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GUIDANCE DOCUMENT No. 10
ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY
OF TOYS
MUSIC INSTRUMENTS

This document is a non binding document intended to provide guidelines to help Member States and stakeholders on the classification of music equipment. 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.

1. Introduction

In the majority of cases the definition of a toy provided by article 1.1 of Directive 88/378/EEC or article 2 of Directive 2009/48/EC 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.

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

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 or 2009/48/EC 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. Toys or musical instruments?

3.1. The following products are toys

Musical quality is not their objective. They are intended to produce simple sounds, not music.

According to CR 14379 toys producing simple sound and operated by an easy action e.g. blow, press, shake, strike (drum) are toys intended for children under 36 months.



réf. 9647 8 x H7 cm - 48/96 pc



réf. 9642 28 x 17 x 3 cm - 36 pc



According to CR14379, piano with realistic look, sound & function, is considered as intended for children above 36 months.



3.2. "Maracas shaped rattles"

If products have a design easily to be confused with rattles - naïve decoration, similar dimensions, 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 who are too young to sit up unaided.

These products should fulfil all the relevant requirements in clause 5 of EN 71-1, especially those for rattles and rattle shaped toys if they weigh less than 500 g (See EN 71-1 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. Products sold together: a tambourine and maracas, or bells, castanets and/or a triangle.

The tambourines are toys intended for children over the age of three. The maracas, if they present the characteristics given in 3.2, are toys intended for children under the age of 3 years. 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. The part of the toy that consists of maracas shaped rattles should be assessed in the same way as under clause 3.2. These products should fulfil all the relevant requirements in clause 5 of EN 71-1, especially those for rattles and rattle shaped toys if they weigh less than 500 g (See EN 71-1 clause 5.8).



3.4. 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). If they are dangerous for children under three they should carry the "not suitable for children under 3 years" warning. Toys which, on account of their function, dimensions, characteristics or properties, or on other cogent grounds, are manifestly unsuitable for children under 36 months do not need to bear the warning.



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. If they are dangerous for children under three they should carry the "not suitable for children under 3 years" warning. Toys which, on account of their function, dimensions, characteristics or properties, or on other cogent grounds, are manifestly unsuitable for children under 36 months do not need to bear the warning.



3.7. Flute

These products are toys intended for children over the age of three, owing to the difficulty of using them (blowing and pulling at the same time). The flute would be dangerous for a child under three years that learns to walk and could fall with the flute in its mouth

If they are dangerous for children under three they should carry the "not suitable for children under 3 years" warning. Toys which, on account of their function, dimensions, characteristics or properties, or on other cogent grounds, are manifestly unsuitable for children under 36 months do not need to bear the warning.



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.

