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GUIDANCE DOCUMENT No. 10

ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY OF TOYS (88/378/EEC)

Grey zone problem: Is a specific product covered by Directive 88/378/EEC or not?

This document is a non binding document intended to provide guidelines in order to help Member States on the classification of toys. This document expresses the views of majority of members in the Expert Group on Toys Safety.

1. Introduction

In the majority of cases the definition of a toy provided by article 1.1 of Directive 88/378/EEC is clear enough to decide on the classification of a product as a toy or not. However, there are some borderline products that are difficult to classify. For these cases, the definition does not seem to be specific enough, and it appears necessary to take into consideration additional criteria.

An approach and procedure to follow when a manufacturer has a doubt concerning the classification of a product can be found in guidance document n°4 on the application of the Directive on the Safety of Toys.

CEN report CR14379 "Guidelines on the classification of toys" contains additional information on functions and characteristics of toys and gives guidelines for deciding which toys are intended for children under 36 months of age and which toys are not intended for such children. CR 14379 Table 21 lists examples of "toy musical instruments" for children above and under 36 months of age.

2. The situation regarding toys versus musical instruments for children

In most cases, it is easy to distinguish between small musical instruments which are toys within the meaning of Directive 88/378/EEC and those which are not toys.

Besides the functions and characteristics mentioned in CEN report CR14379 Guidelines on the classification of toys, the decision may be based on the following criteria:

- the **purpose of the product**: to make music or to emit sounds or to provide rhythmical accompaniment at a given tempo, or simply to make noise;
- the **characteristics of the product**: design and materials chosen to enhance sound quality, level of detail, dimensions;
- the **documents accompanying the product**: the presence or absence of elements of music theory, technical tips, diagrams and printed music;
- the **place of sale**: toy shops, shops/shelves for baby articles or shops specialised in musical articles (instruments and sheet music);
- the **public at which the product is aimed**: realistic presentation or not; a "naïve" decoration;
- the **retail price**.

3. The following products are toys.

3.1.

Musical quality is not their objective. They are intended to produce disorganised sounds, not music. They are operated with simple actions, such as blowing, hitting or shaking. They are intended for children under the age of three.





3.2. "Maracas shaped rattles"

If products have a design easily to be confused with rattles - naïve decoration, similar dimensions, small-diameter handles which are easy to hold and the same simple action to use them, namely shaking - they should be considered to be toys intended for children under the age of three.

These products should fulfil all the requirements in clause 5 of EN 71-1:2005, also those for rattles and rattle shaped toys if they weigh less than 500g (See EN 71-1:2005 clause 5.8).

A warning "this is not a rattle" is not allowed as it would contradict the use of the toy.



original dimension \pm 10 cm



3.3. Small tambourines

These products are toys intended for children over the age of three, since the actions required to handle them are more complicated than for maracas or rattles (shake and turn at the same time). These products are, due to dimensions, functions and characteristic properties, not manifestly unsuitable for children under three. If they are dangerous for children under three they should carry the warning in Annex V.1 of the Directive 88/378/EEC.



3.4. Products sold together: a tambourine and maracas, or bells, castanets and/or a triangle.

As the tambourines are toys intended for children over the age of three, but the maracas are toys intended for children under the age of 3 years, the toy has to be appropriate for the youngest children. The maracas shaped rattles should be assessed in the same way as under clause 3.2

If a toy spans over more than one age group, or there is reasonable doubt as to which age group the toy is intended for, the toy shall be subjected to the more severe test.



3.5. Castanets

These products are toys intended for children over the age of three, owing to the difficulty of using them.



3.6. Small guitars

These products are toys intended for children over the age of three, owing to the difficulty of using them and the presence of strings.



4. Products not considered as toys

4.1. Decorative or collectors' items



4.2. real musical instruments

They are intended to be used in the systematic study of music and for actually performing music. The instruments are designed for good sound quality.

