



Is it a toy?

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A common question that toy manufacturers/importers ask themselves is whether a particular product is really regarded as a toy or whether it might be a 'regular' product. Many products are in the grey zone and assessments must be made on a case by case basis. The European Commission publishes documents that provide guidance.

What is the meaning of the classification?

In every day terms, a toy is an article that has been specifically designed for a child to play with. Legally, the Toy Safety Directive (TSD) offers a slightly more detailed definition but it is still so broad that it requires interpretation. The purpose of this document is to explain the classification of toys.

Toy

A product that is classified as a toy under the EU's Toy Safety Directive is CE marked and must meet certain safety requirements. Anyone who manufactures, imports or distributes the toy must also meet certain administrative requirements which are rather comprehensive, for example compiling the technical documentation. The Directive specifies general safety requirements and states that: 'Toys shall not jeopardise the safety or health of users or third parties when they are used as intended or in a foreseeable way, bearing in mind the behaviour of children.' This broad statement is interpreted in a range of technical toy safety standards, the so-called EN-71 series and, for electrical toys, EN 62115. The manufacturer can use these standards to determine what requirements must be met for any particular toy.

Product

Many consumer products that are not classified as toys but will be used by children fall under the General Product Safety Directive (GPSD). Such products should, as a general rule, not be CE marked¹ but must meet the general safety requirement of the GPSD, which also places certain obligations on economic operators. The general safety requirement in the GPSD in principle states that: 'Producers shall be obliged to place only safe products on the market.' The Directive also states that you should evaluate a product's compliance with safety requirements, for example by applying the relevant safety standards. These may, for example, be European standards for childcare articles, but if there are no specific standards for the product, you can use large parts of the toy safety standards to assess the safety of the product.

Documentation

Whether it concerns toys or 'regular' products, the manufacturer must document how he has ensured that the product meets the safety requirement (test results, risk analyses, etc.). The principle is the same in both cases but the requirements for toys are formulated in more detail and guidance documents are available.

Conclusion

If you do not CE mark a product¹ intended for children (i.e. do not classify it as a toy), this does not mean that you do not have to think about safety, documentation, standards, etc. However, there is somewhat greater freedom in how to ensure and document that the level of safety is sufficient. A manufacturer who chooses not to classify a product as a toy (i.e. chooses not to CE mark it) must be prepared to defend this decision.

Who decides the correct classification?

The manufacturer is the one who makes decisions about whether the product is to be CE marked as a toy or not. The decision must not be in conflict with the Toy Safety Directive which specifies which toys are exempted from the Directive (exhaustive list) and also lists a range of products (in Annex I of the TSD) that should not be classified as toys (non-exhaustive list).

The Member States' authorities can challenge the manufacturer's decision. A Member State's decision, on the other hand, may be challenged by the European Commission and other Member States. Legally speaking, it is ultimately only the European Court of Justice that can provide a definitive interpretation of the Directive. A manufacturer can consult a Notified Body² (payment necessary) or a competent national authority on issues regarding classification. A Notified Body bases its response on experience as well as recommendations from the Horizontal Committee of the Notified Bodies under the Toy Safety Directive or on contacts with Member State authorities. If a Notified Body or an authority considers it necessary, they can bring the matter to the European Commission and the other Member States in order for them to reach consensus on a classification principle that can be included in a guidance document that can be published by the European Commission. The European Commission also publishes guidance documents regarding whether or not toys shall be considered to be intended for children over or under three years.

Guidance Document for 'grey zone products'

The European Commission has recently published guidance documents on the classification of: scooters, aquatic toys/flotation aids, scale models, dolls, paddling pools, musical instruments, books and hobby and craft articles. It has also published a general guidance document on grey zone products which includes, inter alia, the following guidelines:

To meet the Directive's definition of a toy, the product/material must be designed or clearly intended for:

- use in play
- children under 14 years

The term 'use in play', is not the same as 'attractive to play with'. Children may be attracted to play with car keys but it does not mean that car keys are a toy. Instead, the document states that you must consider whether the manufacturer has deliberately added a play value. At the same time, the reasonably foreseeable use of the product shall be considered in the classification decision.

The guidance document indicates a number of criteria to be considered together, rather than separately, and that can provide guidance on the classification:

- point of sale (is the product sold in specific toy stores or specialised stores such as sporting goods, scale models, etc.?)
- packaging and marketing (do they give the impression that the product is intended for children at play?)



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- pricing (e.g. collectable items are often more expensive than toys)
- dimensions (dolls' clothes may be toys, but not clothes for babies)
- combined product/toy (e.g. a key ring with an attached teddy bear is considered a toy but a key ring in itself is not)
- the product facilitates sleep, eating, etc. (these are regarded as childcare articles and not toys)

The guidance documents are available here: http://ec.europa.eu/enterprise/toys/eg_guidance.htm

¹ Certain products such as helmets and life jackets for children or luminaries that resemble toys are not toys in the meaning of the Directive but subject to other CE marking directives (Personal Protective Equipment and Low Voltage Directive) and must comply with these directives.

² A Notified Body is a test laboratory, notified by a Member State to the European Commission as competent to interpret the directive's requirements when standards are not available.

About TIE

Toy Industries of Europe (TIE) is the trade association for the European toy industry, which comprises over 25% of the total world toy market. The toy industry is highly international and is one of the most dynamic business sectors in Europe. Around 80% of the sector is composed of small and medium sized enterprises (SMEs) which have less than 50 employees. Members of TIE include corporate companies as well as national associations from Bulgaria, France, Germany, Italy, the Netherlands, Spain, Sweden, the UK and the Nordic region. TIE membership is open to both corporate companies with a presence in Europe and national associations from European Union Member States (including candidate countries).

Readers are reminded that the text of the original directive or standard is the only authentic legal reference and that the information in this document does not constitute legal advice. Toy Industries of Europe (TIE) does not accept any liability with regard to the contents of this document.