

Policy Department
Economic and Scientific Policy

**STUDY ON SAFETY AND LIABILITY ISSUES
RELATING TO TOYS**

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Executive summary

Millions of toys were pulled from shop shelves and recalled from consumers over safety concerns in the last year. Hazards ranged from exposure to lead in wooden trains to poisonous beads. Prominent media coverage of the recalls of some of children's best loved toys, have made the European public more aware of weaknesses in the product safety systems and manufacturer responsibilities.

This study seeks to highlight some of the gaps in the EU toy safety net by answering a number of specific questions related to toy safety legislation, the function of the CE mark, major recent toy recalls and their follow-up by Member States. It suggests possible solutions to fill these gaps. The study was prepared by Civic Consulting and is based on a literature review and other information available in the public domain, and on in-depth, questionnaire-based interviews (face-to-face, or via the telephone) with national authorities, the Commission, consumer organisations and industry, including US-based stakeholders. All research was conducted between November and mid-December 2007. The list of organisations interviewed and questions asked are given in the Annexes of this report.

Overall, there is a remarkable degree of consensus regarding weaknesses in the EU and its Member States' product safety legislative and administrative systems. These weaknesses have been known for some time, and recent events have acted as a wake-up call for all concerned. A major general problem identified during the course of the study, is the absence of evidence and research in the public domain to help policy makers. Examples include lack of reports on Member States enforcement activities; and lack of accessible evidence (such as market penetration figures) to assess levels of risks posed by potentially hazardous products from small traders versus big-brand companies.

Main conclusions of the study include:

Toy safety legislation: A revision of the Toy Safety Directive is needed and imminent. Areas it will need to address include stronger enforcement, enhanced essential toy safety requirements, and more responsive measures for key safety requirements. These could be achieved through:

- ⇒ Providing broader powers for authorities, including effective deterrent sanctions;
- ⇒ Banning chemicals hazardous to children's health and development from use in toys; and
- ⇒ Extending the comitology procedure to key safety requirements of the Directive.

The CE mark: Recent recalls have undermined the credibility of this mark with consumer stakeholders. Improved standards and enforcement would improve its credibility in time. Information campaigns for consumers on the mark are likely to be of limited use. Practical measures to assure consumers may have to include a combination of tools, for example:

- ⇒ Obligatory EC-type approval for certain categories of toys;
- ⇒ Independent regular audits of manufacturer production systems; and
- ⇒ Marketing campaigns targeted at retailers and distributors.

New legislation in the US is likely to introduce mandatory third-party certification.

Accident and injury statistics: Toy-related injury and accident statistics in the EU are inadequate to inform policy-makers, who rely on US statistics instead. There is a clear need for such comparable data to be made available for EU Member States.

Enforcement and market surveillance: Deficiencies and differences identified in Member States' market surveillance and enforcement systems can be addressed through e.g.

- ⇒ Improved legislation (see above);
- ⇒ Increased inspection powers for customs to tackle dangerous toys before they reach the market, shared product testing arrangements between Member States; as well as
- ⇒ Production of good practice guidelines with concrete examples from Member States.

Recalls and alert systems: A large proportion of mandatory recalls on the EU rapid alert system (RAPEX) are toys, and the majority of these are small trader brands. The system is appreciated by the Member States, but there is still room for improvement. For example:

- ⇒ An obligatory notification requirement for manufacturers when a toy hazard comes to light could be adopted, on the US model;
- ⇒ The number of toy units in circulation could also be included in the RAPEX notification, to enable better risk and market size assessment; and
- ⇒ Follow-up reports could provide information on actions taken on major recalls from Member States, including on number of complaints and injuries.

The industry: The EU product safety system is 'post-market', therefore responsibility for the presence of safe toys on the market lies with industry. Recent recalls have shown deficiencies in industry safety design and production procedures, and in particular the long time it may take to react to an emerging risk. A transatlantic Toy Safety Initiative from the industry is currently ongoing, and EU-level measures include an audit of business safety measures and evaluation of the toy supply chain. These actions will provide further information for formulating policy. Big retailers and supermarkets could also be encouraged to improve the choice of toys on their shelves through independent upstream assessments.

Communication with consumers: Research shows that product safety information for consumers, such as warnings and instructions, is ineffective and partly driven by business concerns over liability. An additional concern is lack of easily accessible safety information when consumers buy toys over the Internet. Maximum outreach and effectiveness for consumers of such information could be achieved through:

- ⇒ Delegating design and development of product safety information to a task-force made up of consumer groups, manufacturers and retailers;
- ⇒ Testing the comprehensibility of product safety information with parent groups; and
- ⇒ Requiring e-commerce traders to display essential warnings prominently with the pictured toy.

1. European legislation relating to toy safety and liability

An overview of current Community legislation relating to safety and liability issues with respect to toys, addressing in particular Directive 88/378/EEC.

Council Directive 88/378/EC concerning the safety of toys¹ (hereafter ‘Toy Safety Directive’) has been the cornerstone of European legislation regulating toy safety. It is a New Approach Directive² which conforms to the usual format of such directives by setting a general safety obligation. This is fleshed out in essential safety requirements that can be presumed to be complied with by, inter alia conforming with relevant national standards. New Approach Directives seek to regulate broad sectors of the market in a way that ensures safety, but does not require every last detail to be spelt out in the legislation. This allows producers a degree of design flexibility so long as essential requirements are satisfied.

Toys must carry the ‘CE’ marking which acts as a passport for the product throughout the Community indicating that the product conforms to the Directive, but safeguard measures are in place should any particular product nevertheless pose a threat to safety. It is possible for other New Approach Directives to apply to toys, for example the Low Voltage Directive.³

The General Product Safety Directive⁴ (hereafter ‘GPSD’), by contrast, seeks to provide a safety net for all consumer products. There is a complicated relationship between the GPSD and the Toy Safety Directive due to the desire not to overburden producers with two sets of differing rules applying to their products, while ensuring that all the rules of the GPSD apply - especially the rules on surveillance and enforcement that are more detailed than in the Toy Safety Directive. The relationship will become even more complicated due to the proposal for a New Legislative Framework for the marketing of products, which includes a draft Regulation and a draft Decision, both relating to rules of market surveillance and enforcement.

In addition, Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)⁵ might apply to toy manufacturers by virtue of their being a “downstream user”: using substances or combination of substances as ingredients in the production of their toys. Title V covers the rights and obligations of downstream users, whilst toys are specifically mentioned in Annex XVII which places restrictions on the use of certain chemicals in, inter alia, toys. Toys which are themselves substances or preparations will also be subject to directives covering the classification, packaging and labelling of dangerous substances⁶ and dangerous preparations.⁷

This section focuses on the Toy Safety Directive as it now stands; it should be noted however that this Directive has been under review for some time,⁸ and a Commission proposal is due early in 2008; it is likely to be revised in significant ways.⁹

¹ OJ 1988 L187/1.

² See Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards: OJ 1985 C 136/1. See also *Guide to the implementation of Directives based on the New Approach and the Global Approach* available at <http://europa.eu.int/comm/enterprise/newapproach/legislation/guide/legislation.htm>. The global approach relates to conformity assessment, See Council Resolution on a Global Approach to Conformity Assessment: OJ 1990 C10/1

³ Directive 2006/95/EC: OJ 2006 L374/10

⁴ OJ 2002 L11/4

⁵ OJ 2006 L396/1

⁶ Directive 67/548/EEC: OJ 1967 L196/1 as amended

⁷ Directive 1999/45/EC: OJ 1999 OJ 2000/1 as amended

⁸ See *Public Consultation – Revision of the Toys Safety Legislation – background document* available at http://ec.europa.eu/enterprise/toys/documents/public_consultation_2007.pdf

⁹ Useful background on these reforms can be found in the *Study on the Impact of the Revision of the Council Directive 88/378/EEC on the Safety on Toys* available at http://ec.europa.eu/enterprise/toys/documents/toys_final_report_without_annexes.pdf

In addition there is a general review of the New Approach reflected in a proposal for a Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products.¹⁰ This seeks to ensure that national authorities responsible for enforcing product safety legislation all apply the same minimum standards, as well as strengthen customs control, and setting information and co-operation obligations between authorities.

These reforms are motivated by a desire to (i) modernise safety requirements (updating of essential safety requirements and possibly covering misuse of toys by children); (ii) clarify the scope and contents (taking into account new developments and materials in toys, such as noise, electric vehicles, magnets and various chemicals); and (iii) improve the efficiency and coherence of enforcement.

The majority of stakeholders interviewed agree with this need to modernise the Directive. Based on their evidence possible avenues for reform are identified in the following sections.

The relationship between the Toy Safety and the General Product Safety Directives

The GPSD is a “gap-filler” Directive for all consumer products, and particularly those that do not have their own sector specific legislation.¹¹ In the case of toys, only some provisions of the GPSD apply, namely for the risks that are not covered in the Toy Safety Directive; the most publicly visible of these provisions is the rapid alert information system, or RAPEX.

The Commission has issued guidance on how the GPSD relates to the Toy Safety Directive.¹² This concludes that the Toy Safety Directive is sufficiently extensive so as not to bring into play for toys the GPSD provisions on:

- The general safety obligation;¹³
- Information on consumer risks;¹⁴
- Identification of producer;¹⁵ and
- Establishment of competent authorities¹⁶ (despite the need for such authorities being only implicit within the Toy Safety Directive - it is said that the GPSD provisions should serve as a model for surveillance of toys).

However, the provisions of GPSD that would apply to toys include:

- Identification of the product;¹⁷
- Consumer safety follow-up after marketing;¹⁸
- Provision of information from producers to competent authorities about dangerous products;¹⁹

¹⁰ COM (2007) 37 final

¹¹ Art 1(2)

¹² *Guidance Document on the Relationship Between the General Product Safety Directive (GPSD) and Certain Sector Directives with Provisions on Product Safety* available at http://ec.europa.eu/consumers/cons_safe/prod_safe/gpsd/guidance_gpsd_en.pdf

¹³ Arts 2(b)(c), 3 and 4

¹⁴ Art.5(1) subpara 1

¹⁵ Art 5(1) subparas 3 and 4

¹⁶ Arts 6(1)(2))

¹⁷ Art 5(1) sub-paras 3 and 4

¹⁸ Art. 5(1) sub-paras 3, 4 and 5

- Producer duty to co-operate with public authorities;²⁰
- Distributors' obligations;²¹
- Rules on penalties;²²
- Requirement to adopt an approach to market surveillance;²³
- The establishment of a European Network of Member States' authorities competent for product safety;²⁴
- Notification under RAPEX;²⁵
- Committee procedures;²⁶
- Transparency and confidentiality;²⁷ and
- Rules on explaining reasons, remedies and submitting views apply with respect to decisions to recall products.²⁸

It is also made clear that both the GPSD and Toy Safety Directive apply without prejudice to the Product Liability Directive. However, the civil liability for harm caused by defective toys is quite distinct from the regulatory controls found in GPSD and Toy Safety Directive whose function is primarily to prevent harm being caused.

