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GUIDANCE DOCUMENT No 7

ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY OF TOYS

TOYS USED IN AND ON THE WATER

This Guidance document is a non-binding document intended to provide guidelines to help Member States and stakeholders to decide whether or not certain aquatic devices/equipment are covered by the Toy Safety Directive. This Guidance document expresses the views of the majority of members in the Expert Group on Toy Safety. The images appearing in the document constitute examples intended to facilitate the decision-making. They do not presuppose the conformity of the represented products¹.

This Guidance 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 Toy Safety 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 Guidance document 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.

I Provisions of the Toy Safety Directive 2009/48/EC

Article 2 of the Toy Safety Directive 2009/48/EC defines toys as products "designed or intended, whether or not exclusively, for use in play by children under 14 years of age". "(A)quatic toy" is defined as a toy intended for use in shallow water which is capable of carrying or supporting a child on the water.

Annex I of the Directive classifies "(a)quatic equipment intended to be used in deep water, and swimming learning devices for children, such as swim seats and swimming aids" as products not regarded as toys.

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

According to Annex II.I.5 of the Directive, aquatic toys must be designed and manufactured so as to reduce as far as possible, taking into account the recommended use of the toy, any risk of loss of buoyancy of the toy and loss of support afforded to the child. Furthermore, Annex V part B.6 provides that aquatic toys shall bear the following warning: "Only to be used in water in which the child is within its depth and under adult supervision".

II Product categories

In general, products used in or on the water should be classified in a pragmatic way on a case-by-case-basis taking into account the above-mentioned provisions of the Toy Safety Directive. However, some categories of aquatic products can be distinguished for the purposes of classification. They are presented below.

a) Bath toys (photo 1)

These are very simple, brightly coloured toys, often animal-shaped, and generally used in the bath. As a rule, they are intended for very young children and are covered by the Toy Safety Directive.

b) Small, battery powered (remote controlled) toy vessels (photo 2)

These products are intended for children over 36 months old, generally for use in city fountains or in rivers, lakes, swimming pools, at the seaside, etc. They are covered by the Toy Safety Directive.

c) Inflatable PVC toys²

i) Simple inflatable toys (photo 3)

These toys are for use at home or at the beach, not exclusively for use in water and not designed to bear the weight of a child. Examples are: large balls with multicoloured segments; big or small self-righting dolls intended for children of all age groups. They are covered by the Toy Safety Directive.

ii) Inflatable toys for use in water and intended to be played on (photos 4 and 5)

The position of the user on these aquatic toys is on the buoyant structure, e.g. small mattresses (not exceeding 1,20 m), small boats (not exceeding 1,20 m) and small or large ride-on toys. The ride-on toys are toys regardless of their size (provided they are intended to be used in play by children).

Boats and mattresses exceeding 1,20 m are normally intended to be used in deep water and are therefore not considered to be toys.

2 Toys may also be made of other material than PVC, such as foam. The same principles of classification as the ones presented in this document for inflatable PVC products can be applied to the products made of other materials too.

iii) Bathing rings (photo 6)

These are rings which are able to support the weight of a child. They have a diameter of less than 1,20 m and are generally used in shallow water (where the child is within its depth) and under adult supervision. They are intended to be used in play by children and are not swimming aids or swimming learning devices³ and are therefore toys. In accordance with Guidance document No 4, other indicative criteria such as the declaration of the manufacturer on the intended use, the place of selling, advertising and packaging should be considered as well.

d) Products not covered by the Toy Safety Directive

i) Articles designed for life saving

Articles designed for life saving are not considered as toys.

ii) Swimming aids and floating leisure articles (photos 7 and 8)

Photos 7 and 8 are examples of swimming aids and floating leisure articles. Floating leisure articles have a minimum diameter of 1,20 m⁴ and are not considered as toys.

iii) Inflatable articles with seats for use in water (floating seats) (photo 9)

These products are bathing rings that have an integrated seat with two holes for a child's legs to hang freely in water. The classification of floating seats is dealt with in Guidance document No 2 of 26 April 2001 which states that these products should not fall under the Toy Safety Directive but under the General Product Safety Directive.

iv) Swimming aids and swimming learning devices (armbands, jackets) (photos 10 and 11)

This group of products consists mainly of small jackets and armbands. Although they are usually sold in toy shops, they are not intended for play but are flotation aids/swimming learning devices. Therefore, they do not fall under the Toy Safety Directive.

3 Cf EN 13138

4 Cf EN 15649 – Floating leisure articles for use on and in the water – Part 1: Classification, materials, general requirements and test methods, Table 1.

PHOTO 1 (Toys)



PHOTO 2 (Toys)



PHOTO 3 (Toys)



PHOTO 4 (Toys)

#59380  60 Lb. (27kg) max. weight

- 40" x 26" (102cm x 66cm)
- 8 ga. (0.20mm) vinyl
- Submarine, Fun Boat and Fish assortment
- Repair patch
- 24 Ea., Ass't., 21.1 Lb. (9.6kg)

#59380

NEW!
PREMIUM
#58516  60 Lb. (27kg) max. weight

Rocket Car Rider

- 38" x 37" (97cm x 94cm)
- 10 ga. (0.25mm) vinyl
- Extra wide back axle for more stability
- 2 air chambers for safer play
- Grab handle
- Repair patch • Shelf box
- 12 Ea., 19.4 Lb. (8.8kg)

#58516

NEW ITEM

POOL FLOATS

25

PHOTO 5 (Toys)



PHOTO 6 (Toys)

#59212
Fish Kings
 • 32" x 31 1/2" (81cm x 80cm)
 • Printed on clear vinyl
 • Smooth inner seam
 24 Ea., Asst., 10.3 lb (4.7kg)

#59212

NEW

#58249

NEW!
PREMIUM
#58249
Happy Sun King
 • 32" (81cm) diameter
 • 8 ga. (0.20mm) vinyl
 • 2 air chambers for safer play
 • Pegable box
 24 Ea., 15.2 lb. (6.9kg)

#59220

#59220
Animal Split Rings
 • 24" x 22" (61cm x 56cm)
 • 8 ga. (0.20mm) vinyl
 • Butterfly, Duck and Frog styles
 36 Ea., Asst., 13.1 lb. (6.0kg)

NEW STYLE

NEW STYLE

NEW STYLES!
PREMIUM
#58221
Big Animal Kings
 • 30" x 22" (76cm x 56cm)
 • 10 ga. (0.25mm) vinyl
 • New Crab, Puppy and new Turtle styles
 • Smooth inner seam
 • Pegable box
 36 Ea., Asst., 23.7 lb. (10.8kg)

PHOTO 7 (Swimming aids – not considered as toys)



PHOTO 8 (Floating leisure articles – not considered as toys)







PHOTO 9 (Inflatable articles with seats for use in water – not considered as toys)



PHOTO 10 (Armbands – not considered as toys)



PHOTO 11 (Jackets – not considered as toys)

