

Policy Department  
Economic and Scientific Policy

**STUDY ON THIRD-PARTY TESTING OF TOYS**

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## List of abbreviations

ANEC	l'Association européenne pour la coordination de la représentation des consommateurs dans la normalisation (European Association for the Coordination of Consumer Representation in Standardisation)
BEUC	Bureau Européen des Unions de Consommateurs (European Consumers' Organisation)
CE-mark	Conformité Européenne (European Conformity)
CEN	The European Committee for Standardisation
CENELEC	The European Committee for Electro Technical Standardisation
CEOC International	The Confederation of Certification and Inspection companies
CPSC	Consumer Product Safety Commission
GS-mark	Geprüfte Sicherheit ("Tested Safety")
IA	Impact Assessment
LGA	Landesgewerbeamt Bayern
NORMAPME	European Office of Craft, Trade and Small and Medium sized Enterprises for Standardisation
QA	Quality Assurance
RAPEX	Rapid Alert System for Non-Food Products
RPA	Risk & Policy Analysts Limited
SME	Small and Medium sized Enterprises
TIA	Toy Industry Associations
TIE	Toy Industries of Europe
TSD	Toy Safety Directive

## Executive Summary

The European Toy Safety Directive 88/378/EEC (TSD) regulates the EU toy sector through safety criteria and essential requirements which toys must meet before being placed on the EU market. The European Commission has now put forward a proposal for a new TSD. One of the key questions during drafting of the proposal for a new Directive was whether to make it mandatory for all toys to be tested by an independent third-party tester, which is not the case today. However, based on an Impact Assessment carried out in 2004, the Commission decided not to include mandatory third-party testing of toys in the proposal for a new TSD.

The objective of this study is to outline the merits and drawbacks of mandatory third-party testing of toys, by providing facts on the current situation and different stakeholders' opinions on mandatory third-party testing of toys.

The US Senate has recently passed legislation on mandatory third-party testing of toys. The legislation has not yet been implemented, but the toy industry is currently developing a certificating programme. The US industry supports the introduction of mandatory third-party testing because 1) many US retailers have their own test requirements and industry would benefit from harmonising these different regimes, 2) industry hopes the new rules will help fight declining US consumer confidence in the toy industry, and 3) there is no possibility for self-declaration in the US, which means that third-party testing is the only way to show that the product conforms to standards.

There are no statistics on the share of toys in Europe which are tested (voluntarily) by third parties, but indications are that less than 20-25% of the companies in Europe use third-party testing. Both small and large companies use third-party testing but SMEs tend to use third-party testing more, as they rarely have the in-house facilities and human resources to perform the tests themselves. The cost of testing varies greatly and depends on a number of factors such as the type of test (physical or chemical), the materials used, the complexity of the toy, etc. Prices range from 150-300 EUR for the simplest tests, to 8-10,000 EUR for the most complicated tests. Since SMEs usually produce small series, and the cost of testing a product sample is the same regardless of the size of the batch, it is relatively more costly for SMEs to use third-party testing than it is for larger companies.

Stakeholders have very different positions towards mandatory third-party testing. European *industry* is against, as they believe that the current rules provide adequate consumer safety, if they are obeyed. There are, however, free riders who cheat (e.g. applying false CE marks). Thus, industry argues, instead of introducing mandatory third-party testing, which would be more costly than the current regime, existing rules should be better enforced. *Consumer organisations* are, on the other hand, strongly in favour of mandatory third-party testing: since too many companies do not comply with the rules, something must be done, and third-party testing would provide the highest level of safety for the consumers.

*Testing institutions* are, not surprisingly, in favour of mandatory third-party testing since, according to them, it ensures unbiased testing. On the other hand, both enforcement authorities and the standardisation body CEN are of the opinion that mandatory third-party testing is not the best solution, and that the way forward is to ensure better enforcement and market surveillance instead.

## 1. Introduction

The European Toy Safety Directive 88/378/EEC regulates the EU toy sector through safety criteria and essential requirements which toys must meet before being placed on the EU market. The European Commission has recently tabled a proposal for a new Toy Safety Directive which aims at enhancing the safety of toys by replacing and modernising the 20 year old Toys Directive. According to the European Commission, the revision has a threefold objective: first and foremost there will be new and higher safety requirements to cope with recently identified hazards, secondly it will strengthen manufacturers' and importers' responsibility for the marketing of toys and finally it will enhance market surveillance obligations of Member States.<sup>1</sup>

Today, under the current TSD toys must bear the CE mark to be placed on the market<sup>2</sup>. If harmonised standards exist, manufacturers can choose to test their toys themselves (according to standards) and provide the toy with a self-declaration showing that the product complies with EU legislation, and put on the CE mark themselves. If no standards exist, the toy has to be tested by an approved/notified body before earning the CE mark and being placed on the market.

One of the issues discussed during the drafting of the proposal for a new Toy Safety Directive was to discard self-declaration and make it mandatory for all toys to be tested by an independent third-party tester. However, an Impact Assessment carried out in 2004 by an independent consultancy concluded that third-party testing of certain toys would be too expensive for industry, given the delays in putting the new toys on the market. Further, given that tests would only be done with prototypes, the Impact Assessment concluded that third-party testing would not sufficiently enhance safety of toys.<sup>3</sup> Based on the Impact Assessment, the European Commission decided not to include mandatory third-party testing of toys in the proposal for a new TSD.<sup>4</sup>

Consumer organisations throughout the EU are, however, pushing for the introduction of mandatory third-party testing. Moreover, the US Senate has recently passed a bill on making third-party testing mandatory in the US. For these reasons, Rambøll Management has been asked by the European Parliament to investigate different stakeholder's perception of mandatory third-party testing of toys, in order to consider the merits and drawbacks of third-party testing of toys.

### 1.1 Facts and figures on the European toy industry

The European toy industry employs over 100,000 people and there are over 2,000 companies operating in the toy and games sector.<sup>5</sup> According to the association Toy Industries of Europe (TIE), the industry consists of roughly 20% large companies and 80% SMEs<sup>6</sup>. However, the share of SMEs may in fact be much larger - according to available Eurostat figures, more than 6,000 companies in the EU-27 are involved in the manufacture of games and toys and of these, approximately 82% have less than 10 employees, whereas less than 1% are large

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<sup>1</sup> [http://ec.europa.eu/enterprise/toys/index\\_en.htm](http://ec.europa.eu/enterprise/toys/index_en.htm)

<sup>2</sup> <http://www.ce-marking.com/toys.html>

<sup>3</sup> COM(2008) 9 final, SEC(2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”, page 7.

<sup>4</sup> COM(2008) 9 final, SEC(2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”, page 7.

<sup>5</sup> Toy Industries of Europe: Facts and Figures, July 2008, <http://www.tietoy.org/>.

<sup>6</sup> Interview with TIE, 10 September 2008.

companies with more than 250 employees<sup>7</sup>. The total toy market (excluding video games) was estimated by TIE at approximately 14.2 billion EUR at retail prices in 2007, with total imports amounting to 11.6 billion EUR (of which traditional toys account for 7 billion EUR and video games 4.6 billion EUR). Asia is the leading supplier of toys with 98% of the total imports, of which China alone accounts for more than 90%. The total volume of exports in 2007 from the European Union to other countries amounted to 1.4 billion EUR for toys and games of which traditional toys accounted for €817 million and video games for €52 million. The United States remains the European Union's leading export market, accounting for 17% of all exports.<sup>8</sup>

## **1.2 The Toy Safety Directive**

The European Toy Safety Directive 88/378/EEC of 3<sup>rd</sup> May 1988 aims at enhancing the safety of toys through achieving an internal market for toys by harmonising the safety provisions of toys between the Member States.<sup>9</sup> Within the TSD it is sought "to provide a common standard for the safety of any product or material that is designed or intended for use in play by children under 14 years of age".<sup>10</sup>

The TSD is based on the New Approach Method like most of the EU sectoral directives for product safety. The New Approach Method aims to facilitate the achievement of the internal market by using the national standards. The main elements of the New Approach which apply to the TSD are the mandatory essential safety requirements (e.g. protection against health hazards or physical injury in general, and risks associated with the physical and mechanical, flammability, chemical, electrical, hygienic and radioactive properties of toys in particular), conformity assessment procedures, harmonised standards, provisions on the CE mark and enforcement measures (market surveillance). Since it is important to understand the New Approach in order to fully grasp how legislation has been carried out in Europe since 1985, the New Approach is briefly presented below.

### **1.2.1 The New Approach**

In 1985, the legislation in the area of free movements of goods in the EU was renewed by the introduction of a new regulatory technique: the New Approach to technical harmonisation and standardisation<sup>11</sup>. The New Approach revolutionised legislation in the area of free movement of goods by moving away from the traditional approach of descriptive requirements to a "new approach" of laying down only performance-based and result-oriented essential requirements in relation to safety. In other words, legislation determines the level of protection but does not prejudge the choice of technical solution required to achieve that level. Free movement of goods, a central pillar of the internal market, is a major driver for competitiveness and economic growth in the EU. Harmonisation of technical regulations at EU level has proven to be the most successful tool in eliminating technical barriers to trade.

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<sup>7</sup> Eurostat enterprise statistics broken down by size classes on NACE 365 (manufacture of games and toys). The statistics are not complete, as especially the larger size classes in many countries are too small for the exact number of companies to be displayed (data are confidential) and almost 8% of the total number of companies are not accounted for in terms of size. These data should thus be treated with some caution. The differences between TIE and Eurostat numbers are not accounted for. The European Commission (DG Enterprise and Industry) provides figures similar to those of TIE on their website ([http://ec.europa.eu/enterprise/toys/index\\_en.htm](http://ec.europa.eu/enterprise/toys/index_en.htm)).

<sup>8</sup> Toy Industries of Europe: Facts and Figures, July 2008, <http://www.tietoy.org/>.

<sup>9</sup> [http://ec.europa.eu/enterprise/toys/index\\_en.htm](http://ec.europa.eu/enterprise/toys/index_en.htm)

<sup>10</sup> Council Directive 88/378/EEC of 3rd May 1988 on the approximation of the laws of the Member States concerning the safety of toys, Official journal L 187, 16/07/1988 P. 0001 -0013.

<sup>11</sup> Council Resolution of 7 May 1985 on a New Approach to technical harmonisation and standards



Within this framework, the “New Approach directives” (also known as “CE marking” directives) have played a major role in making the internal market for goods a reality.<sup>12</sup>

The basic idea of the New Approach is that it only sets the essential safety requirements that products placed on the EU market need to fulfil, while the technical details are taken care of by the standardisation organizations. Hence, the New Approach aims at broad legislation, as opposed to for instance legislation in the US, which is much more detailed.

The main elements of the New Approach are:

- Legislative harmonisation is limited to essential requirements that products placed on the Community market must meet, if they are to benefit from free movement within the Community.
- The technical specifications of products meeting the essential requirements set out in the directives are laid down in harmonised standards.
- Application of harmonised or other standards remains voluntary, and the manufacturer may always apply other technical specifications to meet the requirements.
- Products manufactured in compliance with harmonised standards benefit from a presumption of conformity with the corresponding essential requirements.<sup>13</sup>

Today, the New Approach directives cover a large proportion of products marketed in the EU in more than 20 industrial sectors. However, even though the New Approach has contributed to eliminating trade barriers within the EU the legislation still have weaknesses in regards to the value of the CE marking and the lack of confidence in conformity assessment bodies (notified bodies).<sup>14</sup> Therefore in 2003 the Commission was invited to prepare a revision of the New Approach to technical harmonisation in order to complete it and to update its different constitutive elements in order to ensure more coherence between the various New approach directives already in operation and for future legislation. On 14 February 2007, the Commission adopted a revision of the New Approach<sup>15</sup>.

### **1.2.2 The Conformity assessment procedure**

With regard to the conformity assessment procedure<sup>16</sup> it is stated in the Directive that it is necessary to have harmonised standards at European level. These standards have been developed by the European Standardisation Bodies; the European Committee for Standardisation (CEN) and the European Committee for Electro technical Standardisation (CENELEC) on the basis of the TSD. In the TSD, the conformity assessment procedure ensures that before products are placed on the market, toy manufactures or their authorised representative must subject the product to a conformity assessment which can be done through two methods; self-certification and EC-type examination.