There is also a division of competences within the European Commission. New Approach Directives, including the Toy Safety Directive, are essentially aimed at opening up the internal market and providing the conditions for the free circulation of goods. DG Enterprise is concerned with these internal market questions; whereas consumer safety falls within the competence of DG Health and Consumer Protection. Obviously these policies interact and there is a need for a joined-up approach between the two directorates.

Scope of Toy Safety Directive

The Directive naturally applies to toys, which are defined as 'any product or material designed or clearly intended for use in play by children of less than 14 years of age'.²⁹ It covers toys placed on the market both for sale and distribution free of charge.³⁰ Annex I contains a list of products not regarded as toys. Some examples will suffice to show how broad this list of 21 categories is: Christmas decoration, sports equipment, scale models for adult collectors, puzzles with more than 500 pieces or without pictures intended for specialists, slings and catapults, darts with metallic points, fashion jewellery, bicycles designed for sport or travel on the public highway are all excluded. These exclusions underline why the complementary GPSD is necessary.

¹⁹ Art. 5(3)

²⁰ Art 5(4)

²¹ Art 5

²² Art 7

²³ Art 9

²⁴ Art 10

²⁵ Art 12

²⁶ Art 14-15

²⁷ Art 16

²⁸ Art 18(1)

²⁹ Art.1(1)

³⁰ Art.2(3)

The draft revised Toy Safety Directive contains a similar annex of products not regarded as toys, but also complicates matters by recognising some products as toys, but providing that they still should not be regulated by the Toy Safety Directive. This dual approach seems to risk creating confusion. As the net result of both drafting approaches is to exclude the relevant products from the Toy Safety Directive, adopting one approach as in the existing Directive might be preferable.

Safety obligation

Toys can be placed on the market if they do not jeopardize the safety and/or health of users or third parties.³¹ This assessment is based on the intended or foreseeable use of the products concerned, taking into account the normal behaviour of children, who (as the preamble notes) do not generally show the same degree of care as the average adult.³² In turn, a toy must meet the safety and health conditions laid down in the Directive, the core of which are found in the ‘essential safety requirements’ in Annex II.³³ It is likely that the revised Directive will make it clear that this covers the reasonably foreseeable misuse of toys and also that the precautionary principle applies. The toy industry expressed concern regarding the term ‘foreseeable misuse’, on the grounds that it is likely to generate confusion and may open manufacturers to limitless liability. The term ‘normal foreseeable use’ was suggested by one of the interviewed consumer representatives, and would be more likely to be accepted by industry.

Structure of the Directive

The ‘essential safety requirements’ for toys are set out in Annex 2 of the Directive.

Part I of this Annex lists some general principles relating the overall safety requirements (established in article 2) to risks connected with the design, construction or composition of the toy that are inherent in the use of the toy and which cannot be completely eliminated by modifying its construction and composition, without altering its function or depriving it of its essential properties. In all circumstances the degree of risk must be commensurate with the ability of users to cope with it; particularly for toys intended for use by those under 36 months. Where appropriate a minimum age or need for adult supervision should be specified. Labels and instructions for use should draw the attention of users/supervisors fully and effectively to the risks involved and the ways of avoiding them.

Part II of Annex II lists in detail a number of particular risks grouped under the headings:

- Physical and mechanical properties;
- Flammability;
- Chemical properties;
- Electrical properties;
- Hygiene;
- Radioactivity.

³¹ Art.2(1)

³² Recital 6

³³ Art.3

The structure of the proposed revised Directive may be a little different from its predecessor, with some of the general essential safety requirements being spelled out in the body of the Directive and the annex then listing ‘complementary particular safety requirements.’ These complementary requirements cover the same headings as above.³⁴ The proposed detailed provisions have been revised in various ways. The focus is on inclusion of matters relating to noise and its effect on hearing, and on chemicals.³⁵ As regards chemicals, the Parliament has called on the Commission³⁶ to prohibit all dangerous chemicals in toys unconditionally, including carcinogenic, mutagenic and reprotoxic substances (CMR, categories 1, 2 and 3), endocrine disrupters, sensitisers and fragrances. This call is strongly supported by consumer organisations. The toy manufacturers, on the other hand, are concerned that the chemicals expressly named in the revised Directive should only be those that are relevant to the industry, and that requirements should be measurable, so that tests can be carried out.

Standards are drawn up to allow manufacturers to comply with the essential safety requirements. CEN has adopted EN 71 and CENELEC EN 62115.³⁷ There is a committee procedure which allows Member States or the Commission to review standards and which can lead to the Commission issuing a new standardization brief.³⁸

Two problems have been identified by some of the authorities and consumer groups with the standards process under the New Approach: the difficulty of having a balanced all-stakeholders discussion as some groups are underrepresented due to lack of resources and necessary expertise; and the slow pace of the process to reach consensus on a new standard. For example the new standard for small magnets in toys will take another 12 to 18 months to agree, which is considered a short time.

As a solution to these problems, an extension of the committee procedure (comitology) is proposed for the revised Toy Safety Directive. The Parliament in its recent toy safety resolution³⁹ is calling specifically for a regulatory committee with scrutiny for the key safety requirements, in order to allow it some level of control over the implementation of toy safety provisions. Consumer organisations strongly support this call, arguing that it would allow for a more rapid adaptation of the Directive in case of emerging risks than the rather slow standards development process can achieve, as well as being more transparent.

Presumed conformity

There are two ways in which a toy is presumed to conform to the essential safety requirements:

- i) It can conform to relevant national standards transposing the harmonized standards that have been published in the Official Journal, or;
- ii) It can be subject to an EC-type examination (meaning tested independently by a third party).⁴⁰

³⁴ i.e Physical and mechanical properties; Flammability; Chemical properties; Electrical properties; Hygiene; Radioactivity.

³⁵ The Commission commissioned a *Study on Certain Chemicals used in Toys* available at http://ec.europa.eu/enterprise/toys/documents/study_on_bioavailability.pdf and various options and their costs and benefits were outlined in a report on the *Revision of the chemical requirements of Directive 88/378/EEC on the Safety of Toys* http://ec.europa.eu/enterprise/toys/documents/toys_final_report_30_july_2007.pdf

³⁶ European Parliament resolution of 26 September 2007 on the safety of products and particularly toys, P6_TA-PROV(2007)0412

³⁷ Art.5(1)

³⁸ Art.6

³⁹ European Parliament resolution of 26 September 2007 on the safety of products and particularly toys, P6_TA-PROV(2007)0412

⁴⁰ Art.5(2)

In both cases this is recognized by affixing the CE mark. Manufacturers are free to choose whether to comply with the harmonised standards or to subject their product to an EC-type examination.

EC-type examinations are carried out by ‘approved bodies’ (accredited testing laboratories) who are ‘notified’ to the Commission by the Member States, and which must satisfy the criteria set out in Annex III of the Directive.⁴¹ The procedure to be followed before awarding an EC-type-examination certificate is set out in article 10. It is likely that the revised Directive will have more detailed rules on accreditation of notified bodies and this will be placed in the context of the proposal for a Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products. Variations between practices of accrediting notified bodies have been recognized as a matter of concern.⁴²

For each toy the manufacturer, or the person who places the product on the Community market, must keep a technical dossier outlining various details relating to the product, including evidence that the product conforms with standards or of conformity with an approved model, along with documentation relating to obtaining type-approval.⁴³ It is likely that the revised Directive will modernize these procedures by bringing them within the framework of a new Decision⁴⁴ covering conformity assessment, and targeting both economic operators and notified bodies carrying out EC-type examinations. In particular where there is compliance with harmonized standards there will most likely be a requirement for internal production control.

One of the major toy manufacturer interviewed expressed industry support for the envisaged measures in the Regulation and the Decision, and in particular the requirements for certification of officials doing toy safety tests and the proposed market surveillance standards. This is likely to improve the quality of testing procedures, and also help manufacturers to be more aware of what is expected of them and how they can conform to the expectations.

The CE symbol and labelling requirements

All toys must bear the CE marking⁴⁵ and marks or inscriptions likely to be confused with this are prohibited.⁴⁶ Equally they must carry details of the manufacturer, its representative or importer.⁴⁷ Annex IV sets out warnings and indications or precautions to be taken that have to be given for certain toys.⁴⁸

It is likely that any new Directive will have strengthened and more detailed rules on the CE marking, outlined in the framework of the Decision mentioned above. Improper use of the marking is to be subject to legal action, and deterring penalties, including criminal sanctions for serious infringements.⁴⁹

Another area of continued debate is the extent and manner in which warnings should be provided. CE marking and information to consumers is discussed in more detail in sections 2 and 7.

⁴¹ Art.9

⁴² COM(2007) 37 final at 2

⁴³ Art. 8(1)(b) and 8(2)(b)

⁴⁴ COM(2007) 53 final (Proposal for a Decision on a common framework for the marketing of products)

⁴⁵ Art.8

⁴⁶ Art.11(3)

⁴⁷ Art. 11(1)

⁴⁸ Art. 11(5)

⁴⁹ COM(2007) 53 final, art. 17(7)

Member States' powers

Member States have to take the necessary measures to ensure that sample checks are carried out. They must have access to the place of manufacture or storage as well as the dossier referred to above and the information contained in it, and they have the power to select a sample of the product for examination and testing.

The Commission and Member States can obtain a copy of the type-certificate plus, following a reasoned request, a copy of the design and manufacturing schedule and reports on the examinations and tests carried out.⁵⁰

Member States also have an obligation to report on the Directive to the Commission every three years,⁵¹ and to report regularly on the activities of approved bodies.⁵² However, no such reports are available in the public domain, if they exist at all and there have been calls for greater transparency. Regular consultations on the revision of the Toy Safety Directive are carried out with all stakeholders within the Expert Group on Toy Safety, the minutes of which are also not available in the public domain.

