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Toxic Chemicals in Toys and their Health Effects

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The toys directive in 1988 was the first directive under the New Approach, which demonstrates the importance of the safety of toys for the common market. After twenty years of experience and of technical development a revision of the toys directive is a necessary step.

In general we welcome the revision of this directive. However it was drafted, before the "goods package" passed the European Parliament. Mrs. Thyssen proposed in her "draft of a report" on the toys directive most of the necessary adjustments to the good package.

For the next few minutes I would like to look into some conceptual weaknesses of the toys directive.

1 Limit values and test procedures

This is a question concerning all kinds of hazardous material, which may be contained in toys. This includes CMR Substances, it includes heavy metals, it includes allergenic fragrances and it includes all other kinds of harmful substances.

According to the draft of the new directive the definition of limit values has been modified not only the limit values in question. As a consequence it is very difficult to compare old and new limit values. As a matter of fact for a couple of substances, which are proven to be harmful especially for little children, the limit values have substantially been raised. This is a step into the wrong direction.

Our approach is that any health risk of toys has to be excluded by design and not by written warnings or instruction manuals. All those toys that don't fulfil this condition are not to be made available to the common market.

Let me give you two examples. It is known that lead even after a single intake is stored in the body of a child and as a consequence increased, hazardous concentrations of lead can be measured in the blood for a couple of years, possibly causing long term damage.

We cannot control our children every minute per day, which simply means that we cannot exclude that little children swallow toys or parts of it. But we can take care that toy are as safe as possible and we should not step back behind a safety level, which can technically be easily achieved.

This is the benchmark for limit values for toys.

The second example deals with the so called CMR Substances – substances which are either carcinogenic, mutagenic or toxic for reproduction.

According to the draft of the directive CMR substances shall be banned from toys. This is a good idea. But then exceptions are defined under certain conditions.

We are against any exception. CMR substances of category 1 and 2 are proven to be hazardous. For substances of category three the risk of negative effects on health is high. This kind of stuff has to be kept out of the hands of children.

Based on the suggested exceptions we had the fatal situation that we had products on the marked bearing legally correct a CE marking and containing dangerous concentrations of CMR chemicals. This is not acceptable.

2 Mandatory third Party testing

After the recall of millions of toys last year an obligatory third party testing of toys was one of the cornerstones of the political debate. The congress of the United States of America passed the "Consumer Product Safety Improvement Act of 2008", becoming active on the 15. August 2008, which requires a mandatory third party testing for certain children's products.

In Europe we go one step back. The draft of the new toys directive relies on the self declaration of the manufacturer. The prototype testing requirement of the old directive (Module B, first indent) is replaced by a third party testing of the construction documents only plus testing of one or more major parts of a toy.

This means a reduction of the safety level of toys in contradiction to all statements of European and National politicians after the mattel recalls.

3 Voluntary safety marks

You will have noticed the discussion about voluntary safety marks. According to the draft the voluntary GS for example mark shall be abandoned. On European level a discussion about a possible European safety mark has been raised last year.

Let me touch this subject matter for a few minutes. The New approach is undoubtedly a very successful instrument in respect of the free movement of goods in the common market.

The New Approach assumes that the safety of products will be indirectly guaranteed by the full responsibility of the manufacturer. Should there be unsafe products on the market it is the obligation of the market surveillance to identify those products and take adequate action.

This is the theory.

Concerning the liability of the manufacturer the burden of proof lies on the consumer. The liability follows national law, which is not harmonized.

What does this mean?

Let's come back to our example of a chronic lead poisoning. Damage to the nervous system or a developmental disorder may be recognised after years and not earlier. After such a long time it is highly improbable that a consumer is in a position to proof a causal connection between the contaminated toy – which has gone years ago – and the physical damage of the child. But even if it is possible, then the problem of the consumer to win a legal case still remains and finally to get money from a company that may no longer exist or that may be insolvent.

Everybody can be a manufacturer. For most consumer products, no proof of competence of the manufacturer is required, or no insurance is requested. In fact nobody cares weather a manufacture can fulfil his liability.

The market surveillance performs only random inspections. A comprehensive control of the market is neither indented nor could it be organized.

This simply means that more than 90 % of all consumer products come to the market based on the manufacturer's declaration without any control.

It is obvious that the principle of product safety through full responsibility of the manufacturer cannot guarantee safe products on the market.

The CE marking is a declaration of the manufacturer. It is address to the market surveillance authorities and not to consumers.

A Self-declaration of the manufacturer is unsuitable to prevent false CE markings due to error, negligence or misuse. There is no penalty on European level and rarely on national level for false CE Markings.

This situation is unclear to most consumers.

Conclusion:

1. All Toys that may come into the hands of children, that may be swallowed or parts of which may be swallowed have to be treated as foodstuff concerning limit values of chemicals, be it as components or as contamination.

2. CMR Substances have to be banned from toys completely.

3. Mechanical or electrical safeties are other important aspects of toys, which should not be neglected.

4. And finally: Enforcement of the rules is the problem and not the definition of harmonized standards. This is a lesson we can learn from the toy recalls of last year.

Control measures at the source are always better and more efficient than all concepts of downstream control by the market surveillance.