



Council of the European Union
General Secretariat

Brussels, 14 January 2025

**Interinstitutional files:
2023/0290 (COD)**

WK 312/2025 ADD 1

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NOTE

From:	Delegations
To:	Working Party on Technical Harmonisation (Safety of Toys)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the safety of toys and repealing Directive 2009/48/EC - MT comments

WORKING PARTY ON TECHNICAL HARMONISATION (SAFETY OF TOYS)

Friday 6th December 2024

Malta's Written Comments

Presidency Flash (WK 15332/2024)

Scope: Line 93a

Line 93a: MT can be flexible towards the EP position, however the Council mandate with regards to the precautionary principle is preferred.

Definitions: Lines 106, 106a, 135

Line 106: MT can be flexible towards the use of the word 'legislation' versus 'law', for the definition of 'Union harmonisation legislation'.

Line 106a: Definition of 'intended for the use by' is deemed not necessary.

Line 135: MT strongly agrees with the EP position, that of deleting the definition 'substance of concern', since the list of substances of concern in the ESPR contains substances that are outside the scope of the Toys Safety Regulation.

Product requirements: Line 140

Line 140: MT can be flexible towards either title for Article 5.

Warnings: Lines 146, 159, 161

Lines 146: MT can be flexible towards the EP position.

Lines 159: The EP added text as regards the QR-code is not entirely clear. Line 159 lists warning provisions, thus the intention to use a QR-code for instructions might be misinterpreted to include the warnings as well. Putting the warnings' and instructions' requirements in separate points is ideal. Thus, the Council mandate is favoured.

Lines 161: The Council mandate is clearer and more generic; thus, it is favoured.

Obligations of manufacturers: Line 171 (in connection with 190, 214, 278, 713, 743, 776), last item of a model, 175, 177 (connected to 178, 204, 205, 226, 227, 232), 179, 184a

Line 171 (in connection with 190, 214, 278, ~~713~~, 743, 776, 784): MT deems that the period of 10 years after the toy is placed on the market is sufficient, thus MT prefers the Council mandate text. However, for the sake of compromise, MT can also support the EP text.

Line 175: Council mandate text should be preserved.

Line 177 (connected to 178, 204, 205, 226, 227, 232): Council mandate text should be preserved, and thus the phrase 'on the basis of the information in that *economic operator's* possession' should not be utilised.

Line 179: Council mandate text should be preserved.

Line 184a: MT supports the Council mandate text.

Authorised representatives: Lines 187, 190

Line 187: EP text is not supported. MT prefers to retain the Council mandate.

Line 190: MT deems that the period of 10 years after the toy is placed on the market is sufficient, thus MT prefers the Council mandate text.

Obligations of importers: Lines 205-207

Lines 205-207: Council mandate text should be preserved.

Obligations of distributors: Lines 227-229, 233

Lines 227-229: Council mandate text should be preserved.

Line 233: The EP mandate text can be supported.

Presidency Background Note (WK 15431/2024)

Lines 87, 91, 93a, 106a, 122a, 135, 140, 146, 159, 171, 176, 177-178, 182, 183, 187, 190, 191, 192a, 204, 205-207, 213-213d, 226-229, 232, 233, 238.

Article 1 – Subject Matter

Lines 87 - 88:

EP could consider going with COM text, but wants to include something more in the recital.

Would Member States be open to that idea?

MT's position shall be provided once the text in the recital is formalised. As it is, MT strongly prefers the Council mandate, as the main objective for this Regulation is the protection of the health and safety of children and other persons.

Article 2 – Scope

Line 91: Deletion and intended use:

EP wants to keep deletion next to the idea of intended use. **Do Member States have any flexibility on this?**

The text deletion proposed by the EP in line 91, is not deemed necessarily, however MT can be flexible.

Line 93: Implementing Acts:

The EP's insistence on clarity for implementing acts was not resolved, will be discussed with Implementing Acts.

MT can support the EP text on line 93.

Line 93a: Precautionary principle

The EP marked this issue as a "red line," and proposed to include it in the market surveillance part. **Would Member States have any openness to move this?**

MT can be flexible towards the EP position, however the Council mandate with regards to the precautionary principle is preferred.