Safeguard procedure

Even where a toy bears the 'CE' symbol, Member States can take action to withdraw it from the market or prohibit or restrict its being placed on the market. On doing so they must inform the Commission whether this is because the toy fails to meet standards and hence fails to comply with the essential requirements; whether it is due to incorrect application of standards, or whether it relates to shortcomings in the standards themselves.⁵³ Where it is the last of these, and if the concern is found to be justified, the Commission must bring the matter before a Committee so that it can develop an opinion with a view, in turn, to the Commission issuing a new standardization brief.

Any decisions involving restricting the placing of toys on the market shall state the exact grounds on which it is based, be notified at the earliest opportunity to the party concerned and inform of remedies available and any applicable time limits.⁵⁴

This leads to the following conclusion:

⁵⁰ Art.10(4)

⁵¹ Art.12(2)

⁵² Art.13

⁵³ Art. 7

⁵⁴ Art.14

1. ***Toy safety legislation:*** The current Toy Safety Directive is 20 years old and in the meantime the toys themselves, their market structure, and the knowledge of the risks associated with them have changed considerably. Therefore the Directive has been undergoing a thorough review process for some years. This has brought to light the areas that need particular attention for revision. In particular: i) the need for even stronger and more harmonised provisions to ensure consumer health and safety by Member States; ii) the need for improvements to the essential safety requirements of the Directive; and iii) the need to address some of the shortcomings in the implementation measures for these safety requirements. The first of these needs is addressed through the current proposals for two horizontal policy tools (a Regulation and a Decision) applying to all Directives concerned with product safety, and which specifically aim to strengthen market surveillance in Member States, as well as clarifying economic operators' responsibilities to conform to rules. Chemicals are the main focus of the second need, and in particular to ban from use in toys specifically those chemicals that are proved to cause severe health and development damage in children. The solution to the third need can be the extension of the Committee procedure (comitology) to cover specification and implementation measures for key safety requirements of the Directive.

2. The CE mark – how well does it serve the consumer?

A discussion of the function of the CE mark with respect to toys from a consumer point of view.

The CE mark or logo is one of the cornerstones of the 25 New Approach Directives, including the Toy Safety Directive. As a final and most visible step, the manufacturer applies the CE mark to its product to signify that the toy complies with the law and the relevant standards. The legislation does not require independent conformity assessment in the case of toys. So for the most part this is an unverified declaration made by the manufacturer to the market surveillance authorities. But any manufacturer or distributor marketing products bearing an unjustified CE mark will have committed an offence and risks prosecution by the relevant Member States enforcement authorities.

Alongside other symbols and logos often found on products or their packaging, the CE mark is also visible to consumers. It could be argued that in a perfect world, where every participant in the production chain plays by the rules, this could be a win-win situation – the authorities have the conformity proof they need and parents or guardians have a visible and credible guarantee that every toy they bought for their children is not dangerous.

However, in the real world the CE mark on toys cannot be presumed by consumers to be an indicator of safety. Stakeholders interviewed pointed out that most of the toys subject to recent high profile recalls bear this mark. There are two main reasons cited for this apparent failure in the system. One, agreed by all, is that there are importers and distributors who can easily ‘cheat’ with the CE mark, as enforcement in some areas is poor, and not enough product samples are tested. The second, mentioned in particular by consumer protection stakeholders, relates to the standards themselves – the concern is that they are simply too low and that they do not keep up with rapid market developments in toys (as for example with small magnets used in toys for young children and the increasing availability of electric vehicles for children). As a result the stakeholder confidence in the value of the CE mark is often undermined.⁵⁵

This lack of confidence among consumer stakeholders⁵⁶ is underlined by the evidence that a large proportion of consumers does not understand the meaning of, or most often ignores, the CE mark.⁵⁷ The vast majority simply do not take the CE mark into account when making a purchasing decision. This research is consistent with findings about consumer use and take-up of labels and trust marks on products generally, which is very variable from sector to sector and country to country. Most recent research carried out in the UK specifically on consumer information and regulation,⁵⁸ also points to very low take-up by consumers of safety information, and low recognition and disregard for symbols when making purchasing decisions; the CE mark, even when recognized, was considered more of a ‘standard’ mark rather than a form of reassurance. Brand reputation (either of the retailer or manufacturer) was considered more important, however low-income consumers would still buy ‘cheap dodgy’ goods if the price differential warranted it. There is no clear consensus among stakeholders interviewed on how to resolve the consumer confidence issues in relation to the CE mark or on what form of resolution is needed. Opinions vary even within the same stakeholder groups, including those representing consumers.

⁵⁵ See also Commission staff working document, Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products - Impact assessment, SEC(2007) 173, 2007

⁵⁶ By “consumer stakeholders” we mean those representing consumers’ interests, such as consumer organisations (not individual consumers)

⁵⁷ Eurobarometer 52.1, Europeans and the EC logo, 2000: on average, less than half of consumers notice the CE mark on toys, while over a third think it means that a product was manufactured in Europe; almost two thirds think that the presence of the logo on a product means that it has been subject to specific checks by some kind of independent authority or body.

⁵⁸ *Consumer Information and Regulation*. (July 2007). Report prepared by Vanilla Research for the Better Regulation Executive and the National Consumer Council (NCC)

The following solutions were variously proposed by our respondents to deal with this issue. We discuss briefly under each heading the respective pros and cons. The solutions listed are not necessarily alternatives, but could be applied in combination.

- Removal of the mark from consumer products, and inclusion in the technical documentation only. From a consumer perspective this makes good sense, as it is not a mark directed at consumer decisions; furthermore it can be easily faked. This is the solution strongly favoured by most consumer organisations, arguing also that not only it is widely misunderstood, but can also mean different things on different products, so it is best to place it where only the national authorities need to see it for conformity inspection purposes. The toy industry representatives contacted for this study did not have strong views or objections to this, while most surveillance authorities strongly disagreed, since they needed to see it clearly on products. It is also important that the mark should be clearly visible to all involved in the distribution chain, including final retailers. It was argued that the mark is as good as the enforcement behind it, so ‘shooting the messenger’ will not solve the confidence problem; as the biggest problems with defective toys were identified overall to be with ‘cheap’ importers who disregard safety requirements (or are unaware of them), removing the CE mark will not impact the safety of toys, moreover it could make life simpler for rogue traders.
- Improved enforcement of standards, regular market surveillance and checks for compliance. While only some stakeholders wanted to remove the CE mark from the product, there was universal agreement on the need to ensure the mark complies with required standards, assuming that the standards are high enough. If more efforts are made to ensure that the mark indicates adherence to EU legislative requirements, then the mark would in fact reflect this level of safety. Thus more enforcement would improve its credibility, especially for consumers. Shifting the legal onus of proof onto manufacturers for their products’ safety in case of a dispute with consumers or their representatives was also suggested as a possible measure to give the CE mark added value, by one of the consumer agencies.
- Introduction of a pan-European self-regulated and self-certified label, complementary to the CE mark, which also indicates extra standards, such as marketing or labour conditions, met by the manufacturers. An example of such a label is the UK Lion Mark, developed by the British Toy and Hobby Association and used by most of its members; this follows a code of practice; a variation of this label, with a similar code of practice, is also used by toy retailers. Consumers did not recognise this label, or looked for it, in recent qualitative consumer group research in the UK.⁵⁹ Many stakeholders interviewed did not favour this measure; some felt that it would simply undermine the CE mark: “safety is not voluntary”. However, it should also be noted that moves to higher voluntary standards should be encouraged, and that such marks can still be useful to distributors and retailers.
- Introduction of a pan-European voluntary safety label that is backed by third party certification. An example of such a label is the GS label in Germany,⁶⁰ which is used not just for toys but other products, and has strong support from both consumer groups and surveillance authorities. France also has a similar mark, the NF “petite enfance”,⁶¹ currently used on 150 different toys. The Parliament has requested that the Commission carry out an impact assessment of such a label in the context of its Resolution on product and toy safety.⁶²

⁵⁹ As note 58; 12 focus groups were conducted, selected to ensure even spread of children in the household and internet access

⁶⁰ For more information, see: <http://www.hvbg.de/d/bgp/prod/gs/>

⁶¹ For more information, see: <http://www.marque-nf.com/appli.asp?NumAppli=NF315>

⁶² P6_TA-PROV(2007)0412; Dangerous toys made in China, European Parliament resolution of 26 September 2007 on the safety of products and particularly toys, 7 and 8

An EFTA study on marks was due to be published soon, at the time of finalising this report. A similar voluntary marking initiative, in fact, already exists at the EU level with the so-called keymark,⁶³ which can also be applied to toy standards and is operated by 25 certification bodies in 15 European countries, but it seems that “this is more or less dead right now”, as one stakeholder put it.

- Require mandatory third-party safety verification of toys (mandatory EC-type approval), or at least certain categories of toys that carry with them a particularly high risk, for example toys with small magnets, or those aimed at babies and toddlers. This is a precondition for certain high-safety risk products bearing the CE mark, though not for toys. A number of toy manufacturers already submit their toys for independent testing to prove conformity with harmonised standards, in response to market, rather than legislative, demands (particularly from retailers).⁶⁴ It is worth noting that, on the US market, independent third-party certification is likely to become a mandatory requirement for all toys intended for under 6-year-olds (including imports from the EU); and recent recalls have prompted some of the biggest US toy retailers to test toys on their shelves (see US section below).⁶⁵ Toy industries representatives and one of the authorities interviewed are not sympathetic to this type of certification, on the grounds that it is unrealistic given the volume of toys on the market, and the fact that the supply chain is a truly global one.
- An independent audit procedure is being suggested by the European toy industry body, to ensure that the right manufacture and conformity processes, as laid down in the legislation, are followed. The industry is putting forward the Toy Safety Co-ordination Initiative, started by the US toy industry and the national standards body (ANSI) in response to planned US legislation (see Section 7).⁶⁶ Invitations to participate have been extended to the Commission as well as the Chinese toy industry. An independent audit system is potentially attractive, as both the US and EU industries face big brand reputation risks if their systems allow dangerous products through, and such a system would also be cheaper to operate. However for an audit procedure to work, it must be independent, transparent and properly resourced, while auditors should have access to all the relevant production, testing and manufacturer research and recall data, as well as direct access to enforcement authorities when things go wrong.
- Information/communication campaigns on the meaning of the CE mark generally. This is a measure that is favoured by the Commission,⁶⁷ with an estimated public purse cost of 5 million Euro to conduct such a campaign EU-wide. Research evidence from other sectors suggests that for such a campaign to be effective, it would need to be targeted at a specific audience to convey a simple actionable message and be carried out over a long period of time to bring results: similar to a commercial marketing campaign.⁶⁸ It would be difficult to convey a simple message for the CE mark, as it has multiple functions – from self-declared to third party certified, or not required on certain categories of product – and it was not designed as a consumer information tool.

