

Directive 2009/48/EC of the European Parliament and of the Council
of 18 June 2009 on the safety of toys (Text with EEA relevance)

CHAPTER VI

OBLIGATIONS AND POWERS OF MEMBER STATES

Article 39

Precautionary principle

When competent authorities of the Member States take measures as provided for in this Directive, and in particular those referred to in Article 40, they shall take due account of the precautionary principle.

Article 40

General obligation to organise market surveillance

Member States shall organise and perform surveillance of toys placed on the market in accordance with Articles 15 to 29 of Regulation (EC) No 765/2008. In addition to those Articles, Article 41 of this Directive shall apply.

Article 41

Instructions to the notified body

1 Market surveillance authorities may request a notified body to provide information relating to any EC-type examination certificate which that body has issued or withdrawn, or which relates to any refusal to issue such a certificate, including the test reports and technical documentation.

2 If a market surveillance authority finds that a toy is not in conformity with the requirements set out in Article 10 and Annex II, it shall, where appropriate, instruct the notified body to withdraw the EC-type examination certificate in respect of that toy.

3 Where necessary, and in particular in the cases specified in the second subparagraph of Article 20(4), the market surveillance authority shall instruct the notified body to review the EC-type examination certificate.

Article 42

Procedure for dealing with toys presenting a risk at national level

1 Where the market surveillance authorities of one Member State have taken action pursuant to Article 20 of Regulation (EC) No 765/2008, or where they have sufficient reason to believe that a toy covered by this Directive presents a risk to the health or safety of persons, they shall carry out an evaluation in relation to the toy concerned covering all the requirements

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laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the toy does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take appropriate corrective action to bring the toy into compliance with those requirements, to withdraw the toy from the market, or to recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred in the second subparagraph of this paragraph.

2 Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the relevant economic operator to take.

3 The relevant economic operator shall ensure that appropriate corrective action is taken in respect of toys which that operator has made available on the Community market.

4 Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take appropriate provisional measures to prohibit or restrict the toy being made available on their national market, to withdraw the toy from that market or to recall it.

They shall inform the Commission and the other Member States, without delay, of those measures.

5 The information referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant toy, the origin of the toy, the nature of the alleged non-compliance and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either:

- a failure of the toy to meet requirements relating to the health or safety of persons; or
- b shortcomings in the harmonised standards referred to in Article 13 conferring a presumption of conformity.

6 Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the toy concerned, and, in the event of disagreement with the notified national measure, of their objections.

7 Where, within three months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed to be justified.

8 Member States shall ensure that appropriate restrictive measures are taken in respect of the toy concerned, such as withdrawal of the toy from their market, without delay.

Article 43

Community safeguard procedure

1 Where, on completion of the procedure set out in Article 42(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Community legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure.

On the basis of the results of that evaluation, the Commission shall decide whether the national measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

2 If the national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant toy is withdrawn from their market, and shall inform the Commission accordingly.

If the national measure is considered unjustified, the Member State concerned shall withdraw it.

3 Where the national measure is considered to be justified and the non-compliance of the toy is attributed to shortcomings in the harmonised standards referred to in Article 42(5) (b), the Commission shall inform the relevant European standardisation body or bodies and shall bring the matter before the Committee set up by Article 5 of Directive 98/34/EC. That Committee shall consult the relevant European standardisation body or bodies and deliver its opinion without delay.

Article 44

Exchange of information — Community Rapid Information Exchange System

If a measure referred to in Article 42(4) is a type of measure which is required under Article 22 of Regulation (EC) No 765/2008 to be notified through the Community Rapid Information Exchange System, it shall not be necessary to make a separate notification under Article 42(4) of this Directive, provided that the following conditions are met:

- (a) the Community Rapid Information Exchange notification indicates that the notification of the measure is also required by this Directive;
- (b) the supporting evidence referred to in Article 42(5) is enclosed with the Community Rapid Information Exchange notification.

Article 45

Formal non-compliance

1 Without prejudice to Article 42, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

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- a that the CE marking has been affixed in violation of Article 16 or 17;
- b that the CE marking has not been affixed;
- c that the EC declaration of conformity has not been drawn up;
- d that the EC declaration of conformity has not been drawn up correctly;
- e that technical documentation is either not available or not complete.

2 Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take appropriate measures to restrict or prohibit the toy being made available on the market, or shall ensure that it is recalled or withdrawn from the market.