The self-certification method allows the manufacturer, when harmonised standards covering all the safety aspects exist for a product, to do the tests themselves. The manufacturer describes the means by which the conformity of the product has been assured and finally the

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<sup>12</sup> [http://ec.europa.eu/enterprise/newapproach/pdf/executive\\_summary\\_sec\\_2007\\_0174\\_en.pdf](http://ec.europa.eu/enterprise/newapproach/pdf/executive_summary_sec_2007_0174_en.pdf)

<sup>13</sup> [http://ec.europa.eu/enterprise/newapproach/pdf/executive\\_summary\\_sec\\_2007\\_0174\\_en.pdf](http://ec.europa.eu/enterprise/newapproach/pdf/executive_summary_sec_2007_0174_en.pdf)

<sup>14</sup> [http://ec.europa.eu/enterprise/newapproach/pdf/executive\\_summary\\_sec\\_2007\\_0174\\_en.pdf](http://ec.europa.eu/enterprise/newapproach/pdf/executive_summary_sec_2007_0174_en.pdf)

<sup>15</sup> [http://ec.europa.eu/enterprise/newapproach/review\\_en.htm](http://ec.europa.eu/enterprise/newapproach/review_en.htm)

<sup>16</sup> Conformity assessment: An activity that provides demonstration that specified requirements relating to a product, process, system, person or body are fulfilled, i.e. testing, inspection, certification of products, personnel and management systems.

<http://www.qimtonline.com/mod/glossary/view.php?id=59&mode=letter&hook=C&sortkey=&sortorder=&fullsearch=0&page=-1>

CE mark is put on the toy. This means that the manufacturer can perform all the necessary tests without using third-party testing.

The second method implies that an EC-type examination is used in the absence of harmonised standards or where the standards do not cover all aspects in relation to the toy. In this case the necessary tests are done by an approved body (notified body) who examines the toy. The approved body thus ensures the conformity of the product which allows the product to bear the CE-mark.

All toys marketed in the EU must have the CE-mark to indicate the conformity of the toy with the provisions in the TSD.

### **1.3 The Impact Assessment of the Commission Proposal**

In 2004, an Impact Assessment (IA) of the revision of the Toy Safety Directive was carried out by the independent consultancy RPA in order to assess the impact of the planned modifications of the TSD on the safety of toys.

The IA states that generally, the Toy Safety Directive has been successful in providing safe products and eliminating trade barriers between the Member States. However, the Directive has only been amended once since 1988 (with respect to the CE marking), and a number of deficiencies have been identified over time which have triggered the need to assess the existing legal framework. Three specific overall problem areas were identified in the IA:

- Modernising the safety requirements
- Improving the efficiency and coherence of enforcement, and
- Clarifying the scope and concept

The first area refers to the need to enhance the safety requirements regarding e.g. noise, chemicals, and toys associated with food items in order to deal with previously identified hazards. In addition, a modernisation of the safety requirements could be done by updating some of the essential safety requirements regarding electrical properties etc.<sup>17</sup>

With respect to the second area, the enforcement of the TSD does not seem efficient in the Member States as market surveillance (ex-ante systematic checks by the public authorities) is not working well enough. By introducing an obligation for the producers to conduct a product hazard analysis, risk analysis and make a technical file to be used by the market surveillance authorities, the number of incidents with toys could decline. Furthermore, in order to facilitate better enforcement of the TSD, the IA suggests making the CE mark more visible and specific.

The last problem area refers to the lack of clarification of the scope of the TSD in regards to new products such as videogames etc. The scope should also be clearer on products regarded as electrically driven vehicles. Furthermore, the definitions in the TSD need to be improved and the ambiguities in the text removed.

According to the IA, these problem areas should be dealt with in order to achieve the overall objective of the revised TSD, namely enhancing the level of safety of toys by maintaining and improving the functioning of the internal market for toys. Five policy options and nine sub-options have been identified and assessed. The most important sub-option for the purposes of this study relates to the new provisions on the conformity assessment procedures, which will be presented below.

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<sup>17</sup> COM (2008) 9 final, SEC (2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”, page 2.

In the IA, two changes of the conformity assessment procedure have been considered; 1) the introduction of an explicit obligation for the manufacturer to carry out safety assessment and 2) mandatory third-party testing verification for all or certain types of toys.<sup>18</sup>

The first procedure suggests introducing a new obligation to do an analysis of the hazards that the toy may present and to make it available in the technical file of the toy for inspection by the market surveillance authorities. The costs of this procedure are considered to be very modest.

With regard to the second procedure, mandatory third-party verification for toys, the options considered are 1) to keep the current requirements, under which the manufacturer has a choice between self-verification of the product or an EC-type examination by a designated third party or 2) to impose mandatory third-party verification for certain or all categories of toys which are subject to harmonised standards. The IA concludes that mandatory third-party verification for certain types of products would generate further costs for manufacturers, which could be significant in some cases, as well as delays in putting the product on the market. The IA further states that mandatory third party verification does not render *per se* all toys put on the market safer. Only the prototype is certified by the third party and thus deficiencies during the production process cannot be ruled out and avoided. Taking into account the expected considerable costs of this requirement and that mandatory third-party verification cannot sufficiently enhance the safety of all individual toys, the IA concludes that such an option is not proportionate to the expected benefits. However, the Directive foresees third-party verification becoming mandatory in the limited number of cases where harmonised standards covering all the safety aspects for the toy do not exist<sup>19</sup>.

#### **1.4 The Commission proposal for amending the Regulation**

As mentioned, although the TSD has in general proven successful in providing safe products and eliminating trade barriers between the Member States, a number of deficiencies have been identified over time, which have triggered the need to assess the existing legal framework. Hence, the Commission found that a thorough revision of the TSD was appropriate, with a view to:

- Updating and completing the existing provisions to address safety issues that were unknown at the time of the TSD adoption
- Improving the implementation and enforcement of the TSD throughout the European Union
- Clarifying the scope and concepts of the Directive
- Ensuring consistency with the general measures that have been tabled in the general legislative framework for the marketing of goods<sup>20</sup>.

As a result of the above-mentioned Impact Assessment, the revision of the Toy Safety Directive presented by the Commission did not include the introduction of mandatory third-party testing.

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<sup>18</sup> COM (2008) 9 final, SEC (2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”, page 7.

<sup>19</sup> COM (2008) 9 final, SEC (2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”, page 7.

<sup>20</sup> COM(2008) 9 final, 2008/0018 (COD): Proposal for a Directive of the European Parliament and the Council on the safety of toys (Presented by the Commission)

## **1.5 The objective of this study**

The objective of this study is to allow the European Parliament to consider the merits and drawbacks of mandatory third-party testing of toys, by providing facts on the current situation and different stakeholders' opinions on mandatory third-party testing of toys. The study will be taking into consideration the opinions of industry organisations, consumer organisations, toy producers/distributors/retailers, test companies, European Standardisation Bodies, US industry organisations and standardisation bodies, and authorities.

In order to shed light on all relevant aspects of the study, the European Parliament wished to cover the following questions:

1. Mandatory third-party testing will be introduced in the US legislation on product safety, notably in relation with toys. Are there any other jurisdictions that have already implemented a system of mandatory third-party testing? For which categories of products / toys? What are the experiences?
2. In Europe, what percentage of toys is currently tested by third parties (on a voluntary basis)? What types of toys are concerned? What types of companies are using third-party testing?
3. What is the average cost of (private) testing? Would the introduction of mandatory third-party testing for certain categories of toys impose major additional testing costs to the tests that are already being carried out? Would it cause additional administrative burdens? Would these costs and burdens be too high for SMEs?
4. Could you give an overview of stakeholders' opinions on the introduction of mandatory third-party certification?

## 2. Experiences in other jurisdictions that have implemented a system of mandatory third-party testing

No other jurisdictions have been found which have already implemented mandatory third-party testing. Legislation has recently been passed in the US, but has not been implemented yet. In Germany, a system of voluntary third-party testing exists. Thus, this section will describe the expectations and experiences from these two countries.

### 2.1 The United States

In August 2008, the US Congress passed an “Act to establish consumer product safety standards and other safety requirements for children’s products and to reauthorize and modernize the Consumer Product Safety Commission”<sup>21</sup>. Also known as The Consumer Product Safety Improvement Act of 2008, it establishes a number of requirements for children’s product safety, one of which is “mandatory third-party testing for certain children’s products”<sup>22</sup>. The Act requires every manufacturer and private labeller of any children’s product that is subject to a product safety rule to submit sufficient samples of the product to an accredited third-party “conformity assessment body”<sup>23</sup> to be tested for compliance with such product safety rule and, based on such testing, the manufacturer or private labeller shall issue a certificate certifying that the product complies with the product safety rule.

In terms of the coverage of the Act, it applies not only to toys, but to any children’s product “which is subject to a consumer product safety rule under this Act or a similar rule, ban, standard, or regulation under any other Act enforced by the [Consumer Product Safety] Commission”<sup>24</sup>.

A “third-party conformity assessment body” is defined as a conformity assessment body *not* owned, managed or controlled by the manufacturer or private labeller of the product being assessed. However, there is an important exemption to this called “firewalled conformity assessment bodies”<sup>25</sup>. This exemption has been labelled the “Mattel amendment” since it is largely a result of lobbying by the world’s biggest toymaker, Mattel, causing the US Congress to allow companies with sophisticated labs to avoid the independent testing requirement by getting federal approval for their in-house testing facilities<sup>26</sup>. Basically, labs (conformity assessment bodies) can be accredited as “third-party” even if they are owned, controlled or managed by a manufacturer if it is found that this would provide “equal or greater consumer safety protection” than the use of an independent third party lab, and if procedures are put in place to protect the test results from undue influence, including pressure to modify or hide test results<sup>27</sup>. This provision is expected to mostly benefit the largest manufacturers because smaller ones are less likely to have labs that can be accredited as providing “equal or greater consumer safety protection” than independent test labs.

The legislation is still in its very early phase of implementation and industry organisations are still determining which impacts the legislation will have for them. The toy industry is

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<sup>21</sup> Consumer Product Safety Improvement Act of 2008, signed by the President on 14 August 2008.

<sup>22</sup> Title 1, Sec. 102 of the Act.

<sup>23</sup> I.e. a test house, test lab

<sup>24</sup> Sec. 102, paragraph (a), sub-section (1)

<sup>25</sup> Sec. 102, paragraph (f), sub-section (2) (D)

<sup>26</sup> “The Mattel loophole”, Chicago Tribune, 25 June 2008, <http://www.chicagotribune.com/news/nationworld/chi-matteljun25.0.5665097.story>; also reported in several other US media.

<sup>27</sup> Sec. 102, paragraph (f), sub-section (2) (D)

currently developing a certificating programme, to some degree in anticipation of the law being passed. The industry programme requires testing where a new product is brought to market, but also frequent testing depending on the ability of the manufacturer to do the tests.

In the US, industry supports the introduction of mandatory third-party testing. The reason for this is threefold<sup>28</sup>:

- **Strict rules by retailers:** In the US, retailers have very strict rules as to which tests the toys must undergo in order to be put on the shelves. Most large retail chains have their own test certificates which suppliers must conform to. The toy industry hopes that introducing mandatory testing will persuade retailers to accept just one certificate instead of the many current industry certificates. Thus, the industry expects that mandatory third-party testing will eliminate some of the duplication of testing. In other words, that mandatory third-party testing will not necessarily add more testing, but will add more consistency to the testing that the producers have to carry out anyway.
- **Improving consumer confidence:** In the US, consumer confidence has diminished, mainly as a result of the numerous cases where toys have been recalled due to unacceptable amounts of lead. The new Consumer Product Safety Improvement Act was passed in an attempt to restore consumer confidence and, in addition to mandatory third-party testing of toys, also includes a “general lead ban”<sup>29,30</sup>. SGS (an international inspection, verification, testing and certification company) and TIA, the US Toy Industry Association, agree that they have been motivated by consumer organisations which have stated that mandatory third-party testing is likely to increase consumer confidence. The toy industry acknowledges this diminishing consumer confidence caused by a series of recalls, and the largest US toy makers have taken the step of asking the federal government to impose mandatory safety-testing standards for all toys sold in the United States<sup>31</sup>. The industry has learned in the past that consumers thought that all products were tested, and that confidence dropped when consumers found out that this was not the case. The industry has tried to argue that products can be safe anyway - if a responsible producer is producing it - but has not really succeeded<sup>32</sup>.
- **No possibility for self-declaration:** There is no possibility in the US law for self-declaration, which is why third-party testing is the only way to show conformity with legislation/standards<sup>33</sup>. The Toy Industry Association has proposed a mandatory test conducted by independent laboratories, which will check a certain portion of their toys, whether made in the United States or overseas. Leading toy companies already do such testing, but industry representatives acknowledge that it has not been enough. To address these shortcomings, the proposal calls for uniform standards for frequency of testing, to determine at what point during production the tests would be conducted and what specific hazards, whether lead paint or small parts, must be checked for.

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<sup>28</sup> Interview with SGS and TIA (Toy Industry Association), 18 August 2008

<sup>29</sup> Consumer Product Safety Improvement Act of 2008, Title 1, Sec. 101.