⁶³ For more information, see: <http://www.cen.eu/cenorm/conformityassessment/keymark+/index.asp>

⁶⁴ *Study on the Impact of the Revision of the Council Directive 88/378/EEC on the Safety of Toys*, Final Report. RPA. (October 2004)

⁶⁵ *Toys "R" Us stepping up toy testing*. (2007). Reuters Online. Last accessed 14 December 2007, from: <http://uk.reuters.com/article/consumerproducts-SP/idUKN1030367120070911?pageNumber=1>

⁶⁶ *ANSI Outlines 'Toolbox' of Toy Safety Initiatives*. (2007). Occupational Health and Safety Online. Last accessed 14 December 2007, from: <http://www.ohsonline.com/articles/52763/>

⁶⁷ Commission staff working document, Accompanying document to the *Proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products - Impact assessment*, SEC(2007) 173; Commissioner Meglena Kuneva responses during online stakeholder forum on product safety, (5 Dec 2007). Last accessed 14 December 2007, from: <http://blogs.ec.europa.eu/kuneva-webchat/participate-in-the-safe-xmas-webchat-with-commissioner-kuneva/#comments>

⁶⁸ See, for example *Examining Consumer Policy: A Report on Consumer Information Campaigns Concerning Scams*. OECD Consumer Policy Committee. (2005); or *Warning: Too much information can harm*. Final report by the Better Regulation Executive and National Consumer Council on maximizing the positive impact of regulated information for consumers and markets. (2007). Last accessed 14 December 2007, from http://bre.berr.gov.uk/regulation/reform/next_steps/too_much/

A quick search online for this study in Germany, UK and France also revealed that it is not difficult for the (very small) minority of consumers actively seeking information to find advice related to the CE mark and toy safety generally from a number of industry or independent bodies, as well as a variety of other media sources, so the value added of a pan-European awareness campaign would need to be clearly demonstrated. It may be more effective to spend the money to ensure that all toy retailers, distributors and importers, including online shops and supermarkets are well aware of the CE mark and its function, as consumers routinely use manufacturer and retailer brands as reference for quality.

Overall the findings for this study confirm that there is a clear consensus among those interviewed that effective enforcement by national authorities will also improve the credibility of the mark for consumers. However, on the issue of whether it is necessary for consumers themselves to recognise the CE mark or have any other mark, stakeholder opinions are split. From a consumer point of view, a combination of some form of mandatory third party certification, independent audit system and marketing campaigns targeted at intermediaries, may well bring the required result; in this respect the US soon-to-be agreed measures on third-party certification will need examining.

This leads to the following conclusion:

2. ***The CE mark:*** Currently the CE mark cannot be presumed by consumers to be an indicator of safety. Concerns about recent major recalls of toys bearing this mark, as well as concerns about insufficient standards that it represents have also undermined its credibility with consumer stakeholders. There is clear consensus among stakeholders that effective enforcement of toy safety regulations will also improve the credibility of the mark for consumers, but opinions are split on whether it is necessary for consumers themselves to recognise the CE mark or have any other mark. While absolute safety can never be guaranteed, an analysis of proposed solutions by the various stakeholders strongly suggests that a combination of tools may well be the way forward to assure consumers. Such a combination can include obligatory EC-type approval (mandatory third-party certification) for certain categories of toys, an effective audit system for required manufacturing processes as well as marketing campaigns for the CE mark targeted at intermediaries, such as retailers and importers.

3. Statistical evidence regarding accidents and injuries caused by toys

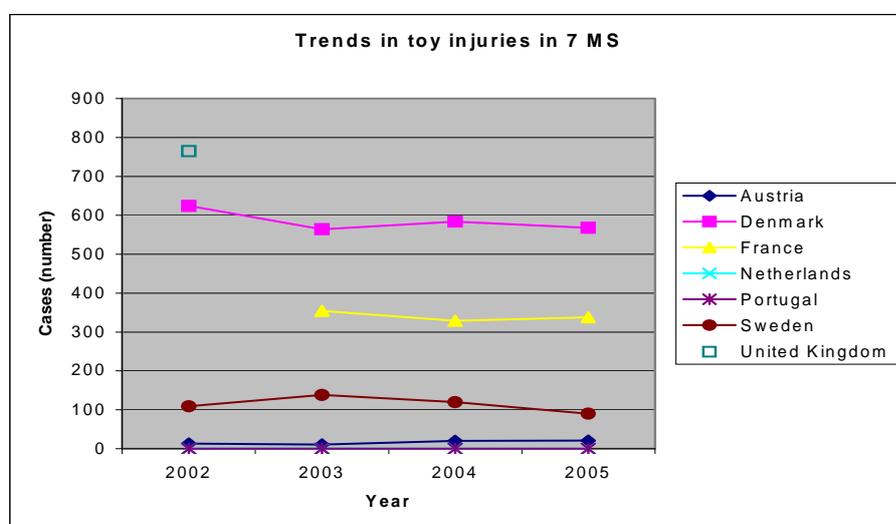
Presentation of, and commentary on, statistics relating to accidents and injuries caused by toys, their trends and likely main causes.

In the EU, little accident data is collected in enough detail to determine whether a toy was involved; even when such data is collected, it is not comparable. Member States that used to collect detailed data no longer do so (the UK's expensive collection scheme was cancelled in 2002). And nothing is collected in a comprehensive, harmonised manner at the EU level. Seven Member States⁶⁹ provide data available in a semi-harmonised way in the European Injury Database, though this is a constellation of different national data collection procedures and information sources. The seven Member States account for about one third of the EU population.

These gaps are not entirely surprising. Good data collection is not easy for this kind of injury. Often less serious injuries where the child does not need medical attention are never reported at all. Where data is collected, it is not made clear whether the accident/injury involved misuse or foul play by the injured party or if it was truly caused by a defect in the toy quality or design. Also some harmful effects of toys cannot so easily be correlated to the toy themselves; for example, harmful effects of lead ingestion will likely not be detected immediately, if at all, and will not be connected to toys in general or to a specific product. The same can be said for toys making loud noises. This fact, in the view of many of our interviewees, underlined the need to apply the precautionary principle, and to have access to reliable scientific data.

Total estimates of the number of children suffering from injuries or accidents due to toys vary at the national level; see the chart on the following page for available estimates. This data only collects information for patients in the age range 0 to 14 years who were brought to the hospital, and includes injuries that may have been caused by reasons other than the design of the toy, such as tripping over one. There may also be variations due to differences in the health systems – it may be that in some Member States injuries are more likely to be treated by local doctors or polyclinics than by hospitals. From the data that was available, there has not been a significant decrease in the number of toy-related incidents in recent years. This is illustrated by the following graph:

Figure 1: Trends in toy injuries (accidents recorded in sampled hospitals)



Source: EU Injury Database. Note: Data relates to age group: children 0 to 14 years old.

⁶⁹ Austria, Denmark, France, Netherlands, Portugal, Sweden, and the UK.

Table 1: Home and leisure accident occurrence in Europe caused by toys (age group: children 0 to 14 years old)

	Austria		Denmark		France		Netherlands		Portugal		Sweden		United Kingdom	
	Cases (sample)	Cases (country)												
2002	13	1,000	624	4,000	N/A	N/A	<5	<1000	<5	<1000	109	2,000	765	23,000
2003	11	1,000	564	4,000	354	35,000	<5	<1000	<5	<1000	138	2,000	N/A	N/A
2004	20	1,000	584	3,000	329	26,000	<5	<1000	<5	<1000	120	2,000	N/A	N/A
2005	21	1,000	568	3,000	338	36,000	<5	<1000	<5	<1000	90	2,000	N/A	N/A

Source: EU Injury Database

Notes: "Cases (sample)" represents the number of accidents recorded in the sample of hospitals participating in the IDB project.

"Cases (country)" represents the number of cases extrapolated at national level.

The number of cases recorded may not be comparable between Member States, due to different national data collection procedures and information sources.

The absence of a clear trend in accident data regarding toys was generally supported in discussions with stakeholders. Although no stakeholder could be very specific about the trend in accidents and injuries in recent years, it was either the impression that the situation was stable or that things were getting better.

One consumer agency representative stated that the most dangerous toys are the ride-along toys; though it is not necessarily a toy defect because these injuries may be related to the way in which the toy is used. The representative said this is true throughout the EU as well as in the United States. UK Home and Leisure accident data (discontinued since 2002) collected very detailed information into the kind of toys causing accidents and confirmed that the ride-on toys cause the most accidents.

Table 2: Accidents caused by category of toy in participating hospitals

Toy Category	Home Accidents	Leisure Accidents
Toy to ride on (car, rocking-horse, etc)	239	91
Small toy car vehicle, plane, boat	148	30
Unspecified toy vehicle	13	4
Toy with projectile	11	3
Other, toy weapon (eg sword, knife, raygun)	55	30
Costume, mask or hat (toy/fancy dress)	9	6
Wendy house	29	11
Other, toy to enter	178	64
Doll, soft toy, teddy bear, action man	75	11
Construction kit, lego, meccano, airfix	28	5
Other toy model - child size or miniature	104	27
Other toy replica - full size	14	4
Chemistry set etc	0	1
Box for toys	136	9
Other, toy	268	107
Unspecified toy	397	35
Small game/toy part	93	16

Source: EU Injury Database; Royal Society for the Prevention of Accidents (Home and Leisure Accident Statistics) (2002)

As regards toy defects, according to RAPEX recalls last year, the majority of toys notified (50%) were caused by choking/suffocating due to small parts, with chemical contents (usually phthalates) as the second most reported category. More detailed information was not available to specify what kind of injuries were caused by the toys.

There is clearly a need for a harmonised data collection across the EU on toy-related injuries, and specifically concerning children. All parties would benefit from improved data collection. Member State authorities could more effectively target their enforcement actions to areas that are the most harmful. For manufacturers, it would be easier to detect problems with certain toy characteristics if they can identify emerging trends. A major manufacturer interviewed noted that the first magnet injuries were identified very late – medical professionals averaged 2 weeks per patient to identify that the problem was related to magnets because the knowledge that magnets could cause such injuries was simply not available.

