



EUROPEAN COMMISSION  
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Single Market for Goods  
Internal Market and its International Dimension

## **EXPERT GROUP MEETING ON TOY SAFETY**

### **Administrative Co-operation**

**Summary report of the ADCO Meeting on the implementation of  
Directive 2009/48/EC on the safety of toys – Administrative Co-operation**

**Borschette Centre, rue Froissart 36, Brussels**

**2 May 2013 (10:00-18:00)**

**Chair:** Katleen Hendrix, DG Enterprise and Industry, Unit C.1

**Participants:**

- Competent authorities and market surveillance authorities under Directive 2009/48/EC
- Authorities from EFTA States
- Authorities from candidate countries

## 1. Opening of the meeting

**The Chair** opened the meeting, welcoming all participants and introducing herself.

### 1.1 Approval of the draft agenda

The agenda was approved.

### 1.2 Adoption of the minutes of the last meeting

**The Chair** concluded that the draft minutes of the meeting of 11 September 2012 were approved.

## 2. Standardisation

### 2.1 Feedback

A **Member State** asked if a reference to TR15371:2013 (Replies to requests for interpretation of EN 71-1, EN 71-2 and EN 71-8) would be published in the Official Journal. **COM** clarified that this would not be the case.

**The Chair** drew the attention of participants to a request concerning trampolines. **The Member State concerned** asked if opening and closing elements made with Velcro can be considered the same as a zipper closure for the purposes of draft standard EN 71-14, knowing that draft standard EN 71-14 only addresses zipper closures. The Member State highlighted that the Notified Body in this case had delivered an EC-type examination certificate (on the basis of the draft standard) for the product version with the zipper closure, but not for the product version with the Velcro closure.

**The Chair** concluded that for the case raised in the request, EC-type examination was necessary as there was no harmonised standard available yet.

### 2.2 Formal objection

**COM** explained that a formal objection had been received against harmonised standard EN 71-2 on flammability and that the Chairman of TC 52 had been asked to comment.

After discussion, **the Chair** concluded that the formal objection needed further reflection, possibly with further input from the Chairman of TC 52. Accordingly the Chair proposed to continue the discussion in the next meeting and invited participants to provide written comments.

### **3. Market surveillance**

#### **3.1 Information Commission**

##### *1) Food Imitating Products*

COM reminded of the Commission interpretative paper on the relationship between the Toy Safety Directive and the Food Imitating Products Directive. The GPSD Committee meeting and the RAPEX contact points meeting had given no comments.

A product intended for use in play by children below 14, which is food-imitating and potentially dangerous, conceivably could fall in both the legal frameworks of the Toy Safety Directive (TSD) and the Food Imitating Products Directive 87/357/EEC (FIPD). The FIPD covers food-imitating products, which include toys. The TSD covers toys, which include food-imitating toys.

However, when looking at the provisions of both texts, they appear to be conflicting. The FIPD bans all dangerous food-imitating products, while the TSD contains safety requirements to manage risks. Thus, products are completely banned when deemed to be dangerous food-imitations, while the TSD provides for measures proportionate to the risks posed by toys. It appears that both texts cannot be cumulatively applied, even if they both aim to protect consumers. In such cases, one has to know which one applies.

COM arrived at the following conclusions:

- The TSD is to be applied to food-imitating toys, not the FIPD.
- Thus, the FIPD is not applicable to food-imitating toys, and cannot be used as a legal basis for taking measures against non-complaint food-imitating toys. Measures against such toys have to be taken exclusively on the basis of the TSD. The FIPD applies exclusively to dangerous food-imitating products which are not toys.

COM responded as follows to comments made regarding loss of protection:

- One should take into account the risk of ingestion also by children older than 3 – The Toy Safety Directive has a general safety requirement in Article 10(2), covering everything which is not explicitly covered by the specific requirements of Annex II.

- Applying only the TSD to food-imitating toys would lower the protection level – This is not correct. The TSD-system is risk-based and offers adequate protection, which has been specifically tailored for children younger than 14 and fully covers the risks from toys. It is equally incorrect that children younger than 14 would be less protected than adolescents older than 14: FIDP protection applies to products which “possess a form ... such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths ... which might be dangerous”. The behaviour of adolescents and the likelihood that they will put food-imitating products in their mouths should be considered, compared to that of children. Moreover, products which are not toys are still covered by the FIPD.
- FIPD applies to manufacturing and export, TSD does not – This is correct. However, both acts aim to protect consumers – in the case of TSD, consumers younger than 14. In realistic and practical terms, measures related to placing on the market of toys offer all the necessary protection for children.