<sup>30</sup> <http://www.marketwatch.com/news/story/us-senate-set-debate-tougher/story.aspx?guid=%7BEA96B15B-9A56-4D4F-A2D0-E01FEC4F963B%7D>

<sup>31</sup> <http://www.iht.com/articles/2007/09/07/news/toy.php>

<sup>32</sup> Interview with SGS and TIA (Toy Industry Association), 18 August 2008

<sup>33</sup> Interview with SGS and TIA (Toy Industry Association), 18 August 2008

While such a system is already to a large extent in place in Europe where it is required that toys undergo testing and a certification mark (the CE mark) is affixed to products before they are sold, the United States has not previously had such a pre-market testing requirement<sup>34</sup>.

According to industry, third-party testing in the US will probably not change the safety level for serious producers. They do not expect third-party testing to result in more of their products being withdrawn from the market. Of course, if all toys are third-party tested, some toys not complying with the standards will be found in the industry as a whole. However, according to industry, most problems with toys and most recall cases concern unexpected problems – including problems that are not foreseen in the standards and which are consequently not being tested for. In the view of European toy industry representatives interviewed for this study, the benefits do not at all measure up to the costs incurred for companies. In their opinion, the money could probably be spent better on for instance increased market surveillance. The real issue here, they argue, is more likely to be that the toy industry has an image problem in the US and that mandatory third-party testing is only introduced in order to improve consumers' *perception* of the toy industry<sup>35</sup>.

The **costs of mandatory third-party testing for industry** are still unclear to the US industry associations. The Consumer Product Safety Commission has been charged with specifying the demands for industry, but these are not yet in place. However, the toy industry in the US has been cooperating with the stakeholders of the industry to make a common system containing three elements<sup>36</sup>:

- Each product undergoes a **design hazard analysis** – it will function the same way as it does in the EU
- **Factory audits**: All toy manufacturers will be paid a visit and thereafter be placed in various groups. Depending on which group the factory belongs to, it will be inspected by independent third-party testers 1 to 6 times a year.
- A **product test** – to test whether the final product complies with legislation (based on a sample of each product).

According to SGS and TIA, the auditing aspect of the proposal from the toy industry will add costs to the programme – at least initially. But in the long run, it will hopefully reduce the need for retailers to do own factory auditing and persuade them to accept the industry programme. Also, to some degree the additional testing costs will be higher on SMEs, but on the other hand it is expected that larger factories will take longer time, as it is per factory that the costs are calculated – not per customer<sup>37</sup>.

Some of the large European companies interviewed expect the extra costs incurred from complying with this new regulation to be high. The new system will both test the raw material and sample the final product, so many extra tests of the toys will have to take place. There is also some fear that it will change the competition in the industry, as SMEs will have difficulties in meeting the demands of the new legislation<sup>38</sup>.

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<sup>34</sup> <http://www.iht.com/articles/2007/09/07/news/toy.php>

<sup>35</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>36</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>37</sup> Interview with SGS and TIA (Toy Industry Association), 18 August 2008

<sup>38</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

With respect to **additional administrative burdens**, SGS and TIA doubt that introducing mandatory third-party testing will create additional administrative burdens – or rather, they expect that the administrative burdens imposed by the mandatory third-party testing requirement of the new legislation will replace or perhaps even reduce the costs currently associated with tracing retailer requirements, if retailers accept the industry programme and replace their many current requirements with the new common standards which will be put in place. The proposal from the toy industry on how to comply with the new legislation has received rather good support from the major retailers. The interviewees are aware that there will be a phase-in period where audits will be conducted, and where the burdens may rise, but as mentioned above benefits will be gained in the longer run from retailers accepting the industry programme. It is foreseen that there will be a transition period for the companies to adjust to the new legislation, in which it is not the intention to ban factories from shipping products until they are audited<sup>39</sup>.

For some of the large European companies selling their products on the US market, it is however unclear what the new legislation will imply. With respect to the factory audit, it is unclear which group the company will be placed in before being tested. There are 4000 Chinese factories which the independent testers will have to visit. The worst case scenario is that the companies will be placed in the bottom group and thus be subject to costly third-party tests 6 times a year, regardless of how well they actually comply with the rules<sup>40</sup>. Moreover, Hasbro Europe states that although the regime is very new and it is too early to judge all the effects, it is already clear that there will be increased costs due to factory audits and it is possible that there will be significant delays in obtaining test results from the laboratories as they become overloaded with work<sup>41</sup>.

## 2.2 Germany

Germany has introduced a voluntary mark called the GS mark. The *Gepriüfte Sicherheit* ("Tested Safety") mark is a voluntary certification mark for technical equipment. It indicates that the equipment meets German and, if available, European safety requirements for such devices. The main difference between the GS and the CE mark is that in order to obtain the GS mark, compliance with the European safety requirements must be tested by an independent test facility<sup>42</sup>. It is normally combined with repeated factory inspections and regular monitoring of the items for which it is issued<sup>43</sup>. According to the German test organisation DEKRA, about 30-40% of all German toy producers use this mark. The GS mark is believed by DEKRA to be a good way to market their products as many consumers have confidence in it<sup>44</sup>. According to LGA, another test organisation, the advantages of the GS mark is that it increases safety for the consumer due to additional monitoring by a test facility. Moreover, it can be used as a marketing argument for the manufacturer/distributor that an independent third party has been involved in the QA and testing process. Disadvantages include higher costs for the companies compared to self-declaration, and that the process of certification can take some time, meaning that the companies will have to wait a while before they can put the GS mark on their products<sup>45</sup>.

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<sup>39</sup> Interview with SGS and TIA (Toy Industry Association), 18 August 2008

<sup>40</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>41</sup> Interview with Hasbro Europe, 18 August 2008

<sup>42</sup> Interview with DEKRA, 9 September 2008

<sup>43</sup> Interview with LGA, 23 July 2008 and 31 July 2008

<sup>44</sup> Interview with DEKRA, 9 September 2008

<sup>45</sup> Interview with LGA, 23 July 2008 and 31 July 2008



However, not all stakeholders agree. For instance, NORMAPME, the European industry organisation for SMEs, states that the national quality marks stating that the product has been certified by a third-party tester, do not provide sufficient safety for the client. It is just an extra cost for the company, which hits especially SMEs hard<sup>46</sup>. In the NORMAPME position paper on the proposal for a revision of the Toy Safety Directive it is stated that "...if this safety mark is to be the European version of the German GS, it does not lead to more protection considering that also GS-marked products were withdrawn from the market as mentioned on the RAPEX<sup>47</sup> website"<sup>48</sup>. It is a general opinion of the industry that third-party testing does not provide safer products. This discussion will be dealt with in more detail in chapter 5.

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<sup>46</sup> Interview with NORMAPME, 11 July 2008

<sup>47</sup> RAPEX, the Rapid Alert System for Non-Food Products, is the EU rapid alert system for dangerous consumer products. Every Friday, the Commission publishes a weekly overview of the dangerous products reported by the national authorities.

<sup>48</sup> NORMAPME Position Paper on a proposal for a directive of the European parliament and of the Council on the safety of toys COM(2008)9 final (May 2008)

### 3. Current use of third-party testing in the European toy industry

#### 3.1 The process of third-party testing

According to the Toy Safety Directive, compliance with the legislation can be done in two ways: Either through self-declaration (where harmonised standards exist) or through third-party testing (mandatory where no harmonised standards exist). Even when self-declaration is possible, companies sometimes choose to have their products tested by a test institute anyway. This is mainly the case when companies do not have the testing facilities in-house, and it is more common to outsource the chemical tests than the physical ones.

Large companies have different ways of complying with the legislation. A few examples:

Hasbro Europe has its own test laboratory which performs a range of physical and chemical testing to ensure conformity with Hasbro standards, which meet and often exceed the EU harmonised standards in the series EN71 and EN62115. In addition to the in-house testing, Hasbro also uses third-party laboratories for instance to test final production samples for conformity with applicable EU toy safety requirements and standards.<sup>49</sup> Another large company, Mattel, has suppliers in China and the tests of these products are done in China, where Mattel have their own test facilities<sup>50</sup>.

One of the large retailers, TOP-TOY, has a procurement office in Hong Kong, with 6-7 in-house quality test personnel travelling to China to test their products. Having an experienced inspector with the relevant tools present at the factory makes in-house control much cheaper for TOP-TOY than third-party testing. In addition, the toys are checked by the authorities in China before the containers with toys leave the country. The chemical tests are done by a test company<sup>51</sup>.

For SMEs, the test institutes are necessary. SMEs usually do not have the human or technical resources to test their products themselves. Thus, they have to go through third-party testing<sup>52</sup>.

Usually, the test organisation performs the tests that the customers ask for, or help the customers if they are unsure of which tests are needed<sup>53,54</sup>. The physical tests are similar for all products. With regards to the chemical tests, specific substances are selected, usually according to normal practices in the area, and the product is only tested for these substances. Some enterprises, mainly the larger ones, ask for additional tests. The test organisations can guide their clients in selecting additional substances, if they feel that there is a need to do so, but they cannot force the customers to do additional tests – especially when it is not required by law<sup>55</sup>. Other tests are often performed in the companies as they know the products best and know what they should be aware of.<sup>56</sup>

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<sup>49</sup> Interview with Hasbro Europe, 18 August 2008

<sup>50</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>51</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>52</sup> Interview with NORMAPME, 11 July 2008

<sup>53</sup> Interview with LGA, 23 July 2008 and 31 July 2008

<sup>54</sup> Interview with Eurofins, 16 July 2008

<sup>55</sup> Interview with Eurofins, 16 July 2008

<sup>56</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

According to TIE, the majority of testing is commissioned by the person applying the CE mark or by the manufacturer as a condition of purchase. The person applying the CE mark usually dictates what tests are carried out either by the manufacturer or by a third party and how frequently tests are applied; the regime applied is sometimes influenced by the purchase requirements placed on the producer by the retailer. Many companies feel that these different regimes amount to little more than technical barriers to trade resulting in duplication of testing and auditing with a negligible effect on improving toy safety.<sup>57</sup>

TOP-TOY states that the third-party testing undertaken by industry today is not equivalent to the proposal. According to TOP-TOY, most operators today use third-party testing as a supplement to their own testing and/or as “proof-of-concept” for new products. The proposal will move some of the internal testing to independent test institutes at much increased cost, but according to the interviewee not necessarily increasing safety<sup>58</sup>.

In the view of the consumer organisations BEUC and ANEC, third-party testing should equal compliance with legislation. It is essential to bear in mind that there are not always standards for legislation. For example there are no standards for magnetic toys. ANEC and BEUC believe that third-party testing should not be about testing compliance with standards, but compliance with legislation. This is however a problem if there are no harmonised standards at European level. The consumer organisations are thus of the opinion that the European Commission should draft a mandate to the European standardisation body so they can prepare the standards. At EU level it is an advantage if common standards exist in order to harmonise the industry<sup>59</sup>.

Two of the testing organisations state that the test results to some extent show that toys produced outside the EU have greater difficulties in complying with the standards, however, the results are not significant as the country of origin is not always known to the test company<sup>60</sup>.

### **3.2 The percentage of toys being tested**

There are no statistics on the share of toys being tested by third parties. Even the European-wide industry organisation TIE did not have these numbers. There is general agreement among the interviewees that it would be beneficial to have data in this area, for instance obtained through a survey among companies in the European Union.

One of the very few stakeholders that did attempt a guess was the German test company DEKRA, estimating that about 20-25% of the companies in Europe are using third-party testing<sup>61</sup>. CEOC International, the Confederation of Certification and Inspection companies based in Brussels, however estimate this number to be less than 15%<sup>62</sup>. While unable to comment on the percentage of toys in Europe currently being third-party tested, Eurofins, a European-wide testing company, stated that few companies have the necessary resources in-house to conduct chemical tests<sup>63</sup>. This statement is supported by the large companies interviewed<sup>64</sup>.

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<sup>57</sup> Interview with TIE, 10 September 2008

<sup>58</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>59</sup> Interview with BEUC and ANEC, 17 July 2008

<sup>60</sup> Interview with LGA, 23 July 2008 and 31 July 2008, and interview with DEKRA, 9 September 2008

<sup>61</sup> Interview with DEKRA, 9 September 2008

<sup>62</sup> Interview with CEOC, 16 August 2008

<sup>63</sup> Interview with Eurofins, 16 July 2008

<sup>64</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

### 3.3 Types of toys being tested

The general picture is that all types of toys are tested. It is not so much a question of the type of toy, but rather a question of the tests needed<sup>65</sup>. As mentioned, some (larger) companies are capable of carrying out the physical tests themselves, whereas the chemical tests require a rather large test laboratory, which few companies have in-house.

