EuroCommerce for retail & wholesale

Position paper
27 November 2023

Retail and Wholesale view on the proposal on Toy Safety Regulation

Key messages

- Definition of ''substance of concern'' (SoC) which is defined in Article 3(36) by cross-reference to 'Article 2, point (28), of the ESPR needs to be amended. The Commission needs to set SoC definition in REACH and not in individual product policy.
- There are currently no legal norms relating to "psychological and mental well-being and cognitive development of children", which could be used by manufacturers and market surveillance authorities to make this complex and difficult assessment.
- EuroCommerce is fully supportive of safe toys and to ensure children are not exposed to these substances, however, the proposal is not clear in relation to new requirements regarding the content of chemical substances.
- Only essential product identification and safety information to be present on-pack, and the rest of the information to be made available in the digital product passport (DPP).
- The Digital Product Passport (DPP) should streamline and facilitate access to harmonised, relevant, and proportionate information and start with existing information requirements as set in ESPR and Toy Safety Regulation. This means the DPP should start with legislative information requirements and not add too much information to begin with.
- Reasonable transition time and to remove the time limit on stock disposal (currently fixed at 42 months after entry into force), to instead allow the sell-through of products until the exhaustion of all stock placed on the market before the entry into force of the Regulation.

Scope & definitions (Articles 1-3 & 17 - 18)

The definition of **''substance of concern''** (SoC) which is defined in Article 3(36) **should refer to chemical legislation instead, e.g. REACH**. In Article 2(28) of the ESPR, the proposed definition of 'SoC' is currently broad and unclear, and not yet final.[1] It is key to have a clear framework for this definition and to set a process for scientifically evaluating the restriction of chemicals for reasons other than safety. Therefore, there should not be a reference to the definition of SoC to the proposal on ESPR, but a reference to a definition in REACH. We strongly believe, the Commission should define SoC in REACH.

The definition of ***'toy model'*** in Article 3(13) is also unclear. In the proposal, 'toy model' means a group of toys that meets certain conditions (a-d). The presumed intention to allow for a common product passport for related models in a sequence under Article 17 should be made clearer by replacing some of the wording, as follows:

[1] We note that the definition of 'substance of concern' has already been the subject of multiple amendments adopted by the European Parliament on 12 July 2023. The definition of SoC should be set in REACH or another chemical regulation, and not in the product regulation for Ecodesign for Sustainable Products.

(a) they are under the responsibility of the same manufacturer,
(b) they have uniform design and technical characteristics relevant for the requirements of this Regulation on safety as ***listed in [Appendix II],***
(c) they are manufactured using ***the same*** *materials and manufacturing processes,*
(d) they are defined by ***an item, batch or product number*** *allowing them to be identified as a group;*

For the definition of 'functional toy' in Article 3(29), here examples are needed in order to avoid misinterpretation from different economic operators and/or authorities. We recommend adding the following examples, e.g. "sewing machines, coffee machines". It is also in our view useful to specify in the definition that the functional toy should also bring the same level of risk – and not just the appearance – of the product/appliance/installation. This is the element that justifies the application of standards and warnings for functional toys. We would suggest:

'Functional toy' means a toy that operates and is used in a manner similar to a product, appliance, or installation designed for adult use, ***resulting in the same or similar level of risk****. This category can include scale models of items such as products, appliances, or installations* ***such as sewing machines or coffee machines, for instance.***

Product safety requirements (Article 5 and Annex II)

A toy shall be placed on the market only if it complies with general safety requirements (Article 5.2) and particular safety requirements (Annex II). EuroCommerce is fully supportive of the Commission's objective to ensure a high level of safety of children when playing with toys.

The proposal includes among the general safety requirements that a toy shall not jeopardise the **''psychological and mental health, well-being, and cognitive development of children''** (Article 5.2). The proposal states (at Recital 14) that this addition is necessary, in particular, to ensure that children are protected from any risk coming from the use of digital technologies in toys. We do not support the inclusion of this new requirement. There are currently no legal norms of "psychological and mental well-being and cognitive development of children", which could be used by manufacturers and market surveillance authorities to make this complex and difficult assessment. The provision assumes that 27 Member States will all make the same assessment, whereas this type of assessment is extremely subjective and may very well differ between different market surveillance authorities within one Member State. Furthermore, it would be impossible for manufacturers to test their physical products for effects on the psychological and mental well-being and cognitive development of children. Enforcement will depend on a complex combination of different elements, including social factors. Therefore, we strongly disagree with this introduction in general safety requirements for toys.

