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NOTE

from : General Secretariat of the Council
to : Delegations

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DS 248/09 MI ENT CONSOM SAN ECO CODEC

No. Cion prop. : 5938/08 MI 40 ENT 18 CONSOM 14 SAN 20 ECO 16 CODEC 120

Subject : Proposal for a Directive of the European Parliament and of the Council on the safety of toys - Corrections

1. At a late stage of the legal-linguistic preparation, a possible sources of misunderstanding (points 7-10) and some technical errors (points 3-6) have been discovered in the text of the draft Directive on the safety of toys. At the meeting of the Jurist Linguist Group - PE-CONS 3744/08 on 2 April 2009 a document giving a first description of these problems was distributed¹. In this document they are further outlined together with suggestions for rewordings and the procedure for adopting these rewordings.
2. Deletions of text are marked by ~~striketrough~~. New text is underlined.

¹ See document DS 248/09 MI ENT CONSOM SAN ECO CODEC.

Annex II, Part III, Point 13

3. It has been discovered that the text before the table in this point partly duplicates the text after the table. Therefore, it was tentatively agreed at the meeting between legal-linguists and experts on 2 April 2009 that these two texts could be changed as follows:

“13. Without prejudice to Points 3, 4 and 5, the following migration limits, from toys or components of toys ~~that are accessible to children during use as specified in the first subparagraph of Article 10(2)~~, shall not be exceeded:

<TABLE>

These limit values shall not apply to toys or components of toys which, due to their accessibility, function, volume or mass, clearly exclude any hazard due to sucking, licking, swallowing or prolonged contact with skin when used as specified in the first subparagraph of Article 10(2).”

Annex II, Appendix B

4. A few technical corrections are needed in Appendix B to Annex II. They are the result of changes to Annex II that were agreed during the last triologue and by Coreper on 10 December 2008.
5. Section 2 of Appendix B must be changed for the following reasons:
- * It shall not refer to point 3 of Part III of Annex II since this point only deals with substances and since substances are classified according to Regulation (EC) 1272/2008 from the entry into force of the chemicals provisions of the Directive on the safety of toys and there is thus no change of legal act on 1 June 2015 for substances;

- * From the entry into force of the chemicals provisions of the Directive on the safety of toys until 31 May 2015 classification of mixtures follows Directive 1999/45/EC and from 1 June 2015 classification of mixtures follows Regulation (EC) 1272/2008;
- * Points 4(a) and 5(a) in Part III of Annex II make reference to the Community legislation for classification;
- * Points 4 and 5 in Part III of Annex II refer to the use of substances, not to the prohibition of substances.

6. The text of Section 2 of Appendix B should therefore be technically corrected as follows:

“2. Community legal acts governing the ~~prohibition~~ use of certain substances for the purposes of points 4(a) and 5(a) ~~3~~ of Part III

From ...* until 31 May 2015, the relevant concentrations for the classification of mixtures containing the substances shall be those established in accordance with Directive 1999/45/EC.

From 1 June 2015, the relevant concentrations for the classification of mixtures containing the substances shall be those established in accordance with Regulation (EC) No 1272/2008.”

* Two years after the date of entry into force of this Directive.

7. As a result of the linguistic corrections performed until and including the meeting of legal-linguists and experts on 2 April 2009, this point is worded as follows:

“9. Toys intended to be strung across a cradle, cot or perambulator by means of strings, cords, elastics or straps

Toys intended to be strung across a cradle, cot or perambulator by means of strings, cords, elastics or straps shall carry the following warning on the packaging, which shall also be permanently marked on the toy:

"To prevent possible injury by entanglement, remove this toy when the child is able to reach the toy".”

8. The wording of this warning was subject to many discussions during the late stages of the negotiations (in December 2008), and while there was a common understanding among delegations and representatives of the European Parliament about the aim of this warning, there was also a common understanding of the difficulties in drafting it in a way that would be clear and easily understandable by consumers.

9. Following further consideration it is therefore suggested that the following wording of the warning, that follows the intentions behind the present wording, gives a more correct description of the situation when the toy should be removed and is easier to understand:

"To prevent possible injury by entanglement, remove this toy when the child starts trying to get up on its hands and knees in a crawling position."

10. Point 9 should thus be amended as follows:

“9. Toys intended to be strung across a cradle, cot or perambulator by means of strings, cords, elastics or straps

Toys intended to be strung across a cradle, cot or perambulator by means of strings, cords, elastics or straps shall carry the following warning on the packaging, which shall also be permanently marked on the toy:

"To prevent possible injury by entanglement, remove this toy when the child ~~is able to reach the toy~~ starts trying to get up on its hands and knees in a crawling position".”

Procedure

11. On 7 April 2009, two messages were sent to delegations, requesting a reply only from those delegations that could not agree to the changes indicated in this document. At the same time, the European parliament was informed about these suggestions for technical corrections.

12. The written procedure initiated by document CM 1513/09 requests those delegations that do not agree to the changes to the text set out in points 3 and 6 of this note to object by 21 April 2009, 12h00 (Brussels time) at the latest.

13. The written procedure initiated by document CM 1553/09 requests those delegations that do not agree to the changes to the text set out in point 10 of this note to object by 21 April 2009, 12h00 (Brussels time) at the latest.

14. The changes above which are not opposed in the Council or the European Parliament will be introduced in the final version of document PE-CONS 3744/08 and thus submitted to the Council for adoption.