### 3.4 Types of companies using third-party testing

The general picture is that both small and large companies use third-party testing, but to a varying degree. Third-party testing is an option that companies can use for different reasons – e.g. verification of in-house tests or designs.<sup>66</sup> The German test organisation LGA states that although they have all types of companies as clients, the majority are medium sized and large companies<sup>67</sup>. This is supported by DEKRA, which states that it is mostly large companies that are using third-party testing. Sometimes they get products from smaller companies, but these are often subcontractors to larger companies which tell them what to test<sup>68</sup>. At Eurofins, a European-wide test organisation, it is both large enterprises and SMEs that get their products tested. Some of the large enterprises have their own test facilities, but they can seldom perform the chemical tests needed for the CE mark, which is why they rely on third-party testing. Also, the tests needed are often so comprehensive that it is sometimes not economically feasible for the companies to conduct the tests themselves.<sup>69</sup>

Further, both producers and distributors are having their products tested<sup>70</sup>. In DEKRA, the tests for producers – including those having the toy or part of the toy produced in China – account for about 70% of the tests conducted on toys, with tests carried out for importers accounting for 30%<sup>71</sup>. At Eurofins, both producers, distributors and some times commerce offices get their products tested, including some of the companies importing from China. Eurofins does a random check of the toys produced in China, even if the product in question has already been tested in China. This is done if the producers want to be certain that the products comply with EU standards before they are introduced in the stores<sup>72</sup>.

According to the consumer organisations BEUC and ANEC, it is a common belief that mainly large companies conduct third-party testing, as well as companies that feel responsible. The tests done by the test companies, however, depend on the toy company's good will, which means that potentially unsafe products may not be tested due to the inherent flaws which would be unveiled by an impartial third-party testing. According to ANEC and BEUC, third-party testing is used by many companies - both large and small, and the current picture is that third party testing is not a question of size, as much as a question of good will, and of using third-party testing as a marketing tool, improving the company's image as a responsible company<sup>73</sup>. However, this is not entirely consistent with the information obtained from the test organisations.

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<sup>65</sup> Interview with LGA, 23 July 2008 and 31 July 2008

<sup>66</sup> Interview with TIE, 10 September 2008

<sup>67</sup> Interview with LGA, 23 July 2008 and 31 July 2008

<sup>68</sup> Interview with DEKRA, 9 September 2008

<sup>69</sup> Interview with Eurofins, 16 July 2008

<sup>70</sup> Interview with LGA, 23 July 2008 and 31 July 2008, and Interview with Eurofins, 16 July 2008

<sup>71</sup> Interview with DEKRA, 9 September 2008

<sup>72</sup> Interview with Eurofins, 16 July 2008

<sup>73</sup> Interview with BEUC and ANEC, 17 July 2008

## 4. Costs of private testing

### 4.1 The average cost of (private) testing

The cost of testing varies greatly. The price depends on a number of factors, such as the type of test (physical or chemical), the material (plastic, textiles etc.), the number of materials and colours used, the addition of electronics, the inclusion of water based components and art materials within the toy, the standards that the toy has to comply with, and how complex and technologically advanced the toy is.<sup>74,75,76,77</sup> Chemical testing is normally much more expensive than mechanical and physical testing such as the foreseeable use testing (to see if the toy breaks).

The different stakeholders interviewed for this study was asked what the “average” cost of a product test was. In the table below, a number of concrete price examples and cost ranges mentioned by different stakeholders is shown. The table is not meant to provide a full overview, but rather to illustrate how complex the issue of pricing is. What is clear from the examples quoted that there is no “average” cost. However, based on the examples provided it seems fair to say that simple tests start at 150-300 EUR, with more complicated tests starting around 3,000-4,000 EUR and going up to 8,000-10,000 EUR.

Type of organisation <sup>78</sup>	<u>Examples</u> given by different stakeholders of price ranges of third-party testing
Statements from <b>test organisations:</b>	Between <b>1,000 and 10,000 €</b> depending on the type of toy  <b>Physical testing</b> (EN71 part1&2): about <b>600 to 850€</b> <b>Chemical testing</b> (EN71 part 3): about <b>450€</b> <b>Allergens testing</b> as provided in the draft new Toy Safety Directive (CMR): <b>up to 5.000€</b>  Price starts (for a simple toy) at <b>3-400 €</b> and goes up to <b>8000 €</b> However, most tests cost <b>between 1000 € and 3000 €</b>
Statements from <b>industry representatives:</b>	Testing costs vary between <b>600 €</b> (for a very simple toy) and <b>4,000 €</b> depending on the complexity of the product.  To see <b>if a toy breaks</b> might cost <b>50€</b> for one toy.  The <b>chemical testing</b> for heavy elements would cost <b>300€</b> for a simple toy  Between <b>300-1500 €</b> per toy,  From app. <b>140 €</b> (for a simple test of certain mechanical properties), and upwards. Type approval or equivalent testing would greatly increase the cost
<b>Standardisation body (CEN):</b>	A simple test is <b>2-300€</b> , a more complicated test from <b>3-4,000€</b> up to <b>10,000€</b>

<sup>74</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>75</sup> Interview with CEOC, 16 August 2008

<sup>76</sup> Interview with TIE, 10 September 2008

<sup>77</sup> Interview with DEKRA, 9 September 2008

<sup>78</sup> The price examples were obtained through interviews with the organisations mentioned in the table, cf. the list of interviews for details.

## 4.2 Additional testing costs

It has been investigated if the introduction of mandatory third-party testing for certain categories of toys would impose significant additional testing costs to the tests that are already being carried out. According to TIE, this would depend on how the requirements were applied. Currently producers do not use testing as a route to monitor compliance against all relevant standards (e.g. RoHS<sup>79</sup>, and EN71 Part 9<sup>80</sup>). A mandatory requirement to test to all relevant standards would be commercially unviable, but a mandatory requirement to test to key requirements (e.g. EN71: Parts 1 to 3<sup>81</sup>) would be less of an issue. Chemical compliance is often applied at material level, not finished product level, as many producers use a finite number of materials across their product range. A mandatory requirement to produce a certificate for each toy would create unnecessary repetitive testing and significantly impact on cost. Moreover, it could have a negative impact due to reducing the frequency of testing applied by the medium-sized to large companies in particular. Physical and mechanical testing is the cheapest aspect of testing. Chemical testing is the most expensive and industry is concerned that it is likely to be significantly more expensive with the introduction of more requirements in the TSD revision.<sup>82</sup>

This view is supported by other industry actors<sup>83</sup>, who assess that if the testing is about showing that they live up to the standards (as it is today), the costs might not be raised considerably. However, if a type approval or similar requirements are needed, this means that the testing will have to be relatively more comprehensive than today.

Another concern by industry is that if all companies suddenly will have to use third-party testing, the price of testing will probably increase<sup>84</sup>, and that the test organisations may not be able to handle the extra workload<sup>85</sup>. However, Eurofins believes that they will be fully capable of handling the workload<sup>86</sup>.

Industry representatives are furthermore concerned that if mandatory third-party testing is introduced in the EU, the producers will lose some of their freedom to choose the best possible way of testing their toys. Industry does not believe that outsourcing a number of the activities currently handled by in-house quality assurance departments is a good signal to send to the consumers either, since it may lead to producers losing their sense of responsibility towards the products. Also, according to industry, the test companies do not know the products as well as the producers and therefore cannot perform all the tests needed the way that the producers can<sup>87</sup>. An example of this is LEGO, who states that they would not rely only on the test companies testing the toys. In LEGO's opinion, the test companies are often not capable of performing the same thorough tests as LEGO, whose internal product lab follows the product from design through prototyping to the finished product.

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<sup>79</sup> Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment 2002/95/EC, commonly referred to as the Restriction of Hazardous Substances Directive or RoHS.

<sup>80</sup> EN71 refers to the harmonised standards for toys. Part 9 deals with Organic chemical compounds.

<sup>81</sup> Part 1: Mechanical and physical properties, Part 2: Flammability, Part 3: Migration of certain elements.

<sup>82</sup> Interview with TIE, 10 September 2008

<sup>83</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>84</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>85</sup> Interview with DI, 11 August 2008

<sup>86</sup> Interview with Eurofins, 16 July 2008

<sup>87</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

LEGO does not believe that this work can be replaced by an independent third-party tester and third-party testing is therefore seen by LEGO as a bureaucratic extra cost for the company<sup>88</sup>.

### **4.3 Additional administrative burdens**

When looking at whether the introduction of mandatory third-party testing for certain categories of toys would impose significant additional administrative burdens on companies, responses from industry indicate that it would depend on the terms of the requirements and on how third-party testing is defined.

Obtaining a third-party certification in itself would not create an administrative burden. However, if this were required to be produced for customs, the administration would create a significant burden. Larger companies using several ports within the EU would require significant resources to administer such a requirement.<sup>89</sup>

Industry further adds that if third-party testing is a matter of complying with the rules, the administrative burdens may not be much larger than today, but if a type approval is needed there will be extra testing and thus increased administrative burdens<sup>90</sup>.

Obviously, the administrative burdens also depend on the frequency of testing required. Typically, toy specimens are taken from the production and tested by a third party before any production is released. This testing is repeated on an annual basis if the toy is still in production. If the toy is modified in any way it is subject to re-testing. If a mandatory third-party testing regime would require toys to be tested more frequently, for instance every month, then clearly the testing costs and the administrative burdens would increase accordingly.<sup>91</sup>

CEOC International, the Confederation of Certification and Inspection companies, have a different view on this, as they believe that the companies would be relieved of some of the administrative burdens, as they would get a complete set of the technical documentation requested in the toys directive from the third-party testing and certification bodies<sup>92</sup>. Thus, in CEOC's perception of the development of the administrative burdens, the companies need not conduct the test themselves. TIE agrees that the larger companies might reduce in-house testing to off-set the additional external third-party testing and expenses, but does not agree that it might reduce the administrative burdens.<sup>93</sup>

### **4.4 Would the costs and burdens be too high for SMEs?**

According to the industry association for SMEs, NORMAPME, the costs and burdens of mandatory third-party testing will indeed be high. Both physical and chemical tests are costly to SMEs as they tend to produce small series rather than mass-produce.

Since the price for testing is the same whether the company produces 10 or 10,000 toys, it is relatively more expensive for SMEs to have third-party testing done than it is for larger companies.<sup>94</sup> One solution could be to allow for SMEs to share test results and use testing based on documentation and calculations. Another would be to keep the certification to a

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<sup>88</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>89</sup> Interview with TIE, 10 September 2008

<sup>90</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>91</sup> Interview with Hasbro Europe, 18 August 2008

<sup>92</sup> Interview with CEOC, 16 August 2008

<sup>93</sup> Interview with TIE, 10 September 2008

<sup>94</sup> Interview with NORMAPME, 11 July 2008

minimum, as NORMAPME believes that it is too costly and does not prevent the companies wanting to cheat from doing so. NORMAPME thus supports the Commission proposal of only requiring third-party certification when no harmonised standards exist<sup>95</sup>.

Larger companies and the Nordic Association of Toy Manufacturers agree that as SMEs produce smaller batches than large companies, and as the costs of testing are the same for small and large companies, the costs are relatively larger for SMEs. In addition, they point to the fact that larger companies often have more than one product line, and they can often negotiate a better price as they have more toys which need to be tested. Thirdly, the possible additional administrative costs and burdens associated with third-party testing is easier to handle for larger companies, as they have the human resources to do so. This situation, where large companies are indirectly favoured, might be seen as going against other EU initiatives such as the recent Small Business Act which aims at easing administrative burdens for SMEs<sup>96</sup>.

The Confederation of Danish Industries adds to the above by pointing out the following scenarios:

1) The time spent waiting on third-party approval is costly, especially for SMEs, as the marketing and sale of products is put on hold for the duration of testing. SMEs often only produce one toy and cannot rely on other product lines<sup>97</sup>. However, this statement should be seen in the light of the test organisations' statement that they are capable of handling third-party testing of all companies, should it be made mandatory<sup>98</sup>.

2) If third-party testers need to control specific pieces of the toy, representatives from head quarters may need to travel with the third-party testers to visit offshore production. The travel costs of visiting offshore production facilities are expensive, and such costs are especially hard to take for a SME with limited resources. Moreover, there are also the costs for the employees (spending time travelling which could have been spent better elsewhere, spending time on familiarising themselves with the situation at the offshore facilities etc.) The test in itself might cost the company around 6-700€ but there are also the travel costs, employee costs etc<sup>99</sup>.

The consumer organisations ANEC and BEUC, on the other hand, state that third-party testing need not be expensive. For instance, the "use and abuse test" is relatively inexpensive vis-à-vis other tests. Third-party testing can also be turned into an advantage, as small (as well as large) companies could use the tests as an element in their marketing strategy, in order to improve the company's reputation by being perceived as proactive and reliable companies<sup>100</sup>.