## *2) Market Surveillance*

**COM** informed participants of the adoption of the Product Safety and Market Surveillance Package.

## *3) Other information*

**COM** informed participants of the publication of an amendment of the Explanatory Notes to the Combined Nomenclature of the European Union concerning so-called “anti-stress items” in the Official Journal of 22 March 2013.

**A Member State** informed participants of a draft corrigendum covering all linguistic versions of the Toy Safety Directive circulated by the Council Secretariat for comments.

## **3.2 Safeguard clause**

**COM** reminded that safeguard clause 2517 was discussed in the ADCO meeting of September 2012. The conclusion of that discussion was that the toy was considered as a toy for children above 3, but it might be dangerous for children younger than 3 and therefore needed the warning “not suitable ...” with an indication of the hazard. Nevertheless, the Member State concerned has come back with further information and arguments.

**The Member State** concerned provided detailed information on its attitude towards the age grading of the magnets in question. It also responded to the comments from other Member States and the manufacturer.

After a tour de table, **the Chair** concluded that there was strong support for the conclusion that the toy was intended for children over 3. The conclusion from the September ADCO discussion was confirmed and COM would take the Decision forward on this basis.

#### **4. Grey zone problems**

##### **4.1 Discussion guidance document 7**

**COM** recalled that Guidance document No 7 on aquatic toys was revised in July 2012. The aim of the revision was to provide clarification, not to change the approach regarding swim rings or to reclassify products. Nevertheless, stakeholders had interpreted the revision as a change in approach concerning bathing rings. Accordingly, a proposal for a revised Guidance document No 7, with new pictures and clarifying wording on what the intention of the revision had been, had been elaborated in collaboration with industry.

After the discussion, **COM** said that several participants had highlighted that in the absence of objective criteria, market surveillance authorities face problems in practice. Many speakers had referred to size as an objective criterion to be retained, 120 cm diameter had been mentioned several times, and it had been found that the standard for floating leisure articles only applies for items with a diameter over 120 cm. **COM** observed that, if a diameter below 120 cm (for example, 90 cm) was retained as criterion, this seemed to create a gap in coverage by standards, as EN 12649 on floating leisure articles only applies if the diameter is at least 120 cm.

A proposal was summarised by **COM** as follows:

- include in section c, iii “bathing rings” of Guidance document No 7 a reference to a diameter of 120 cm as the delineating criterion for toys;
- refer to the general criteria of Guidance document No 4;
- keep existing Photo 6, not include Photo 6A, replace Photo 7 as proposed, keep existing Photo 8.

**The Chair** concluded that a suggestion for new wording would be made, based on the proposal made, and that this would be subjected to a written procedure.

#### 4.2 Discussion guidance document books

Due to lack of time, there was no discussion on this agenda point.

#### 4.3 Open discussion on classification of different products

##### 1) Toys with food

**The Member State concerned** clarified that there were two separate questions. The first question was about the classification of a series of specific examples, all in combination with food – toys or not? The second question concerned the treatment of small parts: the toy does not have small parts, but the food they contain are small parts. What to do?



Liquid in a fire extinguisher



Pen-shaped lollipop with a LED inside

The above two examples had both been classified as toys in the ADCO meeting of September 2012, even though not all Member States had seemed convinced of the play value. The fire extinguisher could still be played with even after the liquid had been

consumed. However, once empty, the pen did not seem to have much play value, although the LED light inside, activated by pressing a button, might give it play value.

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Lipstick with candy inside



Whistle with candy inside

After a tour de table, **the Chair** concluded that both the candy lipstick and the whistle with candy were to be classified as toys.

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Soother-like lollipop



Soother with candy

**A Member State** noted that the above two soothers are toys and are mentioned as examples in the TSD explanatory guidance document, to which the requirements on physical and chemical properties apply. **A Member State** failed to see play value in the soothers, since all what was left after the candy was eaten, was the ring.

After a tour de table, **the Chair** concluded that both the soother-like lollipop and the soother with candy were to be classified as toys.

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For all four the above items, **Member States** and **COM** all agreed that the particular safety requirements of Annex II Part I, point 4(h) apply to the toy part, but not to the food part. **A Member State** disagreed, asking where it said that a toy cannot be made of food. **COM** referred to the express wording of Annex II, Part I, point 4(h), *second sentence* (“Parts of toys otherwise directly attached to a food product shall fulfil the requirements set out in points (c) and (d).”) and to the wording of clause 4.25 of EN 71-1 (“Toys attached to food shall conform to the following requirements:”; “Prior to testing ... the food shall be removed ...”; see also A.55 “These requirements ... do not apply to the foodstuff as such. ... An example of such a product is a toy candy-lipstick where the toy-part of the product fits entirely in the small parts cylinder after removal of the candy part.”).

