts with the intended use of the toy, as determined by virtue of its function, dimension and characteristics.

Toys which might be dangerous for children under 36 months of age shall bear a warning such as 'Not suitable for children under 36 months' or 'Not suitable for children under three years' or a warning in the form of a graphic.

CE marking: this directive is the first specific directive following the principles of the [new legislative framework for market surveillance and CE marking](#) agreed in 2008. Member States shall presume that toys bearing the CE marking comply with this Directive. The manufacturer shall mark the warnings in a clearly visible, easily legible and understandable and accurate manner on the toy, on an affixed label or on the packaging and, if appropriate, on the instructions for use which accompany the toy. Small toys which are sold without packaging shall have appropriate warnings affixed to them. Where, in the case of toys sold in counter displays, that is not technically possible, and on condition that the counter display was originally used as packaging for the toy, the CE marking may be affixed to the counter display. Where the CE marking is not visible from outside the packaging, if any, it shall as a minimum be affixed to the packaging.

Notification: Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party conformity assessment tasks. They shall designate a notifying authority responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies. The Directive sets out the requirements relating to notifying authorities and to notified bodies, as well as the notification procedure.

Market surveillance: Member States shall organise and perform surveillance of toys placed on the market. Where, in the course of their evaluation, the market surveillance authorities find that a toy does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take appropriate corrective action to bring the toy into compliance with those requirements, to withdraw the toy from the market, or to recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

Penalties: Member States shall lay down rules on penalties for economic operators, which may include criminal sanctions for serious infringements, applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive and may be increased if the relevant economic operator has previously committed a similar infringement of this Directive.

Reporting: by 20 July 2014 and every five years thereafter, Member States shall send the Commission a report on the application of this Directive. The report shall contain an evaluation of the situation concerning the safety of toys and of the effectiveness of this Directive, as well as a presentation of the market surveillance activities performed by that Member State.

ENTRY INTO FORCE: 20/07/2009.

TRANSPOSITION: 20/01/2011.

APPLICATION: 20/07/2011.