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<sup>95</sup> Interview with NORMAPME, 11 July 2008

<sup>96</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>97</sup> Interview with DI, 11 August

<sup>98</sup> Interview with Eurofins, 16 July 2008

<sup>99</sup> Interview with DI, 11 August

<sup>100</sup> Interview with BEUC and ANEC, 17 July 2008



## 5. Overview of stakeholders' opinions on the introduction of mandatory third-party certification

In this section the main arguments put forward by different groups of stakeholders on the pros and cons of mandatory third-party testing are summarised. The stakeholder groups included here are:

- Industry
- Consumer organisations
- Test institutions
- Surveillance/enforcement authorities
- Standardisation authorities

### 5.1 Industry

Industry opposes the introduction of mandatory third-party testing for a number of reasons. Their position is that the current system is adequate, and that instead of introducing mandatory third-party testing, the existing rules should be better enforced.

- **Mandatory third-party testing will not stop those who “cheat” anyway but only increase costs for those who obey the rules**

According to industry representatives, a mandatory requirement will not reduce the number of non-compliant toys on the market as it would only be implemented by the manufactures that already comply with the current rules – it will not catch ‘free riders’<sup>101</sup>. The European toy industry is not one of the most dangerous industries but the problem within the industry is that some producers do not live up to the standards, and including mandatory third-party testing in the new directive will probably not change this behaviour.<sup>102</sup> In fact, the economic incentive to cheat will be even stronger than it is now, as it will become more costly to comply with legislation if mandatory third-party testing is introduced. If certain actors already cheat with the self-testing, they can also cheat by claiming falsely that they have had third-party testing carried out. As reliable producers are already testing their products to make sure that they comply with standards, and as companies who cheat probably will find a way to do so regardless of which rules are imposed upon them, mandatory third-party testing is mainly providing legislators with a false sense of security<sup>103</sup>. It represents an added cost for manufacturers which will end up being paid by consumers.

Although there will always be bad apples dumping inferior products on the market, maintaining a positive brand is an important self-regulating factor for the majority of the industry, influencing manufacturers to conform to standards and test to improve product security. Large companies such as Mattel have spent millions on improving their brand after the recall of products, which illustrates how companies are keen to maintain a positive brand in the eyes of the consumer. SMEs in particular cannot afford a “Mattel case”, as they do not have the finances to spend on restoring their brand name.

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<sup>101</sup> Interview with TIE, 10 September 2008

<sup>102</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>103</sup> Interview with DI, 11 August 2008

Thus, the law-abiding members of the industry believe that it is wrong that legislation is based on the lowest denominator, as it will only impose more cost and burdens on those who follow the rules while the companies that are cheating now will find ways to keep on doing so.

- **The CE-marking provides a high level of consumer safety**

Industry believes that the CE-marking provides a very high level of safety for consumers; however there is currently not sufficient market surveillance and control of toys that are on the market. A third-party test would only increase test costs – it will not keep non-conforming goods off the market, as already discussed above.<sup>104</sup>

The system of CE marking using the internal production control module A has, according to industry, worked well for the last 20 years. Under the current regime (module A) some companies appear to have weak control over production including inadequate testing and because of poor enforcement across the EU, such bad practices go undetected and unpunished. It is no use making the existing rules tougher, because the present rules are adequate if they are obeyed and enforced<sup>105</sup>.

- **Increased market surveillance is a better alternative**

Industry suggests increasing market surveillance as a better solution to improve consumer safety than mandatory third-party testing.

The number of toys which are being taken off the market as a result of the RAPEX system has increased. It is especially smaller operators, flea markets and other less controlled channels which sell toys that do not live up to the standards, and these are the ones that the authorities should focus on. The toy standards should obviously be followed by all producers and distributors, but this is not always the case, and it makes other companies which comply with standards look bad. Increased market surveillance would help to catch these products<sup>106</sup>.

Market surveillance could also be more efficient. Within the EU, all Member States should not test the same products. Rather, industry proposes, they should cooperate so that some countries test some products and other countries other products. The authorities should also be better at reporting to each other when they find dangerous toys – that way, dangerous toys discovered in one Member State can be removed faster from the markets in other Member States<sup>107</sup>.

- **Mandatory third-party testing may diminish the incentive to participate in standardisation work**

With respect to the standardisation process, TIE fears that a mandatory requirement will jeopardise the standardisation work as most of the current participants – in particular industry - will lose their incentive to participate. This concern is shared by the European Standardisation body CEN. The argument is that the direct “hands-on” working with standards and testing will be moved from industry to the test labs, who will define test requirements etc. while industry may gradually come to feel that the test labs assume responsibility for the safety of the product instead of industry itself.

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<sup>104</sup> Interview with TIE, 10 September 2008

<sup>105</sup> Interview with Hasbro Europe, 18 August 2008

<sup>106</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>107</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

- **Duplication of work**

Duplication of work is of concern to the industry – as an example, a supplier with a range of 12 toys of the same design and same basic materials but differing in colour may be faced with testing to EN71: part 1 (mechanical and physical testing) 12 times.

- **Risk of increased consumer prices**

Mandatory third-party testing may result in increased consumer prices, as testing may become more bureaucratic and costly for producers. At the moment, industry does not believe that there are enough test companies to meet the potential demand if third-party testing becomes mandatory.<sup>108</sup>

- **Test houses do not have the same knowledge of the products as the manufacturers**

Some larger companies feel that their in-house testing technicians have a greater expertise than third parties and so provide added benefits<sup>109</sup>. For instance, LEGO tests their products in all production phases (from design to new product), and it is their belief that no test companies would be as accurate and comprehensive in their testing, as the test companies do not know enough about the specific product<sup>110</sup>. Hasbro Europe also states that in-house labs may have better knowledge than the third-party testers, as they know the products and work processes better<sup>111</sup>.

- **Fear of losing flexibility and product innovation with mandatory tests**

Today, the toy industry is very flexible. Every company can do their tests the way they want and perform the number of tests they want, as long as they comply with standards. This flexibility is very helpful for the companies as it gives them room to design the testing in a way that fits their production.

When it comes to product innovation, many unforeseen issues arise that are not necessarily covered by the standards as these issues are fairly new. If no scientific material on what is safe and unsafe is available, and/or if these statistics are not gathered it is difficult to introduce legislation that covers it.

- **SMEs will be disadvantaged by mandatory third-party testing**

According to NORMAPME<sup>112</sup>, there are no advantages of third-party testing for SMEs, and third-party testing is very costly for smaller enterprises. High-tech toys (electrical toys, toys with magnets etc.) should be tested by a third party, but NORMAPME does not believe that it is necessary – or that it increases consumer safety – to test low-tech toys like puppets, wooden toys etc. Instead, NORMAPME suggests (as is also suggested in their position paper) that testing based on documentation and calculations be used instead.<sup>113</sup>

- **Increased transparency might help increase consumer (organisation) confidence**

It might help if the consumer organisations had more insight into how companies do the security tests. Of course, transparency is needed, which should be underlined in the set-up.

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<sup>108</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>109</sup> Interview with TIE, 10 September 2008, and Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>110</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>111</sup> Interview with Hasbro Europe, 18 August 2008

<sup>112</sup> European Office of Crafts, Trades and Small and Medium- Sized Enterprises for Standardisation

<sup>113</sup> Interview with NORMAPME, 11 July 2008

It is important that authorities can at all times gain an insight into how the testing is being performed in the companies. If the documentation is available, could it be sufficient for the consumer organisations? The authorities could for instance demand that all test results be publicised. This is not mandatory today<sup>114</sup>.

**Summing up**, the industry recommends that the consumer organisations should trust the existing set of rules. It would be a better option to make the existing set of rules work properly instead of introducing a new set-up, such as mandatory third-party testing. The reason why the current set-up is not working properly has to do with the fact that market surveillance is decentralised and there are no common EU guidelines for market surveillance. The consumer organisations could put their efforts into improving and standardising the market surveillance system instead. The problem does not lay with the companies following the standards but the ones not doing so, and the companies following the standards should not be subject to unjustly strict rules. Instead of mandatory third-party testing, there should be increased market surveillance and authorities should take greater part in developing the standards. Also, authorities should invest more in conducting random checks.<sup>115</sup>

The industry should be trusted to conform to the regulated standards which govern toy manufacturing, and seek to provide standards in areas which are not yet regulated by such, as well as continuously seek to improve the existing standards. The Mattel case is relevant in this context, as magnets (in toys) were not governed by a standard. The point being that magnet toys need not be forbidden, but rather improved by introducing a safety standard<sup>116</sup>.

It was pointed out that the New Approach aims at setting the essential safety requirements that products placed on the EU market needs to fulfil while the technical details are taken care of by the standardisation organisations. Introducing mandatory third-party testing would thus collide with the New Approach<sup>117</sup>.

## **5.2 Consumer organisations/health organisations**

The consumer organisations generally favour the introduction of mandatory third-party testing. They argue that there are too many companies that do not comply with the existing rules, and that something therefore needs to be done.

- **Self-certification does not work well enough - there are still too many non-compliant toys around**

There are half a million different toys in the European toy market. According to the Swedish Konsumentverket, mandatory third-party testing of **all** toys may not be feasible, since it may just lead to cheating with third-party EC type testing certificates. On the other hand, one can still walk around discount stores (this is in particular a problem during Christmas time) and in half an hour fill a basket with dangerous non-compliant toys. This is unacceptable 25 years after the TSD entered into force<sup>118</sup>.

The present self-certification system does not work well enough, although large, responsible companies as for example LEGO and the big toy stores respect the CE mark. If one goes to “regular, organised toy shops” the assortment of toys is much safer than 25 years ago.

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<sup>114</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>115</sup> Interview with LEGO, Mattel, TOP-TOY, K.E. Mathiasen and the Nordic Association of Toy Manufacturers, 14 July 2008

<sup>116</sup> Interview with DI, 11 August 2008

<sup>117</sup> Interview with DI, 11 August 2008

<sup>118</sup> Interview with Konsumentverket, 23 July 2008

But in the lower end of the market nothing seems to have happened since the Toy Directive entered into force, and non-compliant CE marked toys are common<sup>119</sup>.

ANEC and BEUC also state that the self-declaration model does not always work and opens up for companies being able to cheat. Thus, the main advantage of third-party testing is that all that third-party testing will give better guarantees for safety simply because the products will be tested more and by a notified body<sup>120</sup>.

- **Random third-party checks should be mandatory**

Konsumentverket suggests that mandatory random checks on toys bearing the CE mark are carried out by a third party, which is not required today, as companies apply the CE mark themselves. One possible solution could also be to apply module A2 which is described in the new harmonised legislation for CE marked products by the “common framework for the marketing of products” (goods package). The module A2 asks for random tests of CE-marked goods by accredited laboratories or other third parties. That is, mandatory random tests in order to check if the CE marked products are compliant with standards. If it is felt that it is not feasible to subject all types of toys to random third-party checks, it would be an option to start with toys for babies and young children (under three years of age), as these groups are the most vulnerable ones<sup>121</sup>.

- **Market surveillance should be increased but is not enough**

Market surveillance should according to the Danish Consumer Council also be increased, as it has a pre-emptive effect. However, in contrast to industry, the Danish consumer Council does not believe that increased market control is an effective solution, because there are so many products to test. And when some companies do not comply with the rules of self-declaration, something must be done. If third-party testing is introduced, it is the interviewees’ opinion that the probability that the products are in compliance will increase, as fewer companies will dare cheat. Third-party testing should therefore be seen as a preventive measure.<sup>122</sup>

The Austrian Consumer Council agrees that third-party testing could function as a compensation for the malfunctioning market surveillance system. The assumption is that the market surveillance should take care of the companies not complying with legislation but in reality, this does not happen. Market surveillance is already in the legislation, but it is the responsibility of the Member States, and the Commission cannot really do anything if the Member States are not active enough. Coordination is needed in order to make market surveillance work, but the main problem is that the Member States do not have the resources to actively engage in this. Co-funding from the Commission could be a solution, so that the Member State authorities will have the financial resources to hire more people.

Another point with respect to the market surveillance system made by consumer organisations is that it should be a concrete obligation for the Member States to e.g. check a certain number of toys every year. This, in combination with increased resources, might increase the activity level of Member States. The controls could be done in a shared fashion with some countries testing some toys and others testing other toys. With the current situation in the EU (number of test facilities, Member State resources etc) it would be pointless to introduce mandatory third-party testing for all toys - the capacity is not there. Instead, it could be a solution to focus on the most problematic toys – these could be selected through a comitology procedure, and toys with which there have been problems in the past could be selected for mandatory

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<sup>119</sup> Interview with Konsumentverket, 23 July 2008

<sup>120</sup> Interview with ANEC and BEUC, 17 July 2008

<sup>121</sup> Interview with Konsumentverket, 23 July 2008

<sup>122</sup> Interview with the Danish Consumer Council, 11 August 2008

third-party testing. In sum, third-party testing is necessary for certain products PLUS improved market surveillance in order for safety to increase for European consumers.<sup>123</sup>

- **Third-party testing will increase transparency – for both consumers and industry**

ANEC and BEUC consider that third-party testing will increase consumer confidence by creating more transparency from the company to the consumer, and between stakeholders and organisations. As it is now, the consumer cannot see how a company has done the tests. They do not have an overview of every actor in the supply chain. For example, outsourcing the production of toys to countries outside the EU could mean that the company loses knowledge about the product simply due to the fact the companies do not know exactly which raw materials have been used for the product etc. Companies can of course visit their suppliers themselves and check up on the production and which raw materials are used for the products, but if they do not have resources to do so, third-party testing can increase transparency in this part of the supply chain<sup>124</sup>.

