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GUIDANCE DOCUMENT No. 12

ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY OF TOYS

PACKAGING

This document is a non binding document intended to provide guidelines to help Member States and stakeholders making the distinction between toys and packaging. This document expresses the views of the majority of members in the Expert Group on Toys Safety. The images appearing in the document constitute examples intended to facilitate the decision-making. They do not presuppose the conformity of the represented products.¹

This document does not relieve national authorities from their obligation to determine for any individual product, on a case-by-case basis, whether it falls within the scope of application of the Safety of Toys Directive or within the scope of application of other sectoral legislation. The Court has repeatedly held that the national authorities, acting under the supervision of the courts, must proceed on a case-by-case basis, taking account of all the characteristics of the product. Therefore, this document shall not “prescribe” what regulatory framework applies. Rather, it shall serve as one out of many elements supporting the national competent authorities in their case-by-case decision on individual products. In particular, this manual does not deprive a national authority to consult with colleagues from other regulated sectors concerned in order to reach a complete view on all aspects related to a given product.

Background

Young children play with anything to which they have easy access. Their lack of understanding of hazards is such that they will use materials in ways for which they were not intended. Death or serious brain injury can occur to young children as a result of suffocation when their nose and mouth become covered or all the oxygen in the enclosure in which their heads are trapped is used up. Parents and carers have a major role to play

¹ the views expressed in this document are not legally binding; only the European Court of Justice ("Court") can give an authoritative interpretation of community law

in reducing the risk of suffocation through supervision of children and careful storage or disposal of packaging materials.

The Toy Safety Directives (TSD) covered above mentioned hazard and therefore listed requirements so that packaging of toys shall not present risk of strangulation or suffocation. 88/378/EEC - annex II. II. (e) and 2009/48/EC - annex II.I.4. (e), (f) and (g) state clear particular safety requirements on packaging of toys.

The standard EN 71-1 contains requirements for flexible plastic sheeting, toy bags and packaging. The standard contains the following definitions:

plastic sheeting: thin section plastic sheeting which is used as part of the toy or as part of the packaging;

packaging: material accompanying the toy when purchased but having no intended play function;

toy bag:

bag, clearly intended for use in play, often having features designed to encourage the child to use the bag in play activities

1. Packaging

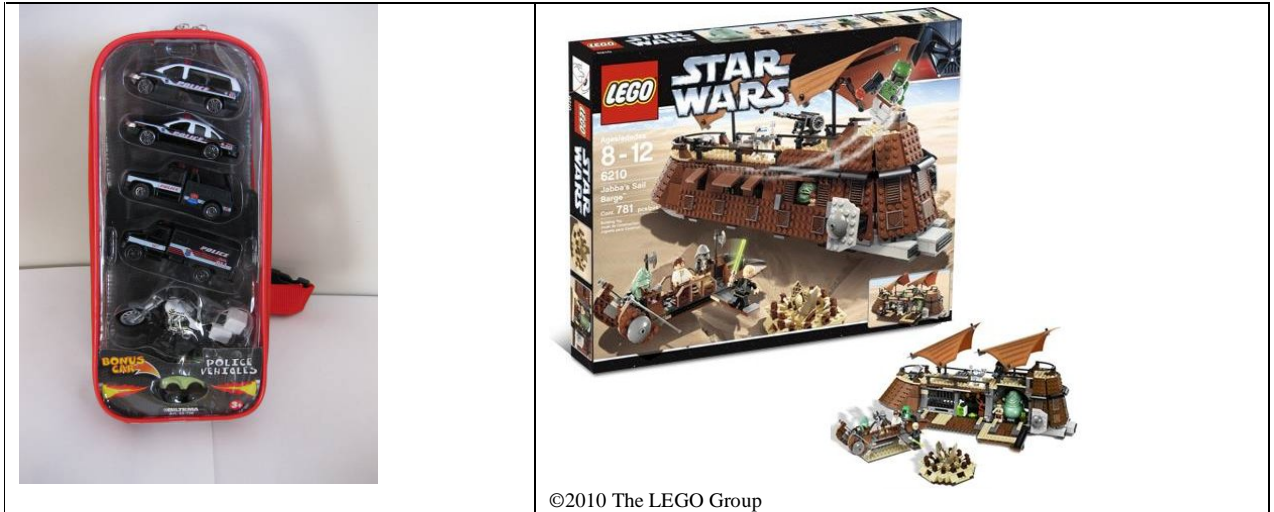
Packaging is material accompanying the toy when purchased but having no intended play function.

The packaging of many products these days can be re-used whether intended by the manufacturer or not. The packaging might be of a style that encourages it to be used as a means of storing the toy, keeping it clean, transporting the toy and keeping the parts together. Some packaging can be used as background decoration to help display the toy in an appealing way. These are all attributes of “packaging” and nothing to do with play and toys.

If potential hazards exist with packaging that are not covered by the TSD, there is EU legislation that allows measures to be taken on unsafe packaging and that is the General Product Safety Directive (GPSD). The scope of the TSD only refers to toys and does not cover packaging – although it contains some requirements for packaging – however the General Product Safety Directive (GPSD) would cover packaging under the definition of “(consumer) product” provided that the packaging is a part of such consumer product.

Pictures of packaging:





1.1. Plastic sheeting (in packaging)

Plastic sheeting is defined as thin section plastic sheeting which is used as part of the packaging.

Picture of plastic sheeting which is used as part of the packaging:



The plastic sheeting is used to wrap the clay in order to prevent it from contamination and drying out during transport and storage – it does not have an intended play function.

2. Toys

There is some packaging that has additional features adding play value or that become a product intended to be played with by children under 14 years of age. In such circumstances this packaging becomes (part of) a toy.

The outer boxes of board games are commonly regarded as an integral part of the toy.



the centre section is clear plastic and the toy can be filled with confectionery or chocolates



the body is clear plastic but containing decorations for the doll's hair



the car can be played with in his exact form and so the packaging become an integral part of the toy

2.1. Plastic sheeting (in toys)

Plastic sheeting is defined as thin section plastic sheeting which is used as part of the toy. Examples of plastic sheeting which is used as part of toys can be found in plastic toy aprons, nurses badges, nurses caps, dolls diapers, glued-on transparent plastic sheeting covering children's books, etc

2.2. Toy bags

Toy bags are not defined in the TSD, however they are different from packaging as they are not covered in clause 6 of the standard EN 71-1:2011. EN 71-1 defines a toy bag as a

bag that is clearly intended for use in play, often having features that are designed to encourage the child to use the bag in play activities.

The reference to *toy bag* in the standard may result in confusion and more and more *bags* (bags considered as packaging having no intended play function) being wrongly treated as “*toy bags*”. Toy bags have to comply with clause 4.4 of the standard, but also with other relevant clauses as these products are toys and not packaging. Bags that are packaging can be attractive to children because they are brightly coloured for example or have child appealing characteristics (Mickey Mouse decorations) but this is not enough to make them a toy bag. There has to remain a difference between a child appealing article like a decorated *bag* and a so-called *toy bag*.

Pictures of toy bags:

