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GUIDANCE DOCUMENT No. 14

ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY OF TOYS

Sports equipment versus toys

This document is a non binding document intended to provide guidelines to help Member States and stakeholders making the distinction between toys and sports 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 EU 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

Directive 88/378/EEC did not regard sports equipment and bicycles designed for sport as toys. During the revision of the new Toy Safety Directive (TSD) 2009/48/EC the legislator did not want to extend the scope of the TSD, but wanted to give further clarifications towards the scope and did not regard as toys sports equipment (including roller skates, inline skates and skateboards) intended for children with a body mass of more than 20 kg and scooters and other means of transport designed for sport.

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

The intention of 2009/48EC was that:

- equipment intended for sports and not for play by children under 14 is not considered as a toy. Since grey zone products exist, the new TSD clarified the classification by foreseeing as criteria whether the product is intended for children with a body mass of more than 20 kilos.
- means of transport, in particular scooters are not toys when they are designed for sport or intended to be used for travel on public roads or public pathways. Other examples include roller skis, kick sledges and kick bikes and roller-skates. In contrast, some means of transport can be considered as toys, if they have a play value and are intended for children under 14 years of age, for instance some scooters with play value which are not intended to be used for travel on public roads or public pathways.

The term "sports equipment" is not defined in the TSD and must therefore be interpreted. According to dictionaries "sport equipment" is defined as equipment or objects used or needed to participate in a particular sport, whereas sport is defined as a physical activity that is governed by a set of rules or customs and often engaged in competitively. The Council of Europe definition of sport means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels². The listed criteria below will try to help Market Surveillance authorities and stakeholders in making a decision on the products concerned.

2. Criteria to classify a product as a toy or sport equipment

The definition of a toy provides the following criteria:

- Any product designed or intended
- whether or not exclusively
- for use in play
- by children of less than 14 years of age.

The main difficulty of this definition is the concept of "use in play" or "playing value". Virtually, everything has playing value for a child, but this does not make every object fall into the definition of toy. To be considered as a toy for the purpose of the Directive, the playing value has to be introduced in an intended way by the manufacturer. . The fact that a product is intended for children under 14 years does not automatically render the product being a toy (e.g. children bicycles)

² http://www.coe.int/t/dg4/sport/SportinEurope/charter_en.asp#TopOfPage

2.1. Intention from the manufacturer

The declaration by the manufacturer of intended use is one of the main criteria to be considered as sport equipment. This will be further supported by:

- The distribution channel: sporting equipment is often sold in dedicated stores. However it can also be sold in specialised toy stores, but will rather be placed separately;
- The place of selling within the store: sporting equipment for children is often sold alongside sporting equipment for adults or separately from toys;
- Target audience of the advertising, display and packaging: packaging and advertising highlighting and emphasizing the fact that it is built and has features suitable for sport use and the physical challenge of using it successfully is more likely to be considered as sport equipment, while packaging, display and advertising designed to attract children would indicate that the product is more likely to be considered as a toy.

2.2. Distinctive characteristics of the product

The size of a piece of equipment and the size of a child are not the unique determining factors in distinguishing sports equipment from toys. When the same product is manufactured in a smaller form but the materials and look remain the same as the full-sized product it is not a toy, but is rather still considered sports equipment. However, when that product is not only reduced in size, but is changed with respect to material, look or a particular component that makes it different from the original product, it could be considered as a toy. When speaking of the distinctive characteristics, the difference in materials is normally the key differentiating characteristic.

The hereafter mentioned distinctive characteristics could be taken into account when determining the distinctive criteria of a product, in order to distinguish sports equipment from toys. However, these characteristics should be examined in addition to the other listed criteria and not in isolation:

- Products with bright, appealing colours with themes designed to attract or entertain children (including animated characters either on the product or provided as accessories, e.g. stickers);
- Products designed with different materials to make that same product more “child friendly” (e.g. lighter or softer than normal);
- Products designed as a toy counterpart of sporting equipment that is clearly designed for children to use in play or to mimic the actions of a sporting activity;
- Well established and perceived as toy and not accepted or recognized for use in sport or sport training.

2.3. Special criteria for product use

Sporting equipment often requires specific instructions or conditions for use, whereas when using a toy, a child should be able to be left alone without the risk of injury. The practice of a sport requires specific criteria for use that indicate that a product should be used for „sport“ and not for „play“.

These criteria include:

- Learning and coaching - Like adults, children need to undergo a learning process, sometimes enhanced by coaching from experts, to learn the practise of specific sports and to handle the required equipment appropriately. Examples of such sporting activity are skiing, ice-skating and cycling.
- Increased supervision for young children – While practising sport, children are often supervised by adults for various reasons, e.g. use of equipment, instruction on rules of the game and technique.
- Use of protective equipment - When performing sports including cycling, roller skating and football, children and many adults make use of additional protective equipment, such as helmets and shin guards.
- Specific rules for children – Many sports federations have developed specific rules tailored to the needs of children. One example is the Play & Stay Action Campaign developed by the International Tennis Federation and adopted by almost all European Tennis Federations, which promotes the use of specific balls, appropriate sized rackets and special coaching for children
- Practise of the sport on places specifically dedicated for this purpose – Examples of this are golf courses, ski slopes and tennis courts. These designated places are often also adapted to allow for specific safety requirements and sometimes also to children (e.g. mini-tennis courts and starter ski slopes).

2.4. Price

Toys may be sold at a lower price than sporting equipment as sporting equipment has distinctive criteria and characteristics to enhance proper use and protection.

These criteria include:

- Materials - Toys are often made of plastics or specific soft materials, whereas sporting equipment is made from refined materials, for example:
 - Ø Skis for sporting use are composed of a complex assembly of components including glass fibre, Kevlar, aluminium, other polymers and composite materials such as carbon fibre.
 - Ø Golf clubs are composed of different materials, such as titanium, stainless steel and advanced composite materials.

- Safety standards – Protective equipment to be worn while practicing sport need to comply with safety standards set in the framework of the Personal Protective Equipment Directive (89/686/EEC).
- Product development and design: To enhance proper use and safety, sporting goods manufacturers are working to constantly develop innovative designs, techniques and material use.

3. Concrete examples

	Toy	Sports equipment	justification
Trampolines for domestic use 	X		Product for use in play by children < 14 years
Sledge 	X		Discussed during ADCO meeting and intended for use in play by children < 14 years
Ski and ski boots		X	Skiing is purely a leisure or sport activity and is not

			<p>considered to be playing</p>
<p>Basketball/football</p> 		<p>X</p>	<p>The official and training balls are used in the sporting event</p>
<p>Basketball/football</p> 	<p>X</p>		<p>Major changes in physical/material properties to adjust the product to children's play movements</p>
<p>Soccergoals for domestic use</p>	<p>X</p>		<p>Product for use in play by children < 14 years</p>
<p>Soccergoals</p> 		<p>X</p>	<p>The soccergoals are used in the sporting or training event or in public playgrounds</p>

Scooters	X		To be used in play for children < 14 years (see guide nr 1)
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4. Who has the ultimate responsibility to decide if a certain product falls or not within the scope of Directive 2009/48/EC?

The decision if a product is covered or not by the Toy Safety Directive is part of the implementation of the legislation. Therefore, this decision is primarily in the field of responsibility of Member States. If the Commission Services consider that the decision of one Member State concerning the classification as a toy or not toy is not correct, it may take up the matter with the Member State. The Court of Justice is the only body that can give a definitive interpretation of the scope of the Directive.