Article 3 – Definitions

Line 106a: intended for the use by

No final decision was made, with further discussions planned. **Would Member States be open to include this definition?**

The definition proposed by the EP in line 106a, is not deemed necessary, however MT can be flexible.

Line 122a: Definition of 'Harm'

The HU PRES agreed to re-evaluate the necessity of this definition. **Would delegations agree to delete this?**

Council mandate text should be preserved.

Line 135 (substance of concern)

EP made it dependent on the inclusion of substances of concern in the proposal. **HU PRES would like to hear the views of Member States as EP wants to delete due to environmental aspects, part of DPP discussion.**

MT strongly agrees with the EP position, that of deleting the definition 'substance of concern', since the list of substances of concern in the ESPR contains substances that are outside the scope of the Toys Safety Regulation.

Article 5 – Product Requirements

Line 140:

Possible flexibility from Council as it's only a title. Any objections?

MT can be flexible towards either title for Article 5.

Article 6 – Warnings

Line 146:

The EP agrees to plural warnings but requests the inclusion of a specific initial clause. As a potential compromise, the Council may consider removing the "maximum age" reference from the text. Would delegations agree?

MT can be flexible towards the EP position.

Line 159: Digital Solutions

The EP suggests adding recital wording to encourage digital solutions and will also review deletions proposed in its own text for coherence. Would delegations agree with this approach?

MT is not in favour of this approach, as MT believes that warnings should **always** be physically visible.

Article 7 – Obligations of Manufacturer

Line 171 – Documentation for 'Last item of a model' (in connection with lines 190, 214, 278, ~~713~~, 743, 776, 784):

The EP queries whether the GPSR text can be adapted directly through a 'copy-paste' approach. It has proposed a separate concept for consideration, while the Council has flagged potential practical issues. COM thinks it is the case today. Council highlighted practicality problem. HU PRES would appreciate to hear the views of the Member States.

MT deems that the period of 10 years after the toy is placed on the market is sufficient, thus MT prefers the Council mandate text. However, for the sake of compromise, MT can also support the EP text.

Clarity in instructions (line 176):

Consensus was reached on the general use of the term "instructions for use." The EP agreed to explore clearer wording for this section. The EP suggests different text: to delete "*including other persons with disabilities if feasible*" and replace it at the end of the last sentence by "*taking into account the needs of persons with disabilities*". They propose to explain more in the recitals. HU PRES would welcome feedback on this option.

It is not clear what the expected requirements for instructions for use and safety information for 'persons with disabilities' are, especially considering that there are several types of disabilities. MT is inclined toward preserving Council mandate.

Manufacturer's responsibility (lines 177, 178):

The EP maintained the importance of including this clarification. Heard concerns and could potentially consider a new recital that would replace all mentions of that sort throughout the text (see below). L178 Council wording could be ok.

"Where manufacturers consider, or have reason to believe, *on the basis of information available to them or on the basis of an examination of toys*, that a toy presents a risk, they shall immediately provide information thereof."

Would delegations agree with this approach?

Council mandate text should be preserved, as the proposed text could weaken liability and complicate enforcement. MT is aligned with the Hungarian Presidency.

Additional Safety and Information Measures (lines 182, 182a):

Line 182 is greened. EP called for consistent handling of information disclosure obligations, particularly concerning importers. They suggested aligning line 182a with Article 10a as a package deal. HU PRES would appreciate feedback from Member States.

MT supports the Council mandate text in line 182a and Article 10a.

Safety Gate Portal (line 183):

EP agreed to consider together with the DPP discussions but reiterated the importance of having the link to the Safety Gate Portal on the website. HU PRES would appreciate feedback from Member States if this is acceptable option.

MT supports the inclusion of a requirement for manufacturers to provide a link to the Safety Gate Portal on their websites. This measure enhances transparency and facilitates consumers' access to safety information about toys. Thus, MT finds this requirement as acceptable.

Article 8 – Authorised representatives

Clear obligations and roles (lines 187–192a):

EP would like to maintain the first part of their amendment in line 187: *When manufacturers terminate the mandate of their authorised representative, they shall inform the market surveillance authority.* EP would agree to delete their second sentence. HU PRES agreed to examine the issue further with Member States. Would Member States agree to add this sentence to the text in line 187?

EP text is not supported. MT prefers to retain the Council mandate.