We welcome that the proposal envisages the **publication by ECHA of guidance for businesses, especially SMEs,** to help them with the practical aspects of specific requests and the general application of the chemical requirements for toys. We welcome this initiative and **encourage its timely publication** (Article 48 and Recital 18).

Lastly, specifically for **SMEs** to be compliant with the Regulation, we call on the Commission to provide even more support e.g., **financial support, finance, specialized management** and **staff training**, and **organizational and technical assistance.** SMEs are vulnerable traders on the market due to lack of resources, adequate skills such as technical and legal expertise, and lack of personnel.

Labelling requirements (Appendix to Annex II, Part B)

We believe that **labelling toys with their fragrance allergens may discourage consumers from buying certain toys based on wrong assumptions**. It needs to be clear on-package, if this allergen is related to safety and health risk, and therefore need to stay on-package, if not this could be displayed in a digital way.

Our sector is supportive of the introduction of a product passport or Digital Product Passport. Digital labelling may help in information flowing from business to business and making it available to consumers in a simple way. The proposal introduces labelling requirements *''for names of the fragrance allergens to be listed on the toy, on an affixed label, on the packaging or in an accompanying leaflet, as well as in the product passport, if their concentrations are exceeding 100 mg/kg''* (Appendix to Annex II, Part B, Point 1). **We suggest that only essential product identification and safety information be present on the product and on paper instructions, and the rest of the information can be made available online in the digital product passport.** This would also permit avoiding an overload of information on-pack.

Obligations for economic operators

The proposal incorporates obligations for manufacturers, importers and distributors aligned with the common framework for the marketing of products, as is already the case in the current Directive. It is essential to **clearly define the role and responsibilities of traders according to the principle of proportionality** in terms of obligations and respective liabilities. The responsibility for ensuring conformity should be clearly set at the level of the manufacturer of the product who made the toy. Distributors can be responsible for acting with due care in **verifying the presence** of the required information/labels/DPP on the physical product, but distributors cannot be required to ensure the veracity or accuracy of the information provided by the manufacturer, nor should they have to verify that manufacturers have complied with their obligation to 1. provide contact information online and allow customers to file complaints concerning the safety of the products they manufacture (as set forth in Article 7 (11)) or 2. upload the unique product identifier and the unique operator identifier of the toy in the product passport registry (as set forth in Article 7(2) second paragraph). These increased obligations conflict with the general duties of distributors defined in Article 12(1) of the General Product Safety Regulation (GPSR), without bringing any clear consumer benefits.

New requirements regarding the content of chemical substances

In the proposal's Annex II, Part III, point 4, generic prohibitions are listed according to the classification, which, in addition to Carcinogenic, mutagenic and reprotoxic substances (CMRs)[2], includes:

- Endocrine disrupting substances (ED) category 1 and 2
- Specific target organ toxicity (STOT) category 1
- Respiratory sensitization (Resp. Sens.) category 1

EuroCommerce is fully supportive of safe toys and ensures children are not exposed to these substances, however, the proposed text provides unclarity.

Endocrine disruptors
Classification for endocrine-disrupting effects seems to be in the same category as CMR classification (long-term effect with a potential very low limit for when the substance has effects). We, therefore, support that endocrine-disrupting substances are regulated in toys in the same way as CMR substances, but it should be clarified whether the regulation includes endocrine-disrupting substances

[2] Carcinogenic, mutagenic and reprotoxic substances (CMRs) – Link.

classified according to human health and/or according to the environment. Given that the Toy Safety Regulation only relates to the protection of health and safety, it should be stated specifically if a ban on endocrine-disrupting substances also applies to substances that are only classified for endocrine-disrupting effects in the environment.

Specific target organ toxicity (STOT) cat. 1
The background for including STOT cat. 1 classified substance in the generic ban seems deficient. In the proposal's preamble text, effects on the nervous system are specifically mentioned as an argument to include classifications for specific target organ toxicity in the generic ban. The aim is favourable; however, it should be noted that many of the substances which have a harmonized classification such as STOT SE 1 and STOT RE cat 1 are not classified yet.

At the same time, if products (articles) can be proven not to have a negative impact in this category they should be approved. Therefore, the regulation should expand the ban to all STOT substances that could trigger STOT mixture classification.