According to the consumer organisations, having third-party testing is just double checking the product before introducing it in the stores. Third-party testing will guarantee that the product will be checked for what others do not have the time to check, have not thought about checking or simply missed. The use of third-party testing makes the companies become more reliable from the consumers point of view. Third-party testing is an advantage not only for the consumers, but also for the entire supply chain, as third-party testing can increase transparency here.

According to ANEC and BEUC, companies can still use their own testing facilities in order to make the product better in the production phase. Third-party testing is to be understood as having somebody else do an extra check. The companies might even be able to reduce their costs by cooperating with the third-party testers, as some of their own tests might not be necessary. If companies keep testing their products themselves more transparency would not be added to the entire system.

- **Small risk of increased costs for consumers – but offset by fewer withdrawals and reduction of costs to society (health effects)**

The consumer organisations agree with industry that mandatory third-party testing possibly can increase the production costs for companies in certain cases. When industry presents this argument, the increase in costs is always assumed to be transferred to consumers. However, ANEC and BEUC studies show that customers will always rather pay a bit more and then be certain that products are safe. While third-party testing can possibly be expensive, the costs incurred through no third-party testing of toys can be much larger, as withdrawal of products is much more expensive because the manufacturer has to check all shops to ensure that all toys have been removed from the shelves. There are also costs to society if accidents happen. For instance, in the cases with magnetic toys, the affected children needed surgery, which is a burden on society that is not always part of the debate. Health effects (in the long run) of e.g. toxic amounts of lead are not always part of the equation either. These invisible costs can often be balanced by third-party testing. Today, third-party testing is being done on a voluntary basis and many companies already use it. So from the consumer organisations' point of view, the argument of extra costs seems exaggerated due to the fact that many companies already use third-party testing<sup>125</sup>.

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<sup>123</sup> Interview with the Austrian Consumer Council, 30 July 2008

<sup>124</sup> Interview with ANEC and BEUC, 17 July 2008

<sup>125</sup> Interview with ANEC and BEUC, 17 July 2008

- **Neutrality of test organisations is questioned**

According to the Austrian Consumer Council, one problem with third-party testing is that the manufacturers are the clients of test companies. There is competition for market shares among the test companies, and they are not really neutral as they see a big market ahead of them if third-party testing was made mandatory. There have been examples in the past of test companies having confirmed that a certain product should be conveyed as proof of excellence, but in reality, the product did not comply with the standards<sup>126</sup>. This is also a concern raised by industry (among others, TIE and the Nordic Association of Toy Manufacturers).

- **The CE mark is for market surveillance, not for consumers**

The consumer organisations believe that the CE mark is not for consumers, it is for market surveillance, but many consumers do not know this. According to ANEC and BEUC, the CE mark should be removed from the products and only be used for market surveillance. An example of how the CE marking is confusing to consumers is that the CE mark is used on toy beds for dolls, but is not allowed on baby beds. On the one hand, when buying a bed or push chair for your child, you should not buy one with a CE mark because this means that the product is a toy. On the other hand, consumers are told to buy CE marked toys. Thus, it is very difficult for the consumers to understand how the CE mark is used. ANEC and BEUC propose that the CE mark is only used in the technical documentation and that the CE mark should not appear on toys as it is misleading for consumers. If it is decided to make third-party testing visible it could be included in the technical documentation<sup>127</sup>.

Abuse of the CE-mark is also a problem, especially for toys sold in the streets, amusement fairs, low-price shops etc. Abuse of the CE-mark is however not an argument for not improving the CE mark as the more that is imposed on producers, the more difficult it is for those not complying with the rules.

In the RAPEX system, the first products to be notified are toys. Toys are more often recalled than for instance domestic appliances. However, many of the recalled toys in the RAPEX system bear the CE-mark<sup>128</sup>: out of the 50 latest reported toys from the RAPEX<sup>129</sup> system<sup>130</sup>, 42 of these did not comply with the toy safety standards. Others had problems with complying with chemical standards - 17 of these were CE marked.

- **Third-party testing could be mandatory only for those toys that present the greatest risks**

ANEC and BEUC consider it necessary to decide which tests is used for which products. Their joint position paper puts forward an idea to prioritise according to the categories of toys, selecting the types of toys that are more important to test. The types of toys for which third-party testing should be mandatory are, according to the ANEC/BEUC position paper, as follows<sup>131</sup>:

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<sup>126</sup> Interview with Austrian consumer council, 30 July 2008

<sup>127</sup> Interview with the Danish Consumer Council, 11 August 2008 and Interview with ANEC and BEUC, 17 July 2008

<sup>128</sup> Interview with ANEC and BEUC, 17 July 2008

<sup>129</sup> [http://ec.europa.eu/consumers/dyna/rapex/create\\_rapex\\_search.cfm?zoek=toy&vanaf=41&jaartal=ALL](http://ec.europa.eu/consumers/dyna/rapex/create_rapex_search.cfm?zoek=toy&vanaf=41&jaartal=ALL)

<sup>130</sup> As of 10 September, 2008

<sup>131</sup> BEUC and ANEC position paper: "Revision of the Toy Safety Directive: How could we make toys safer?", April 2008

- toys intended for children under three years (e.g. rattles);
- toys which, for functional reasons, cannot be designed to eliminate all risks (e.g. toys with high accessible surface temperature, magnetic toys);
- toys which, in case of a failure, can lead to severe health impacts of a child (e.g. a toy containing a laser);
- toys which have caused severe accidents in the past (cf. RAPEX notifications);
- toys which have raised considerable concern in enforcement activities (e.g. candy lipsticks with plastic part – children can swallow the plastic part as it resembles the candy)

### 5.3 Test institutions

- **High level of consumer safety can only be achieved through an effective combination of third-party testing, company QA systems and marketing surveillance**

According to test institutions, in order to increase consumer safety it is not sufficient to tighten up the requirements (e.g. by the revised TSD). A satisfactory safety level can only be reached by an effective combination of third-party testing for the basic assessment and effective company in-house QA systems (both manufacturers and distributors) to guarantee this level for the whole production – not only for the test samples. In some cases it may cause higher costs and require more time<sup>132</sup>. Again, this should be combined with an effective monitoring (market surveillance) system.

- **Mandatory third-party testing ensures independent and unbiased testing**

The advantages of third party testing are that an independent, unbiased party tests the products and that the process is carried out in the same way for all products, so that it is easy to compare<sup>133</sup>. Also, in Europe, many QA departments in large companies are getting smaller (last 5-10 years) as the companies cut down on cost. Hence, they do not always have the human resources to analyse toys in-house, and thus need to outsource the analysis<sup>134</sup>.

### 5.4 Surveillance/enforcement authorities

- **Third-party testing is not necessarily independent and unbiased**

The enforcement authorities do not necessarily believe that mandatory third-party testing is *the* solution for guaranteeing that unsafe products do not reach the market. There are a couple of reasons for this: First of all, many manufacturers already do third-party testing, but enforcers still see lot of unsafe products on the market, even if they have been third-party tested. Mandatory third-party testing will only function in the right way if the testing house/notified bodies are independent. Today, they are not independent, as they are largely for-profit companies. If the test houses or notified bodies confront the customers with a bad report the customers may not have their products tested there again and the test houses will lose business. It is Prosafe's opinion that testers are too polite towards industry. Some notified bodies are of course independent but others are very profit-oriented<sup>135</sup>.

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<sup>132</sup> Interview with LGA, 23 July 2008 and 31 July 2008

<sup>133</sup> Interview with Eurofins, 16 July 2008

<sup>134</sup> Interview with DEKRA, 9 September 2008

<sup>135</sup> Interview with Prosafe, 4 September 2008



- **Give the responsibility for safe products back to the producers instead of third parties**

Some producers are also sending in samples for products that are different from what they intend to produce – another reason why mandatory third-party testing will not enhance safety. A better solution than mandatory third-party testing is, according to Prosafe, to give the producers back the responsibility for putting safe products on the market. With third-party testing, it is sometimes seen that the producers disclaim responsibility for the safety of their products and assign the responsibility for safety to the test houses. It is according to Prosafe important to make manufacturers aware that safety is their responsibility<sup>136</sup>.

Prosafe states that self-declaration is not ideal either, but as the above examples show, mandatory third-party testing does not make the safety situation better.

- **Better enforcement and industry self-regulation is more efficient than mandatory third-party testing**

In the toy industry, there are many responsible companies which obviously do not present a problem. However, at the other end of spectrum there are the very irresponsible companies whose main focus is on making a lot of money in a relatively short span of time, regardless of the safety. The latter group is what enforcers are working with. The Mattel case is a good example of a responsible company, as Mattel had enough self-correcting power to correct errors and change production. An irresponsible company would just have stepped out of the industry and tried to make money in a different way. With respect to the irresponsible companies, if there is a system where they can “buy” a certificate to make their company look safe, they will do it. If mandatory third-party testing should be proven with a mark like the CE mark, the irresponsible companies will just find some way to produce such a mark and put it on their products. Better enforcement is more efficient than third-party testing<sup>137</sup>.

- **Harmonisation of *enforcement* is needed**

The only thing that helps bringing down the number of unsafe products on the market is if the enforcement agencies, together with the responsible companies, improve the coordination and enforcement. There are however obstacles towards this, the most prominent one being because of the European Commission. Prosafe states that harmonisation of legislation (which in itself is a good initiative) is useless if *enforcement* of legislation is not harmonised, but the problem is that enforcement is the responsibility of the Member States. Hence, the European Commission cannot force the Member States to do more on enforcement, only politely request them to do so. The problem is that there are large differences in the ways the Member States are carrying out enforcement, for instance with respect to the level of enforcement, and which products they are focusing on<sup>138</sup>.

Prosafe has started to discuss harmonisation among enforcement authorities in Europe. It is being discussed for instance in terms of which products the individual enforcement authorities have to focus on, and how Prosafe can encourage the different European enforcement agencies to work more closely together.<sup>139</sup>

- **Member states need to co-ordinate and work together on enforcement and market surveillance**

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<sup>136</sup> Interview with Prosafe, 4 September 2008

<sup>137</sup> Interview with Prosafe, 4 September 2008

<sup>138</sup> Interview with Prosafe, 4 September 2008

<sup>139</sup> Interview with Prosafe, 4 September 2008

Bringing the relevant people together from the different enforcement authorities and enhancing the coordination will improve toy safety in Europe, as it is more efficient and effective to conduct market surveillance together. Moreover, it should be better explained to the enforcement authorities why active market surveillance is needed and better coordinated (e.g. which products should be controlled in which countries etc.). Moreover, the enforcement activities are moving from the national to the EU level, which is also recommendable in Prosafe's view<sup>140</sup>.

## 5.5 Standardisation bodies

- **Mandatory third-party testing is not what is needed**

According to CEN, the standards corresponding to the Toy Safety Directive are clear enough for the producers. It should be relatively easy for the producers to produce toys according to this standard. If in doubt, a producer will need a type approval.

Also, not all toys are equally complicated. If a producer produces toys for which no harmonised standards exist, third-party testing is needed in order to obtain a type approval. Mandatory third-party testing seems very bureaucratic and not necessarily in compliance with what is needed in the industry.

- **Mandatory third-party testing may jeopardise standardisation work**

Like industry, CEN fears that mandatory third-party testing will jeopardise the standardisation work. If all toys will need a type approval there is no initiative to work with standardisation.

The standardisation work could be strengthened, by ensuring that all relevant stakeholders participate. Test organisations, consumer organisations, authorities and producers participate in the work today, and it is very important that all stakeholders continue to do so. However, there has recently been a tendency that consumer organisations and authorities are less active, which means that the standardisation bodies lose legitimacy towards them. When developing standards, it is important that all relevant stakeholders support this work.

- **Strengthen market surveillance instead of third-party testing**

It is clear that the system today lacks proper market surveillance. CEN believes that instead of introducing mandatory third-party testing, it should be looked at how market surveillance could be strengthened. For instance, the technical file that all producers must have could be handed over to the authorities before the toy is put on the market. However, it seems that the authorities lack resources to carry out market surveillance effectively.