US statistics

In the absence of reliable comparative statistics available in the EU, a majority of parties (including consumer representatives, market surveillance authorities and manufacturers) interviewed said that they use often the more comprehensive data collected by the US Consumer Product Safety Commission (CPSC) on accidents and injuries caused by toys, as the toys on both markets are very similar. In addition new toys tend to come earlier on the US market, so EU authorities can be alerted to potential problems coming their way.

The CPSC runs the National Electronic Injury Surveillance System (NEISS), which is a “national probability sample” of hospitals in the US. Patient information is collected from these sample hospitals for every emergency visit involving an injury associated with consumer products. This sample then provides an estimate for the total number of injuries and their causes. The NEISS database is available on the Consumer Product Safety Commission’s website, and can be queried by different parameters by any member of the public. In addition, the CPSC produces regular statistical reports on a variety of products, including toys.⁷⁰ The CPSC statistics show, similarly to the EU, that ride-on toys, followed by small toys that can cause choking and asphyxiation are the most important causes of injuries and deaths. Between 1990 and 2005, 166 (57%) of the total of 292 child deaths in the US were caused by choking/asphyxiation. Figures recently released for 2006 show an estimated 220,500 toy-related injuries treated in US hospital emergency departments, related to but not necessarily caused by toys. There were 22 child deaths in 2006, again most caused by choking and asphyxia.

This leads to the following conclusion:

3. ***Assessment of statistical evidence:*** In the EU, the available statistics on toy-related injuries concerning children are clearly insufficient. Data is not easily comparable between Member States, as it results from different national data collection procedures and information sources. Therefore, enforcement authorities rely on US statistical data and own experience. Such research and information are necessary to help policy makers and law enforcers to target their resources to the areas where they can be most effective. There is clearly a need at the EU level for harmonised data collection similar to the US approach. This can be part of a wider statistical initiative related to product-related home and leisure injuries, collected, as necessary through a central EU-level initiative.

⁷⁰ Both the database and consumer product related statistics can be accessed at: <http://www.cpsc.gov/library/library.html>

4. Analysis of recent toy recalls

Analysis of major recent toy recalls, including those made by Mattel, the risks behind those recalls and action underway to address those risks. This part should include also an analysis of whether any deficiencies in market surveillance have been brought to light by the recalls, discussing for example action by the market surveillance authorities in the period between the first and the second Mattel Recall.

Toy recalls have dominated the product safety agenda in 2007 both in Europe and worldwide, engendering a crisis of confidence in the safety-net system. Mattel, the world's biggest toy company, has recalled an estimated 20 million items of its Barbie and Fisher Price ranges due to illegal lead paint levels and small magnets; other famous brands, such as RC2's Thomas the Tank Engine have also recalled an estimated 2 million toys due to paint containing lead. Hasbro, the world's second largest manufacturer recalled over a million toy ovens due to mechanical failure and burn dangers. An overview of the major voluntary recalls, in terms of numbers recalled and geographical coverage, is given in the table below:

Table 3: Major toy recalls Nov 2006 to Nov 2007

Date ⁷¹	Manufacturer/brand	Number of units recalled worldwide	Hazard
Nov 2006	Mattel / Polly Pocket Dolls	4.4 million (US 2.4 million)	Magnets
Jun 2007	RC2 Corp / Thomas and Friends	1.5 million (US and UK)	Lead
Jun 2007	Hasbro / Easy-Bake Oven	1 million	Mechanical error, partial finger amputation and burning
Aug 2007	Fisher Price – Mattel / Nickelodeon & Sesame Street	905,000 (EU 167,500)	Lead
Aug 2007	Mattel / Polly Pockets, Doggie Care, Batman, Barbie&Tanner	17.4 million (EU 6.3 million)	Magnets
Aug 2007	Mattel / Sarge Car	436,000 (EU 116,000)	Lead
Sept 2007	Mattel-Fisher-Price/ Barbie accessories, Geo Trax, Bongo	846,700 (EU 165,800)	Lead
Sept 2007	RC2 Corp / Thomas and Friends	200,000 (US and UK)	Lead
Oct 2007	Mattel-Fisher Price / Go Diego Go	55,400 (EU 12,000)	Lead
Nov 2007	Spin Master (and other brand names) Aqua Dots	4.2 million	Chemical contents: children became unconscious after swallowing beads

Source: CPSC, RAPEX and Mattel for its recalls between August and October 2007

⁷¹ Exact date can vary depending on which country notified first; all of these recalls were first notified in the US through CPSC press release.

As well as these major recalls, the toy category is the most frequently notified on EU's Rapid Alert notification system (RAPEX). The latest statistical overview⁷² shows that altogether 337 toy notifications were made by Member States, or 30% of all notifications. This is an increase in share from the same period in the previous year (22%), most likely as a result of the high profile of recent toy recalls. This indicates an increase in member country pro-active surveillance activity, rather than an increase in numbers of dangerous toys on the market

Apart from those listed in the table above, the vast majority of toy recalls recorded on RAPEX are from smaller brands and manufacturers, sometimes only available in one country. Estimated unit numbers for each toy notified are not published in the RAPEX table, which makes it difficult to judge the overall balance of market penetration, between these smaller-scale safety alerts and the major recalls of last year. The vast majority of notified toys originate in China (not surprisingly as the country is responsible for 80% of the toys on the market in the EU), and for many the manufacturer or provenance is not known.⁷³ A scan through the RAPEX toy notification since January 2007, also revealed only a small minority (two reports from the UK) are notified to be counterfeits. All this is significant only in so far as small brands and importers who breach (or are not aware) of rules are often cited as the most problematic in terms of toy safety on the market, yet from the published available data it is difficult to see how this can be true *in terms of the total number of toys on the market subject to a safety alert or recall*, for the past year at least. Although in a fragmented market such as the one for toys, it can be expected that the majority of individual problems will be associated with actions of small traders, when a problem occurs with toys from one of the major companies, it has a very big impact on the market as a whole, and on public confidence. Some of the stakeholders interviewed suggested that problems with SMEs, importers, distributors or traders, may occur through ignorance rather than deliberate 'cheating'. This would indicate the need for better information provision and training for these economic operators in Member States.

Risks behind the recalls

With one exception, all the major recalls between November 2006 and November 2007 were due to the dangers of small magnets and lead in paint.

Exposure to lead, particularly by children, is a well-documented and known hazard, which can stunt mental and physical development, therefore even in cases where no acute poisoning can be expected, avoidable contamination with lead is unacceptable. Lead-based paint has been a common concern for a long time; more recently dangerous levels of lead have been found in children's metal jewellery in the US (and been subject to a number of recalls, the most recent on 21 Nov 2007).⁷⁴ As it is illegal, paint containing lead is not available on the EU market (or in the US), so this problem has been strongly connected with deficiencies in the monitoring of production and conformity processes by the big manufacturers and their contractors in China. Mattel, in its response to the survey by Civic Consulting, confirmed that the lead-related recalls occurred because a minority of subcontractors circumvented safety procedures and requirements. The manufacturer also states that it has since implemented a new three-stage safety check for lead in paint to help prevent future occurrences.

The hazards associated with swallowing small powerful magnets have come to wide public prominence following the first Mattel recall in November 2006, which was due to an original product design fault, rather than factory production processes:

⁷² RAPEX statistics. (1 January-31 October 2007). Accessible from: http://ec.europa.eu/consumers/safety/rapex/stats_reports_en.htm

⁷³ In 13% of all notifications the country of origin was not determined, however the report does not state how many of these were toys.

⁷⁴ See for example: <http://www.cpsc.gov/CPSPUB/PREREL/prhtml08/08093.html>

“The magnets can be swallowed, aspirated by young children or placed by a child in their nose or ears. When more than one magnet is swallowed, the magnets can attract each other and cause intestinal perforation, infection or blockage, which can be fatal. Aspiration to the lungs requires immediate surgery. Magnets placed in the nose or ears can cause swelling and be difficult to remove.”⁷⁵

Dangers of small magnets in children’s toy jewellery were first reported by UK doctors in 2002 who treated children at the Sheffield Children’s Hospital, while the first magnets-in-toys incidents started in the US as far back as 2005; one company paid \$13 million in settlement to affected consumers.⁷⁶ The French customs authority (DGDDI) warned its services of the magnet problem generally, and discussed it in a Commission working group, before the first Mattel recall took place in November 2006. Five magnet-related recalls took place in the year to April 2007, involving some 8 million products from various brands. By the time of the second Mattel recall in August 2007 the US Consumer Product Safety Commission (CPSC) altogether reported some 570 cases of magnets coming loose and at least 33 intestinal injury cases, and one infant death. The most recent independent inspection report on the state of toy safety in the US conducted by the Public Interest Research Group (U.S. PIRG) found several examples of toys and jewellery on the market, from various brands, that contain dangerous small magnets, some of which were poorly designed.⁷⁷ There are no similar reported figures or overviews available for the EU.

Consumer organisations, and others, questioned both Member State surveillance authority enforcement, and the adequacy of their powers to improve assessment and conformity procedures by manufacturers, as well as apparent manufacturers’ inaction, given that the dangers were known for quite some time.

Apart from the lead and magnet risks outlined above, and associated with the major manufacturer recalls during 2007, the majority of risk alerts notified by Member States authorities on the RAPEX system between January and October 2007 were for choking hazards (212 alerts), followed by chemical content in toys (158, most often phthalates).

Member States actions

The assessment in this section is based on interviews with stakeholders carried out for this study, and particularly market surveillance and customs authorities (see Annex 1 for a list of stakeholders interviewed). No evaluations of the effectiveness of Member States’ product safety enforcement activities are available in the public domain, including any reports required by article 12 of the Toy Safety Directive (see section 1, Member States’ powers above).

Authorities from Member States interviewed operate primarily on a “post-market surveillance” system, and normally will not check toys until after they have received a complaint, or information from the manufacturer or importer. In several countries, there are also inspection programmes or ‘plans of control’, which target specific categories of toys to be checked systematically and randomly. This happens especially in the run up to Christmas. In Poland for example each of the regional inspectorates has to make about 1,000 random controls a year (for all products). Some of the authorities interviewed reported increased resources devoted to toy surveillance. In the Czech Republic for example all toys and child products for children under 3 are currently monitored, directly due to the Mattel recalls. In the UK, detailed surveys of the toy market have been carried out in the last month by several local authorities joining forces.