Line 189:

EP indicated that it would discuss the issue further, but they want to see the totality of the dates and deadlines proposed as their concern is that it could backfire. HU PRES would like to discuss with Member States the possibility to get rid of the idea of setting this deadline and as an alternative would like to receive justification from Member States with national examples.

MT emphasizes that setting clear deadlines is crucial for effective market surveillance and rapid response to safety issues. Timely access to information allows authorities to take swift action to protect consumers, especially in cases involving serious risks. Thus, MT is in favour in keeping a deadline however MT is flexible on the timeframe.

Line 191:

EP could drop the word official. Would Member States prefer this option? HU PRES would welcome feedback from Member States.

MT is in agreement that documentation is to be provided in languages indicated by the authorities, in line with Article 7(9). Thus, MT supports the EP text, while is flexible with the word 'official'.

Line 192a:

EP proposed a revised version deleting the information part. Could Member States accept this addition?

(ca) inform the competent national authorities about any action taken to eliminate the risks posed by toys covered by their mandate through a notification in the Safety Business Gateway, where the information has not been already provided by the manufacturer or upon instruction of the manufacturer.

MT can support the insertion of the GPSR text, Article 10(2)(c), within this Regulation, for coherence's sake, and as it reaffirms the safety framework by ensuring that authorities are informed of corrective actions taken by authorised representatives.

Line 204 (also valid for line 226 due to a similar amendment):

EP could potentially be flexible in taking the Council text, but it is important for them to keep their second addition in their text. EP proposed to consider their wording for the recital on

the information in the possession of the importer, also keeping „*inform the manufacturer and refrain from placing*” addition and could delete „ *by the manufacturer*”. **Could this compromise work for the Member States?**

MT strongly prefers the Council Mandate text but is open to accept the addition of the phrase ‘*inform the manufacturer and refrain from placing*’.

Immediate reporting (lines 205–207) (also valid for lines 227-229 due to a similar amendment):

EP could be flexible to the structure but would insist to include immediately in line 207 and to have the recital on information. **HU PRES indicated willingness to discuss this issue further. Would appreciate the views of Member States on this compromise solution.**

Council mandate text should be preserved. Nonetheless, MT is flexible towards adding the word ‘immediately’ in line 207.

Lines 213-213d:

Both HU PRES and the EP indicated that they will examine the paragraph further. **EP is open to the Council’s structure, but only without the point b, in line 213b. Would Member States be open to such a compromise?**

MT prefers the Council Mandate text, as the structure of the text is deemed better.

Lines 226-229: see line 171 and lines 205-207.

Recital to be checked with Member States. In Line 229 EP thinks immediately is needed for consistency, but ok with Council reference.

MT strongly prefers the Council Mandate text but is open to accept the addition of the phrase ‘*inform the manufacturer or the importer and refrain from placing*’. MT is **against** having a recital or regulations regarding the phrase ‘*on the basis of the information in that economic operator’s possession*’, as it is deemed to potentially create loopholes.

Line 232:

EP’s recital to be discussed with Member States. Would it be acceptable compromise?

MT is in agreement with the inclusion of the word ‘immediately’, as in lines 177 and 212. Furthermore, MT is also flexible towards the inclusion to inform the consumers or other end-users, similarly to line 213. However, MT is **not flexible** towards adding any recital or inclusion in the text of the phrases related to the information in the possession of the economic operators.

Line 233:

EP would like to ensure that consumers are informed. Can be flexible on “furthermore”. HU PRES indicated that would still discuss the paragraph with the Member States. Would you be open to this amendment?

MT is flexible towards the EP mandate text. Nonetheless, it is important that the obligations between different economic operators are similarly structured, for coherence’s sake. For example, line 233 to be structured similar to lines 213-213d.

Article 12 – Identification of economic operators

15-Day deadline for information disclosure (line 238):

The parties agreed to revisit the issue, but no consensus was reached during the discussion. HU PRES would like to discover with Member States the possibility to get rid of the idea of setting this deadline and as an alternative would like to receive input from Member States with national examples.

MT emphasizes that setting clear deadlines is crucial for effective market surveillance and rapid response to safety issues. Timely access to information allows authorities to take swift action to protect consumers, especially in cases involving serious risks. Thus, MT is in favour in keeping a deadline however MT is flexible on the timeframe.