

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 4 April 2007

concerning the publication of the reference of the standard EN 71-1:2005 ‘Safety of Toys — Part 1: mechanical and physical properties’ regarding the technical requirements on projectiles with suction cups as an impact area in accordance with Council Directive 88/378/EEC on the safety of toys

(notified under document number C(2007) 1460)

(Text with EEA relevance)

(2007/224/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys ⁽¹⁾, and in particular the second subparagraph of Article 6(1) thereof,

Having regard to the opinion of the Standing Committee established by Article 5 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and on Information Society Services ⁽²⁾, as amended by Directive 98/48/EC ⁽³⁾ (Committee on standards and technical regulations),

Whereas:

- (1) Article 2 of Directive 88/378/EEC provides that toys must be placed on the market only if they do not jeopardise the safety and/or health of users or third parties when they are used as intended or in a foreseeable way, bearing in mind the normal behaviour of children.

⁽¹⁾ OJ L 187, 16.7.1988, p. 1. Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

⁽²⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by 2003 Act of Accession.

⁽³⁾ OJ L 217, 5.8.1998, p. 18.

- (2) Pursuant to the Article 5(1) second subparagraph of Directive 88/378/EEC, toys are presumed to comply with the essential safety requirements referred to in Article 3 of the Directive if they conform to the national standards applicable to them transposing the harmonised standards the reference numbers of which have been published in the *Official Journal of the European Communities*.

- (3) According to the Article 5(1) second subparagraph of Directive 88/378/EEC, Member States are required to publish the reference numbers of national standards transposing harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Communities*.

- (4) The European Committee for Standardisation (CEN), under mandate from the Commission, drew up and adopted the harmonised standard EN 71-1:1998 ‘Safety of toys — Part 1: mechanical and physical properties’ on 15 July 1998, the references of which were published for the first time in the *Official Journal of the European Communities* of 28 July 1999 ⁽⁴⁾.

- (5) On 19 September 2005, the European Committee for Standardisation adopted the standard EN 71-1:2005 ‘Safety of toys — Part 1: mechanical and physical properties’ which is a consolidated version of the harmonised standard EN 71-1:1998 and its 11 amendments.

⁽⁴⁾ OJ C 215, 28.7.1999, p. 4.

- (6) Pursuant to Article 6(1) of Directive 88/378/EEC, the Spanish authorities have raised a formal objection in respect to the requirements on projectiles toys with suction cups as an impact area intended for children above the age of three years laid down in the standard EN 71-1:2005. The Spanish authorities claim that the standard does not provide enough protection for projectiles toys intended for children above the age of three years. According to the Spanish authorities, a child older than three years might detach a suction cup from a projectile using a force higher than a force of 60 N laid down in clause 8.4.2.3 'test for protective components'.
- (7) The standard EN 71-1:2005 lays down different requirements for toys with suction cups depending on the age of the child. Regarding toys with suction cups intended for children under the age of three years, the standard requires that the 'tension test' be performed with a tensile force of 50 N (in case the largest accessible dimension is 6 mm or less) or of 90 N (in case the largest accessible dimension is greater than 6 mm). Regarding projectiles toys with suction cups as an impact area that are intended for children above the age of three years, the standard requires in clause 4.17.1(b) that resilient materials used as impact surfaces shall not become detached when tested according to clause 8.4.2.3 (tension test, protective components). The tension test for protective components specified in clause 8.4.2.3 is performed with a force of 60 N.
- (8) The Commission has been informed of several accidents with projectiles toys with a suction cup as an impact surface intended for children above the age of three years. In 1997, a Swedish child of nine years old suffocated to death after having sucked on a suction cup tip which he accidentally inhaled. Two other fatalities have occurred in the United Kingdom. In addition, the Commission has been informed of eight fatalities registered in the United States. More recently, in August 2005, the Spanish authorities informed the Commission of a fatal accident with a four years old child caused by a bow and arrow toy with a suction cup.
- (9) Suction cups affixed to projectile toys are intended for securing the projectile to a surface. Sticking and unsticking the projectiles imply that the suction cup is submitted to repeated stress. Furthermore, children above three years old often bring suction cups to their mouths to moisture the cups before sticking them on a surface. If the suction cup is not properly secured on the toy it is foreseeable that it can be detached during normal and foreseeable use. If the suction cup becomes detached and enters entirely in the mouth, it can block the airway at the back of the mouth and upper throat and cause asphyxiation.
- (10) On the basis of these findings, the Member States consider that children above the age of three years should be given the same protection as children under the age of three years. Thus, suction cups used as impact surfaces on toy projectiles intended for children over three years shall not become detached when submitted at least to the relevant tests laid down in clause 5.13.b of EN 71-1:2005, in particular to 'torque test' (clause 8.3) and 'tension test, general' (clause 8.4.2.1).
- (11) Consequently, on the basis of the information submitted by the Spanish authorities, the other national authorities and the Committee on standards and technical regulations the Commission considers that the standard EN 71-1:2005 presents shortcomings regarding the technical requirements for projectiles toys with suction cups as an impact area intended for children above the age of three years.
- (12) Pending the revision of the standard, in the interest of safety and legal certainty, the publication in the *Official Journal of the European Union* of the reference of the standard EN 71-1:2005 should therefore be accompanied by an appropriate notice.
- (13) In absence of a standard that covers the abovementioned risks and according to Article 5(2) of Directive 88/378/EEC, Member States shall presume that the abovementioned toys satisfy the essential safety requirements only if they have an EC type examination certificate issued by a notified body which conformity with the approved model has been certified by the affixation of the EC marking.

HAS ADOPTED THIS DECISION:

Article 1

In case of projectile toys with suction cups intended for children above the age of three years, the standard EN 71-1:2005 'Safety of toys — Part 1: mechanical and physical properties' as adopted by the European Committee for Standardisation on 19 September 2005 does not satisfy the essential safety requirements referred to in the Article 3 of the Directive 88/378/EEC, in particular under Annex II.II.1 (e), in so far as concerns clause 4.17.1 (b).

Article 2

The publication in the *Official Journal of the European Union* of the reference of the standard EN 71-1:2005 'Safety of toys — Part 1: mechanical and physical properties' shall be accompanied by the following additional notice:

'In case of projectiles toys with suction cups with an impact area, the requirement laid down in clause 4.17.1 (b), according to which the tension test is performed in accordance with clause 8.4.2.3, does not cover the risk of asphyxiation presented by these toys'.

Article 3

A notice identical to that provided for in Article 2 of this Decision shall accompany the reference to a national standard

transposing standard EN 71-1:2005 'Safety of toys — Part 1: mechanical and physical properties', to be published by the Member States pursuant to Article 5(1) second subparagraph of Directive 88/378/EEC.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 4 April 2007.

For the Commission

Günter VERHEUGEN

Vice-President