⁷⁵ 1st Mattel recall: www.cpsc.gov/cpsc/pub/prerel/prhtml07/07039.html

⁷⁶ *Trouble in Toyland, 22nd Report*. US PIRG. (Nov 2007). Available from: <http://www.uspirg.org/issues/toy-safety/trouble-in-toyland-report>

⁷⁷ As above

In terms of specific responses to the magnet toys recall, there were significant differences between the countries interviewed – France in particular had a pro-active investigation and has changed its customs control procedures at the Mattel warehouse, and investigated all similar toys with magnets from the manufacturer, not just those recalled; it has also introduced measures, ahead of the EU, to place a warning on all toys containing magnets starting on 1 January 2008. In Germany, working groups were formed between different regional inspectorates to collaborate in testing other toys for magnets following the first Mattel recall. UK reported extra checks on shop shelves after the second recall, and convening a Toy Summit with all stakeholders after the third and fourth recalls, aimed at increasing vigilance.

There are also differences in how consumers are informed about recalls – in some countries voluntary recalls are the responsibility of the manufacturer, with little involvement from authorities, while in others (Czech Republic and Germany for example), consumer organisations are actively involved both in informing consumers and receiving complaints.

Two of the authorities identified the considerable variation in market surveillance between Member States as the most serious problem, which needs addressing. One agency, in particular, identified the varying degrees of authority awarded to inspectors as the most important variable in effective market control, referring as good practice examples to the powers given to French inspectors and UK trading standards authorities. Both have broad and extensive powers, for example power to seize products, suspend a product from the market, and order destruction of products. Resources available and overall numbers of inspectors allocated to product safety were also mentioned as critical, though accurate figures are difficult to ascertain, due to different systems and allocation of resources in different states.

Most stakeholders, in fact, including consumer, industry and standards bodies agreed on the need for improved market surveillance. The standards body (CEN), mentioned in particular the need for more inspections in a system where goods are surveyed after they are placed on the market; as well as increased training and more resources for customs officials, as most toys in the EU are now imported.

The role of customs, their powers and co-operation with market surveillance authorities in fact emerged as a very important issue to be addressed. As clearance of imported toys in one country's port of entry means free movement throughout the single market, strong conformity checks at the external borders may save considerable resources to authorities way down the market line. Some importers and rogue traders may be 'port shopping', finding the EU's entry points where controls are less strict. Some substantial differences between Member States systems at customs emerged from interview discussions. For example in the UK customs officers do not have a formal role in toy inspections, but typically they have a good relationship with local trading standards officials for that area, and notify them of any suspicious shipments sampled; however, not every shipment can be checked, as there are far too many. In France there is a more formal co-operation arrangement between the ministries in charge of customs and consumer protection, with customs having powers to inspect, and custom-clearance controls "are favoured". Customs and market surveillance authorities also share two laboratories specialised in the control of toys.

One final issue raised by those interviewed was co-operation between market surveillance authorities in different Member States. Beyond RAPEX, opinions varied about whether or not such co-operation should exist. The UK would like to see more EU-wide co-operation, for example different authorities could be looking at different batches of toys, share information and avoid duplication, as most of them survey the market running up to Christmas.

The toy recalls of 2007 had the effect of putting into sharp focus differing practices in market surveillance and enforcement across the Member States. In summary, and perhaps not surprisingly, more extensive powers and resources, including in reviewing industry conformity assessment procedures; better-trained and resourced customs, as well as more effective cross-border co-operation,

including in shared testing, were considered as the most important by authorities. It would be useful to establish a catalogue of good practice examples, with evaluations, in individual Member States, as well as a clear risk assessment of gaps in the system, naming individual Member States and agencies as necessary. A project is currently being undertaken by PROSAFE (an informal network of market surveillance authorities in Europe) to develop guidelines for best practices.⁷⁸

Commission action points for Member States

The Commission very recently published the results of its “Stocktaking” on consumer product safety controls, focusing on toys, which included a review of Member States’ activities in the aftermath of the major toy recalls as well as generally the effectiveness of national market surveillance and enforcement systems.⁷⁹

Although no detailed overview of individual Member States actions are given (and no country reports are available in the public domain), the Stocktaking report points to national surveillance and enforcement systems as a high priority to be addressed. It gives the striking evidence that despite the large scale, and high profile, of the recent toy recalls, only a tiny proportion (1-2% on average) of the toys have been returned, including the high-risk magnetic ones. To identify the reasons for this, a pan-European consumer survey is to be commissioned early in 2008.

Other issues identified in relation to Member State enforcement levels in the report are the general need to strengthen co-operation between market surveillance and customs authorities, cross-border co-operation and better-targeted co-ordination of surveillance actions. All these echo issues identified also by stakeholders interviewed for this study. Last but not least, the Commission also plans to introduce a number of indicators in the forthcoming Consumer Protection Scoreboard, to enable evaluation of Member States’ efforts in the area of product safety.

Manufacturer and retailer responsibility

With regard to manufacturers and retailers, the Commission Stocktaking is acknowledging that they have procedures and systems in place. It is nevertheless proposing as a priority to conduct an audit of (all) business safety measures in the toy supply chain, education and training on EU toy safety standards for Chinese partners and work to improve recall success rates.

This leads to the following conclusion:

4. ***Analysis of recent major toy recalls:*** Recent major manufacturer recalls have had a major impact both on the market and on consumer confidence. They have brought to public attention differing practices in market surveillance and enforcement systems across the Member States. For the toy industry, they have brought to light significant deficiencies in ensuring that the toy supply chain is safe, and the long time it can take to address emerging serious problems, such as the one with small magnets. Clearly, as identified also by the Commission, national surveillance and enforcement systems are top priorities to be addressed. However, publicly available evaluations, comparative reports and indicators would be needed to enable more practical pointers for future policy. A review of good practice examples, with evaluations, in individual Member States would be useful in this respect, as well as a clear risk assessment of gaps in the enforcement systems.

⁷⁸ The outline of the project called EMARS (Enhanced Market Surveillance through best practice) can be seen on www.emars.eu, last accessed 14 December 2007.

⁷⁹ *Stocktaking on Product Safety*. (Nov 2007). http://ec.europa.eu/consumers/safety/news/stocktaking_report_en.pdf

5. Follow-up by Member States of RAPEX notifications

Analysis of follow-up by the Member States of notifications published in the Community Rapid Information System (RAPEX).

According to stakeholder interviews, there are differences in Member States between follow-ups of voluntary and mandatory recalls. On the whole, voluntary recalls are the responsibility of the business initiating the recall, not of the market surveillance authority, with the result that they may not be followed-up and checks may not be made on shop shelves or on how thoroughly the product was recalled. The level of information reaching consumers is also not the public authority's responsibility in such cases. This may have had an impact in Member States regarding the Mattel recall, which was voluntary, and may explain the low return rates reported.

For example, in Poland after a recall (voluntary) there is no check on the market, only if a consumer calls in to notify them that a product is still on the shelves. In Germany, follow-up is completely voluntary for each inspector in the region, and there is no authority regarding the practicalities of a recall at the federal level. In Sweden too, typically the shop shelves are not checked in voluntary recalls, though they were asked to do so for the first time following the Mattel recalls. In the UK, voluntary recalls typically involve local trading standards authorities because of the relationship between the business and the local authority (home authority principle), but there is no legal obligation for manufacturers to involve authorities in voluntary recalls. In the Czech Republic the follow-up actions after a RAPEX notification are the same, regardless of whether it is a voluntary or mandatory recall.

According to stakeholders interviewed, there is no obligation to remove the products from circulation, following a notification. In Germany, for example, if it is not considered necessary by a Bundesland, the inspector does not have to remove the product. In the Czech Republic, products notified on RAPEX are typically re-tested, and a period of 45 days is allowed for this purpose; if tests confirm the problem notified, trade inspectors are required to check the shops for the product and remove it from shelves.

Stakeholders also stated that follow-up of RAPEX is likely to happen less and less as the number of notifications increases. Most authorities noted that the number of notifications is a big problem (in 2007 approximately 1,600 notifications)⁸⁰ and very time consuming, especially to search for which products need immediate attention and which are irrelevant, for example not on their market.

There were also specific issues identified with how the RAPEX system is used by Member States. These included:

- Need for an increased understanding about what the purpose of RAPEX is, which is exchange of information quickly on products that have the potential to cause immediate or serious threats to consumers. There are reportedly a significant number of notifications that do not comply with this purpose, with the result that notifications may be irrelevant so authorities will not look for all toys listed on the system. As one authority said: "The system itself is not flawed in any way, but the way people are using the system is not quite correct". Another stated that it prefers to make only one or two notifications per risk (magnets for example), so that the authorities see the risks and are aware of the dangers, rather than list every toy found with the problem.

⁸⁰ Estimate. Between January and November 2007 the Commission validated and transmitted 1,485 RAPEX notifications to Member States and EEA/EFTA countries including: 1,261 Article 12 notifications (serious risk), 12 Article 11 notifications (moderate risk) and 212 notifications for information (Source: RAPEX statistics 1 January – 30 November 2007).

- The numbers of notifications on RAPEX have increased considerably, and it is reportedly not possible to follow them all up. Comparison statistics on numbers of notifications by country may create a sense of ‘competition’. RAPEX is a very time consuming system to operate, and used unwisely, puts unnecessary burdens on under-resourced inspection services.
- There may be problems in individual Member States, due to differing competencies of different authorities. For example in Germany one authority deals with structural or mechanical risks (magnets), and another with chemical risks (lead).

This leads to the following conclusion:

5. **RAPEX:** The Community Rapid Alert System is clearly valued by market surveillance authorities, but there is also scope for improving its effectiveness to ensure, for example, that only products with appropriate levels of risk are notified, or products that are likely to be present in more than one Member State. RAPEX reports should also include monitoring and feed-back on Member States handling and follow-up of the recalls; reports of any injuries caused by the toy or number of complaints received by the alerting authority could also be considered to be included in the system.

6. Toy safety legislation in the United States

A brief comparative analysis of relevant federal legislation in the US, and the role and powers of the US Consumer Product Safety Commission.

The legislative situation on toy safety in the United States (US) is currently fluid, as the existing law is in the process of being replaced with a new one. Two bills are currently going through Congress: Senate bill S 2045 and House of Representatives bill 4040.⁸¹ A final bill was expected imminently at the time of completing this study. The following section refers first to the existing legislation, then to the main changes expected in the new one.

Consumer safety at the Federal level⁸² is the responsibility of the Consumer Product Safety Commission ('CPSC'). The CPSC was established by the Consumer Product Safety Act ('CPSA') in 1972. The definition in the CPSA of a consumer product is broad enough to encompass toys.⁸³ Only a couple of additional references to toys appear in the CPSA, for instance an amendment regarding lawn darts and other similar sharp-pointed toys. In addition an obligation to report incidents causing children to choke due to small parts was introduced. The CPSC has issued some regulations relating to children's toys (examples might include those for bicycle helmets and swimming pool slides), but in recent years voluntary standards have been preferred and the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM) have produced voluntary standards which play an important role. For example ASTM has produced standards for small magnets in toys, published in May 2007, which are used by major manufacturers for the EU market also, while an equivalent EU standard is still in development.

The CPSC also enforces other legislation which may impact on toy safety, such as the Flammable Fabrics Act and, most significantly, the Federal Hazardous Products Act (FHPA). Not only are hazardous substances defined to include "any toy or other article intended for use by children which the Secretary by regulation determines... presents an electrical, mechanical, or thermal hazard"⁸⁴ but banned hazardous substances are defined to include any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted.⁸⁵ Toys can also be misbranded hazardous substances.⁸⁶ It can be determined by regulation that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard.⁸⁷

Any toy or other article intended for use by children, which contains a defect which creates a substantial risk of injury to children can be the subject of notification requirements⁸⁸ or obligation to repair, replace or refund.⁸⁹ There may also be a prohibition on selling, distributing or importing such toys. This provision, which requires companies to report to the CPSC, on a timely basis, any potential hazards with their products that have come to light is considered as one of the most effective in the act; there are penalties if companies fail to conform. Some of the major toy recalls of 2007 have been the result of this provision in the US legislation.

⁸¹ Under the US system, each house votes on a separate bill, which are then negotiated if different and merged into one.

⁸² There may also be state laws to the extent they are not pre-empted by Federal legislation.

⁸³ The definition in the CPSA of a consumer product is "any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise".

⁸⁴ S.2.(f)(D)

⁸⁵ S.2(q)(1)(A). There are some exemptions e.g. for chemical sets

⁸⁶ S.2(1)(p)

⁸⁷ S.3(2)(e)1

⁸⁸ S.15(a)

⁸⁹ S.15(b)

A significant change was enacted in 1994 when the Child Product Safety Act (ChPSA) introduced a new s.24 to the FHSA dealing with labelling requirements for certain toys and games. This required choking hazard warnings on toys and games or balloons, small balls and marbles aimed at children over 3.

Under current legislation the CPSC has regulatory authority over 15,000 different products, including toys. To enforce the legislation it can issue rules and standards, and it can recall products that fail to meet those standards. Under the other acts that it enforces, such as the FHSA, it has also powers to recall products that are dangerous or volatile. The CPSC can also ban products when a standard is not feasible; seize products that violate mandatory standards; seek civil and criminal penalties for the reporting requirement; and educate consumers regarding product safety. As in the EU, the CPSC operates a 'post-market' surveillance system, where it is the manufacturer's responsibility to ensure products are safe before placing them on the markets. CPSC field inspectors can serve subpoenas, collect samples for testing, and conduct import surveillance at ports of entry.⁹⁰ So CPSC has broad authority, but what it does not have is sufficient resources. The current CPSC budget is half of what was granted to it in 1973 (adjusted for inflation) and less than half the staff it had at its peak. It has only around 85 investigators around the United States (not including supervisors and other managers in the field offices). Every CPSC investigator is assigned to certain geographical regions which include ports of entry for goods being imported into the U.S. (the US has around 300 ports of entry). CPSC investigators work at these various ports around the U.S. in conjunction with U.S. Customs and Border Protection personnel on an as needed basis.⁹¹ In addition the agency has limited authority to punish wrongdoers – the maximum current fine it can impose is \$1.8 million, considered inadequate as a deterrent. Other problems highlighted by consumer organisations included inadequate standards for chemicals in current legislation (for example levels of lead and phthalates) and Section 6(b) of the Consumer Product Safety Act which according to one consumer group "gives corporate wrongdoers power over the CPSC's ability to disseminate information about dangerous products to the public".⁹²

Senator Mark Pryor's (D-Ark) CPSC Reform Act of 2007⁹³ addresses most of the above concerns, and seeks to strengthen the powers of the CPSC in several respects.⁹⁴ Crucial to the present discussion is the proposed requirement that there be third party certification of children's products by a qualified non-governmental independent third party that would certify the product conformed to consumer product safety standard or is not a banned hazardous substance under such a rule.⁹⁵ A child product is defined as a product (other than medication, drug or food) designed or intended for use by, or care of, a child under 7.⁹⁶ It is understood there is pressure from consumer groups to raise this age level.

⁹⁰ CPSC field inspectors can serve subpoenas, conduct import surveillance at ports of entry, conduct inspections (either announced or unannounced) at CPSC discretion during reasonable hours, collect documents, and collect samples at cost for further examination. They cannot halt production but can make recommendations to Compliance Officers in the CPSC who can examine the samples and other relevant evidence to determine the appropriateness of halting production. Consumer complaints are reviewed by both field investigators and compliance officers as well as staff from the hazard offices at CPSC to identify violations, product defects, trends and patterns of problems. Source: personal communication CPSC, December 2007

⁹¹ Personal communication CPSC, December 2007

⁹² Testimony of Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group Legislative Hearing on the CPSC Reform Act of 2007, S. 2045

⁹³ Senate Bill S.2045; the H.R. Bill 4040 has similar, though not identical, provisions.

⁹⁴ For instance it would make it illegal to sell recalled products, improve CPSC's ability to disclose safety information to the public, and raise the cap on the agency's penalties to \$100 million. State Attorneys General would also have the ability to enforce CPSC regulations and there would be protection for whistleblowers.

⁹⁵ S.10

⁹⁶ S.10(e)

There will also be a new requirement for the manufacturer of children's products to place distinguishing marks on the product or packaging so as to enable the ultimate purchaser to ascertain the source, date and cohort (including the batch, run number, or other identifying characteristics) of production of the product.⁹⁷ Toys with lead (accessible or inaccessible) are proposed to be banned if they contain more than a trace of lead.⁹⁸

This leads to the following conclusion:

6. ***United States toy safety:*** In contrast to the EU where toys have both their own detailed regime in the Toy Safety Directive and potentially any gaps can be addressed under the GPSD the existing US approach appears less comprehensive or at least to provide less detailed rules. Last years' toy recalls have highlighted deficiencies in the legal and enforcement systems and this has provoked introduction of new legislation. If passed this would seriously strengthen product safety control in the US, particularly the requirement of third party certification for all toys and enhanced resources and powers for the CPSC. There are, however, good practice examples in the US system, some of which could be of benefit to the EU and its Member States: in particular the broad enforcement powers given to the CPSC, including its authority to impose penalties; the proposed increase in penalties to \$100 million; and the obligation for manufacturers to report potential product safety hazards to the CPSC, backed by civil penalties for non-compliance.

⁹⁷ S. 11

⁹⁸ S.23

7. Overall conclusions

Highlighting any areas where clear problems or gaps have been identified in the Community legislative and administrative framework, including the availability of information to consumers

This study is based on information available in the public domain, and on in-depth interviews with national authorities, the Commission, consumer organisations and industry conducted in a fast changing environment with almost daily breaking news, the latest of which has been the publication, by the Commission Health and Consumer Protection Directorate General of its Stocktaking exercise on product safety controls, with a specific focus on toys.⁹⁹

The first general conclusion is that there is a remarkable degree of consensus amongst the stakeholders interviewed, and the conclusions from the Commission and the European Parliament resolution, regarding the weaknesses in the EU product safety ‘gate-keeping’ system. These conclusions are not entirely new, and can be found also in the impact studies commissioned for the revision of the Toy Safety Directive and the so-called New Approach, and various stakeholder views expressed as long ago as 2004. The major toy recalls of the last year, have re-enforced these views, and have also raised public awareness regarding holes in the safety net at all levels: business, legal and administrative.

What is still lacking, however, is sufficient detailed hard evidence, at least in the public domain, to support some of these views, and to help policy makers make policy fit for purpose. For example, while there is wide agreement that enforcement at the national Member State level is an acute priority, there are no publicly available (comparative) evaluations, reports or indicators to enable substantiation of concerns about weaknesses in the system. Equally, there is a widely held view that the biggest safety problems in the European toy market lie with small importers or distributors selling at fairs and market stalls, rather than with the big own-brand companies, but for this too it is difficult to find evidence or comparative market penetration figures and therefore levels of risk. Injury figures and statistics as well are woefully inadequate in Europe, so policy makers rely on impressions and US figures rather than solid evidence.

Another overall conclusion is that the toy market is complex, global and fragmented, and therefore involvement and co-operation to ensure the safety of products is needed from all stakeholders concerned on the EU level, in the Member States and third countries where the majority of toys on the European market are manufactured.

The following is a brief overview of identified gaps and weaknesses in the toy safety net, outlining also possible ways forward:

Toy safety legislation

The ongoing revision of the Toy Safety Directive is needed to address changes, in the last 20 years, of the structure of the toy market, new technological developments in the manufacture of toys, and perceived deficiencies in the safety net by enforcing authorities and economic operators. Areas that need particular attention are: stronger and more harmonised enforcement provisions in the Member States; enhanced essential toy safety requirements in the Directive; and more responsive and accountable implementation measures for key safety requirements. These aims could be achieved through:

⁹⁹ Latest Safety News. DG Health and Consumer Protection Online. Accessible at: http://ec.europa.eu/consumers/safety/news/index_en.htm

- ⇒ Broader powers and resources for national authorities, accompanied by effective civil and criminal sanctions including for failure to notify authorities regarding known hazards in toys;
- ⇒ The ban from use in toys of hazardous chemicals that potentially could cause severe health and development damage in children;
- ⇒ Extending the Committee Procedure to cover specification and implementation measures for key safety requirements of the Directive.

Product standards

As product standards form an integral part of EU New Approach legislation they need a brief mention here. The small magnets recalls of 2007 highlighted also some weaknesses in the EU standards-making process, and in particular their slow response to new potentially hazardous technological developments (a standard for small magnets will take another 12-18 months to develop). A comitology procedure (see above) could enable a quicker reaction with an option to specify new details in the essential requirements of the Directive itself. This would be not dissimilar to the US legislative model, where standards can be also issued by the regulator, which potentially makes the system faster and more responsive.

The CE mark and how well it serves consumers

The credibility of the CE mark as an indicator of safety has been undermined by recent major toy recalls. In addition there are consumer stakeholder concerns that the standards it represents may not be sufficiently high. As the mark is a messenger only, improved standards and enforcement would also improve in time its credibility. While information campaigns to consumers on the CE mark, are likely to be of limited use, practical measures to assure consumers may include a combination of tools, for example:

- ⇒ EC-type approval (mandatory third-party certification) for certain categories of toys;
- ⇒ Independent and regular audits of manufacturer testing and production;
- ⇒ Marketing campaigns for the CE mark, targeted especially at intermediaries (retailers and distributors).

Accident and injury statistics

Available and comparable statistics in the EU for toy-related injuries concerning children are very poor, and of little use to policy makers who rely on US National Electronic Injury Surveillance System (NEISS). As such statistical research and information are useful tools for policy makers and law enforcers to target their resources, there seems to be a clear need for such data to be gathered at the EU level also, possibly as part of a wider product safety-related initiative.

Enforcement and market surveillance

Last year's stream of major toy recalls have brought to public attention weaknesses and differences in market surveillance and enforcement systems across the Member States, as well as the long time it can take to address emerging new hazards, such as the one with small magnets in toys. As well as stronger powers for authorities and ability to impose effective fines (see Toy Safety Legislation, above), such deficiencies could also be addressed through:

- ⇒ Increased attention to tackling dangerous imported toys at the ports of entry into the EU, through, for example giving powers to customs authorities to inspect and stop faulty batches of toys entering the market;
- ⇒ Effective co-operation between different countries' authorities through, for example, shared product testing arrangements;
- ⇒ Production of good practice guidelines, comparative evaluations, publicly available reports and indicators.

Recalls and alert systems

First voluntary alerts for major recalls of magnets and lead in the past year were made in the US, possibly due to the legal obligation for manufacturers to notify the Consumer Product Safety Commission (CPSC) when a safety hazard related to their products comes to light. The majority of mandatory toy recalls on the EU's product safety rapid alert system, RAPEX, are brands from small companies. RAPEX notifications do not give unit numbers circulating for those toys, or their availability throughout the EU market, therefore risk evaluation for authorities can be difficult and not all notifications are followed up in Member States. There is therefore scope for improving the system's effectiveness through, for example:

- ⇒ Ensuring products notified have appropriate risk levels and are available in more than one country;
- ⇒ Reports from authorities on follow-ups, as well as reports of any injuries and number of complaints received;
- ⇒ A more user friendly and informative format, that could be also used by other stakeholders, media and consumers for spreading the information.

The industry

Recent recalls have also brought to light deficiencies in the practices of industry in ensuring that its toy supply and production chain is safe, and the long period of time it can take major toy companies to put right emerging serious problems with the design of their products.

The safety of toys placed on the market by small companies (importers and distributors) are of bigger concern to authorities than those of big own-brand companies who have a brand reputation to safeguard and large resources to ensure safety of their products. However, there is little evidence available to ascertain comparative levels of risk versus market penetration. Some of these problems are currently being addressed through EU-level measures, such as an audit of business safety measures and evaluation of the toy supply chain. In addition:

- ⇒ All retailers, particularly big chains and supermarkets, could be encouraged to engage in upstream assessment of toy safety standards from all their suppliers, and edit the choice on their shelves, to safe toys only, for consumers. This is already happening in some cases, it could be more wide spread and better targeted.

Communication with consumers

Ensuring effective communication with consumers includes warnings, labels and instructions on toys and their packaging, as well as reaching consumers effectively when dangerous toys are recalled from the market. Research has shown current use of product safety warnings to be ineffective and be partly driven by business concerns over liability.¹⁰⁰ An additional concern for consumer stakeholders is the lack of easily accessible safety information and warnings when consumers purchase toys via the Internet.

The draft revised Toy Safety Directive contains an entire annex dedicated to requirements for warnings and instructions to consumers on toy safety,¹⁰¹ maximum out-reach and effectiveness for consumers of such information could be achieved through:

- ⇒ Delegating development of good practice and effective design of warnings and instructions to consumer groups, retailers and manufacturers working together;
- ⇒ Testing the understanding and readability of safety information on toys with parents, before introducing them on the market;
- ⇒ Toys displayed for sale over the Internet could display the appropriate warnings prominently in the toy description window.

More effective communication with consumers on product recalls is the primary duty of manufacturers and national authorities, which could employ more effective marketing means of reaching their target audience than they do at present. Legal provisions, however, could ensure that marks on the product or packaging make it easy for consumers to identify the originator of the product, on the model of the proposed US legislation.

¹⁰⁰ *Warning: Too Much Information Can Harm, final report*. (November 2007). UK Better Regulation Executive and National Consumer Council. Last accessed 17 December 2007 from:
http://bre.berr.gov.uk/regulation/reform/next_steps/too_much/

¹⁰¹ Commissioner Kuneva response 87 to question on warnings. Last accessed 17 December 2007 from:
<http://blogs.ec.europa.eu/kuneva-webchat/participate-in-the-safe-xmas-webchat-with-commissioner-kuneva/#comments>

Annex I – List of stakeholders contacted

Interviews

Organisation	Industry	Date
DG SANCO	EC Authority	November 16, 2007
DG Enterprise	EC Authority	November 15, 2007
ANEC - European association for the co-ordination of consumer representation in standardisation	Consumer association	November 26, 2007
US Consumers Union	Consumer association	November 2007
US PIRG - US Public Interest Research Group	Consumer association	November 26, 2007
Forbrugerrådet (<i>The Danish Consumer Council</i>) and representative of the CEN technical committee	Consumer organisation	November 21, 2007
Department of Trade and Industry, UK	Market surveillance authority	November 15, 2007
Konsumentverket (<i>Swedish Consumer Agency</i>)	Market surveillance authority	November 13, 2007
Ministère de l'Économie et des Finances et de l'Industrie, France	Market surveillance authority	November 21, 2007
Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (BAuA) (<i>Federal Institute for Occupational Safety and Health</i>)	RAPEX authority	November 13, 2007
Urząd Ochrony Konkurencji i Konsumentów (<i>Office of Competition and Consumer Protection</i>), Poland	RAPEX authority	November 28, 2007
Ministerstvo průmyslu a obchodu (<i>Ministry of Industry and Trade</i>), Czech Republic	RAPEX authority	November 21, 2007
TIE – Toy Industries of Europe	Manufacturers' association	November 28, 2007
Lego	Manufacturer	November 20, 2007
CEN - European Committee for Standardization	Technical committee	November 20, 2007

Written Responses

Organisation	Industry
Mattel	Manufacturer
General Inspectorate for Consumer Protection, Hungary	Market surveillance authority

Personal communication

Organisation	Industry
BEUC – The European Consumers' Association	Consumer association
Österreichische Agentur für Gesundheit und Ernährungssicherheit (<i>Austrian Agency for Health and Food Safety</i>)	Market surveillance authority
CPSC	US Authority

Annex II – Member State authority questionnaire

STUDY OF THE SAFETY AND LIABILITY ISSUES RELATED TO TOYS

*

MS AUTHORITIES

The European Parliament has commissioned Civic Consulting to conduct a study on safety and liability issues related to toys. We very much appreciate the time you have taken to contribute to this study.

1. General details (Name, organisation, date of interview):

Please specify

2. Legislation. The EU Directive 88/378/EEC is going through an amendment process. In your view – does it need amending and why? And if yes, how should it be amended?

Please specify

3. CE Mark is this an adequate measure? Do you think consumers understand what it means? Any research on this in your country? Do you think it can be improved/other consumer-oriented measures put alongside it/or in its place, and if so, how?

Please specify

4. Please tell us about market surveillance processes in your country (with literature reference if possible). Specifically for toys, are there independent tests/spot-checks in place?

Please specify

- a. **What authority do you have to ensure toy manufacturers' compatibility with European safety requirements or to monitor individual manufacturers' internal assessment procedures / technical documentation?**

Please specify

5. **What measures do you have in place following a RAPEX alert/recall (i.e. how do you monitor the recall, what measures do you take to alert consumers, how do you follow-up the recall)?**

Please specify

- a. **What specific action did you take between the 1st (on November 6, 2006) and 2nd recall of Mattel toys (on August 14, 2007)?**

Please specify

- b. **Regarding your actions between the 1st and 2nd recalls of Mattel toys, were there any structural changes made to your assessment procedures as a result?**

Please specify

- c. **After the 1st recall in November 2006, were there any extra inquiries made into other Mattel products containing magnets that were not explicitly listed in the recall?**

Please specify

6. **Do the actions you take for voluntary recalls differ from those you take for mandatory recalls?**

Please specify

- 7. Do you have any statistics on recent recalls (number of toys recalled worldwide and in your country, reasons for the recall, etc.)?**

Please specify

- 8. Do you have any statistics on injuries or accidents caused by toys? What is your impression of trends in accidents/injuries caused by toys? What are their likely main causes?**

Please specify

- 9. Any other comments?**

Please specify

Annex III – Manufacturer questionnaire

EVALUATION OF THE SAFETY AND LIABILITY ISSUES RELATED TO TOYS

*

QUESTIONS FOR MANUFACTURERS

The European Parliament has commissioned Civic Consulting to conduct a study on safety and liability issues related to toys. We very much appreciate the time you have taken to contribute to this study.

1. General details (Name, organisation, date of interview):

Please specify

2. Legislation. The EU Directive 88/378/EEC is going through an amendment process. In your view – does it need amending and why? And if yes, how should it be amended?

Please specify

3. CE Mark. From your perspective, is this an effective tool to ensure toy safety? If not, please explain, as well as how it should be changed/modified/replaced?

Please specify

4. How do you, if at all, communicate toy safety issues to European consumers?

Please specify

5. What measures / processes does the industry have in place to ensure quality/safety from the supply chain?

Please specify

- a. **Does TIE play a role in ensuring the quality and safety of the toys placed on the European market by the industry?**

Please specify

6. **How would you assess the risks associated with recent recalls (i.e. what would have been the dangers/risks if the recalls did not happen)?**

Please specify

- b. **What role, if any, do you play following a recall of toy products?**

Please specify

- c. **How do you think the recall of Mattel products was conducted in the EU, both after the November 2006 recall and the related recall on August 14, 2007?**

Please specify

- d. **As a result of these large-scale recalls, have there been any changes made by the industry with respect to the quality/safety of toys?**

Please specify

7. **Do you have any statistics on your recent recalls (number of toys recalled worldwide and in the EU, reasons for the recall, etc.)?**

Please specify

8. **Any other comments?**

Please specify