



## What obligations do distributors have under the Toy Safety Directive?

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*Depending on whether you are a manufacturer, importer or distributor, there are different regulatory requirements in the Toy Safety Directive (TSD). It can sometimes be difficult to understand exactly what obligations each economic operator has if you only read the text of the Directive.*

Therefore, the European Commission published a guide that explains in detail the Directive's requirements. Generally, the company's obligations are more extensive when it has the role of 'manufacturer', while they are less extensive for 'importers' and even less for 'distributors'. However, distributors do have important obligations and this article helps provide further information.

**The criteria for determining which economic operator role one has** (manufacturer, importer, distributor) are determined for instance by how the toys were purchased, who designed (or modified) the toys, what brand the toys are sold under and at which stage of the product cycle the company becomes involved. The definition in the Directive is not always consistent with how a company traditionally perceives its role. A company can have a different role in different situations and they must determine their role on a case by case basis.

According to the text of the TSD, a distributor is 'any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a toy available on the market'. Thus it can be a wholesaler, a toy shop, a private person who regularly sells toys at a market or a non-for-profit organisation that regularly sells toys, as long as they are not manufacturers or importers.

If a distributor puts a toy on the market under its own name or brand name, or modifies a toy, he becomes a manufacturer, in the meaning of the Directive, and additionally has to fulfill the obligations that apply to manufacturers. An economic operator is only considered to be an importer if he imports toys from a 'third country', i.e. a country outside the EU. An economic operator is therefore not an importer but instead a distributor if he buys a product from a toy manufacturer or importer based in another EU country.

**Distributor obligations** are contained in Article 7 of the TSD. Further explanation is included in the European Commission guidance document<sup>1</sup> where it is summarised in section 16. Generally, it is stated that distributors shall 'act with due care in relation to the applicable requirements' when they sell toys. The requirements that apply to the distributor are therefore often about verifying that the manufacturer and the importer have fulfilled some of their informational obligations. Distributors are not allowed to draw up a 'declaration of conformity' or the 'technical documentation'. Only the manufacturer can do this. Furthermore, the distributor is not obliged to keep a copy of these documents and the requirement for the distributor that it shall act with 'due care' will be viewed in light of the fact that it is not expected to have access to technical documentation and therefore has limited possibilities to verify the details.

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

However, an authority can send a reasoned request to a distributor to obtain relevant parts of the technical documentation and therefore it is important for a distributor to work with suppliers they trust and/or to ensure that, if necessary, they can provide what the authority requests.

**The following is a summary of the key requirements** that apply to distributors<sup>2</sup>. It is not considered necessary for the distributor to check every single toy in order to verify that the manufacturer has procedures in place to ensure that he complies with legal requirements with respect to the CE marking, address, warnings, etc.

### ***Conformity marking***

Distributors are required to confirm that the toy carries the conformity marking (CE marking).

### ***Name and address***

Distributors are required to confirm that the toy or its packaging carries the manufacturer's name/brand and address and, when applicable, also that of the importer.

### ***Warnings, instructions for use and safety***

Distributors are required to confirm that safety information, instructions and warnings that accompany the toy are in the correct language. A distributor does not have the same responsibility as a manufacturer regarding the accuracy of the warnings, but he should react to obvious errors (e.g. if a soft toy, which, by definition is considered appropriate for children under three years, is marked with the warning 'Not suitable for children under 3 years').

### ***Safety requirements***

If a distributor has reason to believe that the toy does not meet the safety requirements, he must not sell the toy. The distributor should instead immediately consult with the manufacturer or importer and, if the toy is dangerous, the responsible authority must be contacted.

### ***Customer complaints***

Distributors are not required to keep a register of complaints, but should inform other economic operators in the supply chain about any safety related customer complaints.

### ***Storage and transport***

Distributors shall, while the toy is under their responsibility, make sure the storage or transport conditions do not jeopardise the toy's safety. Examples could be careless handling or inappropriate storage conditions (moisture, heat, etc.).

### ***Identification of other economic operators***

Toys must be traceable through the supply chain, i.e. distributors must be able to identify any economic operator that has supplied a toy to them. They should keep the necessary documentation for ten years after the toy is put on the market (counting from the last unit).

### **About TIE**

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<sup>2</sup> This information is not exhaustive. Legal texts and guidance documents should be consulted for complete information.



Toy Industries of Europe

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