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Dispensers for small candies, sold with candies



Dispenser with shooting mechanism, sold with fruit gums



Container in the shape of fruit filled with sugar

**Member States** believed that all three items had play value added, so they were all toys. **A Member State** added that small parts requirements do not apply to the sweets inside the box. **A Member State** failed to see how the shooting dispenser has a play value once the last sweet is out.

After a tour de table, **the Chair** concluded that the small candy dispenser, the shooting box and the fruit-shaped containers all were to be classified as toys.

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Container filled with chocolate candies, bunny on top of the cap



**A Member State** agreed that both are toys, but saw no need to deviate from the rule that small parts requirements do not apply to food. **A Member State** agreed they were toys, but had a doubt: there is a small part that can be put in the mouth and break, namely the sweets inside the rabbit have a wrapping – are they sweets or toys and do small parts requirements apply or not? **COM** agreed that the fluffy rabbit is a toy, but took the view that the chocolate eggs inside were food and that food, as well as the wrappers around the food, were not covered by the small parts requirements of the Toy Safety Directive. **A Member State** did not agree that the container filled with chocolate candies was a toy.

**The Chair** concluded that both the contained filled with chocolate candies and the fluffy rabbit with Easter eggs were to be classified as toys.

**COM** reiterated that food is not part of the toy, so the food falls outside the remit of this group, and that there are other instruments to deal with it other than the Toy Safety Directive. Food, wrapped or not, is always food. Accordingly, the small parts requirements do not apply to the wrapped Easter eggs.

## 2) *Piñatas*

**A Member State** was unsure if piñatas for use at birthday parties were toys. Piñatas are containers, usually made in paper or balloon materials, and filled with candy; they are hung up and children hit them with sticks to get the candy out. The play value appeared to lie in the game of getting the candy out; once the piñata is destroyed and the candy is out, the play value is lost. **Member States** viewed them as a container in which toys or food are kept. When broken, it is destroyed, so it should not be seen as a toy, but should be classified as a decorative object for celebrations (cf Annex I Toy Safety Directive).

**The Chair** concluded that based on the available elements (there was no information on the presentation, the content, whether they were marketed with a stick or not) the views expressed pointed to the conclusion that the piñatas were not to be classified as toys.

### *3) Court Decision in Hungary*

**The Member State concerned** clarified that the market surveillance authorities had deemed this to be a toy recommended for 1.5 to 4 year olds as an ability development game. The head of the toy fits entirely into the small parts cylinder. However, a Decision of the Budapest Central Court had ruled that this toy was for children older than 3 and that the testing had been done on the wrong basis, because the upper part of the toy was not a small ball, as it had no round or elliptical shape. Moreover, the toy is an ability development toy which is part of the Montessori programme. No appeal is possible against the Court Decision. Views on the classification were expressed.

**The Chair** concluded that there was much support for the classification of this toy as a toy for children younger than 3 to which the small parts requirements applied.

### *4) Birthday train*

**The Member State concerned** expressed the opinion that the birthday train is a toy for children under 3 and that it could not contain candle holders, even if the candles were not supplied with the birthday train, as it could be assumed that customers would purchase the candles to fit into the candle holders. **Some Member States** took the view that the train was a toy for children of all ages. **Others** felt that it was a toy for under 3 but did not see a problem with the candleholders being incorporated; the issue of possible combination with candles, and ensuing risk, was an issue of parental responsibility. **A Member State** felt that if market surveillance authorities wanted to keep such items from the market, they could easily rely on the small parts requirements, but should not go into possible (mis)use by combining with candles.

**The Chair** concluded that there was much support for the classification as a toy also for children under 3, but that there appeared to be no problem to have candleholders incorporated, as the issue regarding possible (mis)use by combining incorporated candle holders with candles went beyond the remit of the Toy Safety Directive.

*5) Borderline between decorative products and toys*

**The Chair** invited written comments whether Guidance Document No 11 needed review.

**4.4 Discussion guidance document USB sticks**

Due to lack of time, there was no discussion on this agenda point.

**5. Any Other Business**

Due to lack of time, there was no discussion on this agenda point.

**6. Closing of the meeting**

**The Chair** closed the meeting, thanking all participants.