Currently, there is a proposal to revise Regulation (on classification, labelling and packaging of substances and mixtures (CLP Regulation) notably to introduce a classification for damage to the nervous system. Therefore, it could be more appropriate to regulate the use of substances that can damage the nervous system based on this (future) classification than to generally include all STOT 1 classifications.

Limit values
In the proposal, the ban on chemicals in point 4 and the exemptions in point 5 need more clarity. Here, a specific limit value needs to be set. It will give more clarity to manufacturers to have greater empirical certainty and contribute to increased compliance.

We understand this as a ban on the deliberate addition of any quantity of substances with the included classifications. The wording is also analogous to the Cosmetic Products Regulation's CMR ban (Article 15) and exception for impurities (Article 17), which together are usually interpreted as a ban on deliberate addition.

The table below summarizes the existing and proposed requirements:

Classification	**Existing requirement**	**Proposed requirements**
Carc. 1 / Muta. 1	0,1 % *	Do not add deliberately **
Repr. 1	0,3 % *	Do not add deliberately **
Carc. 2 / Muta. 2	1 % *	Do not add deliberately **
Repr. 2	3 % *	Do not add deliberately **
ED 1 / ED 2	Not regulated (new classification from 2025)	Do not add deliberately **
STOT SE 1	Not regulated	Do not add deliberately **
STOT RE 1	Not regulated	Do not add deliberately **
Resp. Sens. 1A / 1 / 1B	Not regulated	Do not add deliberately **

**) unless the substance has been set a harmonized SCL (Special Concentration Limit)*
***) is allowed as an impurity provided TRA is passed*

EuroCommerce acknowledges that some of the existing limit values may seem too high, but a transition to *"not intentionally added"* without any limit value that can *"allow"* impurities or trace contamination is a paradigm shift that will have very significant administrative consequences for manufacturers.

The generally accepted method for communicating the content of hazardous chemical substances in chemical products is via a safety data sheet (SDS) as defined under REACH. The rules therefore set limit values for when substances with different classifications must appear in the safety data sheet. However, these limit values do not ensure that it cannot occur problematic substances in amounts below the limit value in the product in question. Manufacturers buying raw substances for their products should have SDS proving that the classification is within limits. However, the SDS cannot be unconditionally used as documentation under the Toy Safety Regulation that a substance is not present in a mixture if a limit value has not been set. Because articles do something similar applies. It is not considered possible that a toy manufacturer can realistically ensure that a supplier of chemical raw materials that are included in a paint or similar that is used in some components of the article, does not contain a small amount (trace contamination) of some substance with one of the classifications mentioned.

It is uncertain that one can obtain all the necessary information and one cannot realistically test for all substances.

It is necessary to set limit values for the covered substance groups/classifications that are subject to generic bans. This will ensure that regulation can be complied with and that a sufficient level of protection is ensured at the same time that the rules can be checked and enforced.

Presumption of conformity of toys

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.

Digital Product Passport

We **welcome the introduction of the digital product passport (DPP)**, which is a crucial tool to modernise and digitalize product information, as well as improve the transparency of the product value chain. The proposal also sets the right precedent for other product regulations, as it is creating a DPP at the toy model level (subject to our comments above) and replacing the EU Declaration of Conformity. DPP should be founded on open and international standards, interoperability, and proportionality. It is important that the DPP works for different types of stakeholders and is harmonized in their scope, meaning it needs to be workable and accessible for B2B, B2C and B2G.

We support the clarification in the legal text of the role and responsibilities relating to the DPP.

Commission implementing and delegated powers

We ask that the process of developing these implementing (Articles 2.3 and 14.2) and delegated acts (Article 46) is **transparent and participatory**. The Commission should establish a **consultation forum**, or **expert group** composed of Member State representatives, the relevant stakeholders of the private sector (including retailers and wholesalers) as well as civil society partners similar to the Eco-Design Consultation Forum.

Entry into force and application of the new rules to stock already on the market

We welcome the application of the proposed Regulation **30 months following its entry into force** (except for those provisions regarding notified bodies and Commission implementing and delegated powers) (Article 56) and the associated transitional provisions (Article 54). However, we ask for the

expansion of the transitional measures to remove the time limit on stock disposal (currently fixed at 42 months after entry into force), to instead allow the sell-through of products **until the exhaustion stocks** if they were placed on the market before the entry into force of the Directive. Having one year to sell through is not enough.

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