CEN does not believe that mandatory third-party testing improves customer security, as it is not the standards that are inadequate but the surveillance that does not function well enough. With the market surveillance system today, too few free riders are caught. Those not following the rules today will either not have the third-party test made or cheat with the documentation.<sup>141</sup>

The arguments outlined above are summarised in the table on the following page.

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<sup>140</sup> Interview with Prosafe, 4 September 2008

<sup>141</sup> Interview with CEN, 20 August 2008

## 5.6 Summary of arguments from different stakeholder groups concerning mandatory third-party testing of toys

Industry	Consumer/health organisations	Test institutions	Enforcement authorities	Standardisation bodies
<p><b>Overall position:</b> Against mandatory third-party testing. Current system is adequate. Instead of mandatory third-party testing, existing rules should be better enforced.</p>	<p><b>Overall position:</b> In favour of mandatory third-party testing (possibly for selected types of toys only). Too many companies do not comply, something must be done.</p>	<p><b>Overall position:</b> In favour of mandatory third-party testing. Ensures unbiased testing.</p>	<p><b>Overall position:</b> Mand. third-party testing not the best solution, ensure better enforcement/surveillance instead.</p>	<p><b>Overall position:</b> Mand. third-party testing not the best solution, strengthen market surveillance/enforcement instead.</p>
<ul style="list-style-type: none"> <li>• Mandatory third-party testing will not stop those who “cheat” anyway but only increase costs for those who obey the rules</li> <li>• The CE-marking provides a high level of consumer safety</li> <li>• Increased market surveillance is a better alternative</li> <li>• Mandatory third-party testing may diminish the incentive to participate in standardisation work</li> <li>• Duplication of work</li> <li>• Risk of increased consumer prices</li> <li>• Test houses do not have the same knowledge of the products as the manufacturers</li> <li>• Fear of losing production flexibility and product innovation with mandatory tests</li> <li>• SMEs will be disadvantaged by mandatory third-party testing (disproportionate costs)</li> <li>• Increased transparency of current certification procedures and test results might help increase consumer confidence</li> </ul>	<ul style="list-style-type: none"> <li>• Self-certification does not work well enough - there are still too many non-compliant toys around</li> <li>• Random third-party checks should be mandatory</li> <li>• Market surveillance should be increased but is not enough</li> <li>• Third-party testing will increase transparency – for both consumers and industry</li> <li>• Small risk of increased costs for consumers – but offset by fewer withdrawals and reduction of costs to society (health effects)</li> <li>• Neutrality of test organisations is questioned</li> <li>• The CE mark is for market surveillance, not for consumers</li> <li>• Third-party testing could be mandatory only for those toys that present the greatest risks</li> </ul>	<ul style="list-style-type: none"> <li>• High level of consumer safety can only be achieved through an effective combination of third-party testing, company QA systems and marketing surveillance</li> <li>• Mandatory third-party testing ensures independent and unbiased testing</li> </ul>	<ul style="list-style-type: none"> <li>• Third-party testing is not necessarily independent and unbiased</li> <li>• Give the responsibility for safe products back to the producers instead of third parties</li> <li>• Better enforcement and industry self-regulation is more efficient than mandatory third-party testing</li> <li>• Harmonisation of enforcement is needed</li> <li>• Member states need to co-ordinate and work together on enforcement and market surveillance</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory third-party testing is not what is needed</li> <li>• Mandatory third-party testing may jeopardise standardisation work</li> <li>• Strengthen market surveillance instead of third-party testing</li> </ul>

## **BIBLIOGRAPHY**

### **Documents**

Council Directive 88/378/EEC of 3rd May 1988 on the approximation of the laws of the Member States concerning the safety of toys, Official journal L 187, 16/07/1988 P. 0001 - 0013.

COM(2008) 9 final, 2008/0018 (COD): Proposal for a Directive of the European Parliament and the Council on the safety of toys (Presented by the Commission)

COM(2008) 9 final, SEC(2008) 38: Directive of the European Parliament and the Council on the safety of toys – Executive summary of the Impact Assessment”

Council Resolution of 7 May 1985 on a New Approach to technical harmonisation and standards

COM(2008)9 final NORMAPME Position Paper on a proposal for a directive of the European parliament and of the Council on the safety of toys (May 2008)

BEUC and ANEC position paper: “Revision of the Toy Safety Directive: How could we make toys safer?”, April 2008.

Revision of the Chemical Requirements of Directive 88/378/EEC on the Safety of toys, 30 July 2007

Consumer Product Safety Improvement Act of 2008, H.R. 4040, One Hundred Tenth Congress of the United States of America.

### **Webpages**

ANEC: <http://www.anec.org/>

CEN: <http://www.cen.eu/cenorm/homepage.htm>

CEOC: <http://www.ceoc.com/Default.aspx>

CE Marking consultancy service : <http://www.ce-marking.com/toys.html>

COM (2007) 37 final/ COM (2007) 53 final/ SEC (2007) 173:

[http://ec.europa.eu/enterprise/newapproach/pdf/executive\\_summary\\_sec\\_2007\\_0174\\_en.pdf](http://ec.europa.eu/enterprise/newapproach/pdf/executive_summary_sec_2007_0174_en.pdf)

Consumer Council of the Austrian Standards Institute:

<http://www.verbraucherrat.at/index.html>

Dansk Erhverv: <http://www.danskerhverv.dk/Dansk+Erhverv+frontpage.htm>

Dansk Industri: <http://www.di.dk/>

DEKRA: <http://www.dekra.com/>

DG Enterprise and Industry: [http://ec.europa.eu/enterprise/toys/index\\_en.htm](http://ec.europa.eu/enterprise/toys/index_en.htm)

DG Health and Consumers:

[http://ec.europa.eu/consumers/dyna/rapex/create\\_rapex\\_search.cfm?zoek=toy&vanaf=41&jaa rtal=ALL](http://ec.europa.eu/consumers/dyna/rapex/create_rapex_search.cfm?zoek=toy&vanaf=41&jaa rtal=ALL)

Eurofins: <http://www.eurofins.dk/>

Eurosafe: <http://www.ecosa.org/>

Hasbro: <http://www.hasbro.co.uk/>

International Herald Tribune: <http://www.iht.com/articles/2007/09/07/news/toy.php>

KE Mathiasen: <http://www.keleg.dk/>

Konsumentverket: <http://www.konsumentverket.se/>

Legetøjsfabrikanterne: <http://www.legetojsfabrikanterne.dk/Fuld%20maalsætning.htm>

LEGO: <http://www.lego.com/en-US/default.aspx>

LGA: [http://lga.de/tuv/index\\_en.shtml](http://lga.de/tuv/index_en.shtml)

Mattel: [http://www.mattel.com/about\\_us/default.asp](http://www.mattel.com/about_us/default.asp)

Market Watch:

<http://www.marketwatch.com/news/story/us-senate-set-debate-tougher/story.aspx?guid=%7BEA96B15B-9A56-4D4F-A2D0-E01FEC4F963B%7D>

NORMAPME: <http://www.normapme.com/>

ProSafe: <http://www.prosafe.org/>

SGS: <http://www.sgs.com/>

TIA:

<http://www.toyassociation.org/AM/Template.cfm?Section=Home&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=232&ContentID=5891>

TIE: <http://www.tietoy.org/index.php>

TOP TOYS A/S: <http://www2.top-toy.com/Service?SuccTPL=TTtoptoyQualityTPL&lang=E>

## INTERVIEWS

### Overview of the interviewees

Interviewee			Interview date
Organisation	Name of interviewee	Title	
<b>INDUSTRY ORGANISATIONS</b>			
Toy Industries of Europe (TIE)	Heidi Ranscombe	Adviser Safety, Environmental & Technical	10 Sept 2008
Legetøjsfabrikanterne (The Nordic Association of Toy Manufacturers)	Lars Abel	Secretariat Director	14 July 2008
European Office of Crafts, Trades and Small and Medium- Sized Enterprises for Standardisation (NORMAPME)	Vanessa Pereira	Standardisation Project Manager	11 July 2008
TIA (Toy Industry Organisation)	Joan Lawrence	Director of Regulatory Affairs	18 Aug 2008
CEOC			16 Aug 2008
Dansk Industri (Confederation of Danish Industry)	Anette Dragsdal	Chief Consultant	11 Aug 2008
Dansk Erhverv (The Danish Chamber of Commerce)	Mette Feifer	Consultant	21 Aug 2008
<b>CONSUMER ORGANISATIONS</b>			
The European Consumer Organisation (BEUC)	Laura Degallaix	Senior Policy Officer Environment and Health	17 July 2008
The European Consumer Voice in Standardisation (ANEC)	Tania Vandenberghe	Programme Manager	17 July 2008
Konsumentverket (The Swedish Consumer Agency)	Wanda Geisendorf	Expert in Child Safety	23 July 2008
Verbraucherrat (Consumer Council of the Austrian Standards Institute)	Franz Fiala	Head of consumer safety in Austrian Consumer Council	30 July 2008
Eurosafe	Joanne Vincenten	Director of European Child Safety Alliance	20 Aug 2008
Forbrugerrådet (Danish Consumer Council)	Helen Amundsen	Senior Technical Adviser	11 Aug 2008

<b>ENFORCEMENT AND STANDARDISATION BODIES</b>			
European Committee for Standardisation (CEN)	Peter Trillingsgaards	Chairman of TC 52	20 Aug 2008
Product Safety Enforcement Forum of Europe (Prosafe)	Dirk Meijer	Chairman	4 Sept 2008
<b>TOY MANUFACTURERS/DISTRIBUTORS/RETAILERS</b>			
LEGO Group	David Hartz	Manager, Quality Compliance and Global Quality	14 July 2008
TOP TOYS A/S	Jon Vastrup	Product Safety Manager	14 July 2008
KE Mathiasen	Vivi Schytt	Quality and Safety Controller	14 July 2008 & 21 July 2008
Mattel	Christian Schultz	Communications Manager	14 July 2008
Hasbro Europe	Daryl Scrivens,	Vice President Quality Assurance	18 Aug 2008 (in writing)
<b>TEST COMPANIES</b>			
Eurofins	Inge Bondgaard	Chemical engineer	16 July 2008
DEKRA	Peter Spengler	Head of Dept., Laboratory for Environmental and Product Analysis	9 Sept 2008
Körperschaft des öffentlichen Rechts (LGA)	Rolf Ohlsen	Dipl.ing., toy expert	23 July 2008 & 31 July 2008
SGS (Netherland)	Sanda Stefanovic	Senior Consultant	13 Aug 2008
SGS (US)	Malcolm Denniss	Technical Director	18 Aug 2008

## **Short presentation of the interviewed organisations**

### **Toy Industries of Europe (TIE)**

*<http://www.tietoy.org/index.php>*

Toy Industries of Europe (TIE) comprise 95% of all companies active in the European Toy Sector including national trade associations of Member States and toy companies across Europe. TIE represents the European Toy Industry and it hereby is the representative voice between the toy industry and the EU stakeholders.

### **Legetøjsfabrikanterne** (The Association of Danish Toy Manufacturers)

*<http://www.legetojsfabrikanterne.dk/>*

The Association of Danish Toy Manufacturers is a national association and a member of the TIE. The scope of the association is to collect toy manufacturers producing or selling toys in Denmark to coordinate their interests and to create a dialogue between other organisations and authorities.

### **NORMAPME**

*<http://www.normapme.com/>*

The European Office of Crafts, Trades and Small and Medium-Sized Enterprises for Standardization (NORMAPME) is an international non-profit association created in 1996 with the support of the European Commission. NORMAPME is a European organization focusing on small enterprise interests in the European standardization system. Its members represent over 11 million enterprises in all European countries, including all EU and EFTA member states. NORMAPME defend the interests of all European SMEs in the standardisation process.

### **TIA**

*<http://www.toyassociation.org>*

The Toy Industry Organisation (TIA) is a not-for-profit trade association for producers and importers of toys and youth entertainment products sold in North America. TIA represents over 500 companies who account for approximately 85% of US domestic toy sales. Associate members of TIA include licensors, designers, inventors, safety consultants, testing laboratories, communications professionals and the media. TIA works with government officials, consumer groups and industry leaders on ongoing programs to ensure safe play.

### **CEOC**

*<http://www.ceoc.com>*

CEOC International is a not-for-profit organization that represents independent inspection and certification organizations in 20 countries. The scope of CEOC International is to promote safety, quality and the environment through independent inspection and certification. CEOC has 60.000 employees in all of it's member organizations. CEOC International members are accredited by public authorities to provide inspection and other conformity assessment services for a large variety of equipment such as boilers, pressure vessels, lifts, machines, cranes, medical equipment, electrical and heating installations, industrial plants, nuclear power stations, buildings and toys.



## **Dansk Industri**

*<http://www.di.dk>*

Dansk Industri (The Confederation of Danish Industry) is a private organisation currently funded, owned and managed entirely by 11.000 companies within manufacturing, trade and service industry. The aims of Dansk Industri are to provide the best possible working conditions for Danish industry, and it offers its members a broad range of consultancy, products and services designed to benefit various industries. DI is a member of the Confederation of Danish Employers (DA), BUSINESSEUROPE, the International Chamber of Commerce (ICC) - and the Business and Industry Advisory Committee to the OECD (BIAC).

## **BEUC**

*[www.beuc.org](http://www.beuc.org)*

BEUC is the European Consumers' Organisation or the "Bureau Européen des Unions de Consommateurs". In 2007, BEUC's members include 40 independent national consumer organisations from some thirty European countries (EU, EEA and applicant countries). BEUC acts as a sort of "embassy" for these organisations in Brussels and their main task is to represent their members and defend the interests of all Europe's consumers. BEUC takes the view that the relationship between consumers and suppliers of goods and services should be based on fairness and should strive to create the right conditions for consumers to make independent decisions. BEUC also formally represents consumers within the decision-making process. BEUC has a seat on the **European Consumer Consultative Group (ECCG)** and experts from our member organisations participate in various European Commission advisory groups.

## **ANEC**

*[www.anec.org](http://www.anec.org)*

ANEC is the European consumer voice in standardization, representing and defending consumer interests in the process of standardization, conformity assessment and related legislation. The Aim of the organization is to ensure a high level of consumer protection. ANEC was set up in 1995 as an international non-profit association under Belgian law. ANEC represents consumer organizations from the European Union Member States and the EFTA countries.

## **Konsumentverket**

*<http://www.konsumentverket.se>*

The Swedish Consumer Agency (Konsumentverket) is a state agency whose task is to help the general public in Sweden with consumer affairs. The Consumer Agency, with a staff of around 100, works on a wide variety of consumer issues. Its fields mainly relate to advertising and contract terms, consumer information and education, domestic finances, product safety, product quality and environmental impact. The Government and the Swedish Parliament set consumer policy objectives. The Agency acts in the collective interest of consumers but in general does not resolve individual consumer disputes.

## **The Consumer Council at the Austrian Standards Institute**

*<http://www.verbraucherrat.at>*

The Consumer Council at the Austrian Standards Institute (Verbraucherrat) was established in 1991 with the aim to represent consumer interests in national, European and international standards bodies. The Council is financed by the Federal Ministry for Social Security, Generations and Consumer Protection.

## **EuroSafe**

*<http://www.ecosa.org>*

EuroSafe, the European Association for Injury Prevention and Safety Promotion, is the network of injury prevention champions dedicated to making Europe a safer place. The strategy of the association is to create a sustainable network of experts and dedicated organizations to increase co-ordination in the injury field at European level. The major strategic intent of EuroSafe is to create a sustainable and trust working network of experts and expert organizations and to increase co-ordination in the injury field at European level.

## **Forbrugerrådet**

[www.fbr.dk](http://www.fbr.dk)

The Danish Consumer Council (Forbrugerrådet) represents the interests of consumers and is independent of public authorities and commercial interests. Founded in 1947, the Consumer Council is the spokesperson for consumers' interests, lobbying vis-à-vis the Government, the Parliament, public authorities and the business community.

## **CEN**

*[www.cen.eu](http://www.cen.eu)*

The European Committee for Standardisation (CEN) was founded in 1961 by the national standards bodies in the European Economic Community and EFTA countries. Today, CEN is contributing to the objectives of the European Union and European Economic Area with voluntary technical standards which promote free trade, the safety of workers and consumers, interoperability of networks, environmental protection, exploitation of research and development programmes, and public procurement.

CEN is a non-profit making technical organization set up under Belgian law. CEN coordinates efforts of its members to develop standards to be used by its members and associates. Furthermore, CEN support the policies of the European Union (EU) and European Free Trade Area (EFTA).

## **PROSAFE**

*<http://www.prosafe.org>*

PROSAFE (the Product Safety Enforcement Forum of Europe) is an organization established by enforcement officers throughout Europe who deal with the safety of consumer products. The first formal meeting of the group was in 1990. Since then, most EU Member States and EFTA countries have been represented at meetings. PROSAFE has been supported by the European Commission Health & Consumer Protection Directorate General (DG), Internal Market DG, Enterprise DG and EFTA.

## **LEGO Group**

*<http://www.lego.com>*

The LEGO Group was founded in 1932 by Ole Kirk Christiansen and is today owned by Kjeld Kirk Kristiansen, a grandchild of the founder. LEGO is the world's sixth-largest manufacturer of toys with products sold all over the globe. LEGO is mostly known for the LEGO brick which was launched in 1958. The purpose and vision of the LEGO Group is to inspire children to explore and challenge their own creative potential.

In 2007, the LEGO Group's profit for the year before tax amounted to DKK 1,414 million in 2007 against DKK 1,281 million in 2006.

## **TOP TOYS A/S**

*<http://www2.top-toy.com/>*

TOP-TOY A/S is the largest toy retailer in the Nordic market. TOP-TOY manufactures a wide range of toy brands. The range of products covers toys for children between 0-12 years- from classic, timeless baby toys to innovative toys for older children.

TOP-TOY A/S is a holding company that contains the following companies: BR TOYS, TOYS"R"US (Scandinavia) and TOP-TOY (Hong Kong) Ltd. The head office and the distribution centre are located in Denmark.

## **KE Mathiasen**

*<http://www.keleg.dk>*

K.E. Mathiasen A/S is a family owned Danish company that was established in 1963. The company is a leading distributor in the Nordic countries within toys, multimedia and licensed products for children. The company's turnover exceeds 110 million Euros and the group has more than 250 employees. KE Mathiasen import products from all over the world and serve thousands of retailers in our different markets. The KE Mathiasen business is divided into 3 major divisions: Toys, K.E. Media, and K.E. Leisure.

## **Mattel**

*<http://www.mattel.com>*

Mattel Inc. is an American company which was founded in 1945 by Harold "Matt" Matson and Elliot Handler. Today, Mattel is the world's largest toy importing company based on revenue and has 25,000 employees around the world. The products it imports, mostly from China, include Barbie dolls, Matchbox etc. The Barbie line is responsible for more than 80% of Mattel's profits.

## **Hasbro**

*<http://www.hasbro.co.uk/>*

Hasbro was founded by brothers Henry and Helal Hassenfeld in 1923. Today, Hasbro is one of the world's leading toys and games companies. The company's most famous brands include My Little Pony, Action Man, Monopoly and Trivial Pursuit.

## **Eurofins**

*<http://www.eurofins.dk>*

Eurofins services a broad range of companies, authorities, and organisations. The company offer state-of-the-art technology and know-how in order to enhance safety and quality of the processes, foodstuffs, and products that we use and consume, and the surrounding environment. The company is part of the international group Eurofins Scientific with branches in the United States and most of Europe.

## **DEKRA**

*<http://www.dekra.com>*

DEKRA is an international service provider with a European focus. The company contains four business units who work under the umbrella of the parent organisation, the Stuttgart-based DEKRA AG. The company provides a wide ranging portfolio of services that span the testing of vehicles and plants, environmental audits, consultancy, training and further training, building work monitoring and extend to certifying services. DEKRA has 18,000 employees and had a turnover at 1.4 billion euros in 2007.

## **LGA**

*<http://lga.de/>*

The LGA (Landesgewerbeanstalt Bayern) is a group of companies providing testing and other services. Their parent company is the LGA (Landesgewerbeanstalt Bayern), a public-law corporation based in Nuremberg, with more than 30 offices in Germany and abroad. The services mainly involve testing and examination, consultancy, certification and training.

As laid down by its statutes, the LGA operates as a neutral, independent service provider for all kinds of businesses, as well as for private and public clients. The LGA's services mainly involve testing, consultancy, certification, as well as education and training.

## **SGS**

*<http://www.sgs.com>*

SGS is the world's leading inspection, verification, testing and certification company. Recognized as the global benchmark for quality and integrity, SGS employs over 50 000 people and operate a network of more than 1 000 offices and laboratories around the world.

## APPENDIX 1 – Questionnaire Industry Organizations and Industry

1. How does your organisation define toys falling under the Toys Safety Directive? (EC: Toys for children under 14 years of age)

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2. How is the industry structure? Large/small players
  - a. How large is the percentage of toys being imported from outside EU (e.g. China)? Are there other important players except China?
  - b. Is it common for European toy producers to outsource toy production to e.g. China?
  - c. What happens with the imported toys? Who is testing it (subcontractors, producers, distributors etc.)?

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3. In Europe, what percentage of toys is currently tested by third parties on a voluntary basis?
  - a. How is it done (process)?
  - b. What types of toys are concerned?
  - c. What types of companies are using third-party testing? (e.g. small/large companies)
  - d. Who is testing? Producers, distributors etc. Who is testing the products, if it is not the companies themselves?

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4. Do you know of other jurisdictions (countries) that have implemented third party testing?
  - a. Which?
  - b. For what types of toys?

c. What are the experiences?

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5. Are you familiar with the cost of testing?

a. If yes, what is a typical price for different tests relevant to your members?  
What does the price depend on?

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6. Would the introduction of mandatory third-party testing impose major additional testing costs to the tests that are already being carried out?

a. What would be more costly, physically testing (if the toy breaks) or testing for allergens?

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7. Would the introduction of mandatory third-party testing impose larger administrative burdens on companies? In what way? How much larger would the burdens be?

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8. Referring to the Mattel case, Mattel had to recall several toys due to toxic levels of lead paint. Could third-party testing better ensure that an incident like the Mattel case does not happen? Why/why not?

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9. Do you believe that the CE-marking currently provides enough safety for consumers? Why/why not? Can you give any examples?

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10. How would the mentioned costs affect SMEs and larger companies, respectively?  
Would the burden, relatively speaking, be higher for SMEs?

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11. From your point of view, what are the advantages of third-party testing? What are the disadvantages?

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12. How would you improve consumer safety? What do you think would be reasonable?

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13. Can you think of other organizations, companies, persons we should talk to?

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## **APPENDIX 2 – Questionnaire Consumer Organisations and Health Organisations**

1. How does your organization define toys falling under the Toys Safety Directive? (EC: Toys for children under 14 years of age)

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2. In Europe, what percentage of toys is currently tested by third-parties on a voluntary basis?
  - a. How is it done (process)?
  - b. What types of toys are concerned?
  - c. What types of companies are using third-party testing? (e.g. small/large companies)
  - d. Who is testing? Producers, distributors etc. Who is testing the products, if it is not the companies themselves?

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3. Do you know of other jurisdictions (countries) that have implemented third party testing?
  - a. Which?
  - b. For what types of toys?
  - c. What are the experiences?

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4. What are the advantages of third-party testing? What are the disadvantages?
  - a. Which test form would be most advantageous, physically testing (if the toy breaks) or testing for allergens?



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5. Referring to the Mattel case, Mattel had to recall several toys due to toxic levels of lead paint. Could third-party testing better ensure that an incident like the Mattel case does not happen? Why/why not?

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6. What are the main problems with the lack of third-party testing?

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7. What are the problems with the CE-marking?

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8. With respect to third-party testing: If you had to prioritize, what would be the most important aspect to do something about? E.g. physical tests, testing for allergens etc.

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9. Can you think of other organizations, companies, persons we should talk to?

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**APPENDIX 3 – Questionnaire Third Party Testers**

- 1. In Europe, what percentage of toys is currently tested by third-parties on a voluntary basis?
  - a. How is it done (process)?
    - i. What types of tests do you perform?
  - b. What types of toys are concerned?
  - c. What are the costs?
  - d. Who are you testing for, producers or distributors?
  - e. What types of companies are using third-party testing? (e.g. small/large companies)

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- 14. When testing, what are the typical issues? What do the tests show?
  - a. Do the test results differ depending on where the toys are being produced (within/outside the EU)?

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- 15. What are the lessons learned from third-party testing? Advantages/disadvantages?

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- 16. Are you familiar with other jurisdictions (countries) that have implemented third-party testing?
  - a. For what types of toys?
  - b. What are they being tested for?
  - c. What are the experiences?

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17. Would the introduction of mandatory third-party testing impose major additional testing costs to the tests that are already being carried out?

- a. What would be more costly, physically testing (if the toy breaks) or testing for allergens?

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18. Referring to the Mattel case, Mattel had to recall several toys due to toxic levels of lead paint. Could third-party testing better ensure that an incident like the Mattel case does not happen? Why/why not?

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19. Do you believe that the CE-marking currently provides enough safety for consumers? Why/why not? Can you give any examples?

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20. Can you think of other organizations, companies, persons we should talk to?

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