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GUIDANCE DOCUMENT No. 15

ON THE APPLICATION OF THE DIRECTIVE ON THE SAFETY OF TOYS

Colouring and painting articles, writing and drawing articles and stationery items

This document is a non binding document intended to provide guidelines to help Member States and stakeholders making the distinction between toys and stationery items. 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, these guidelines do 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. Provisions of the Toys Safety Directive 2009/48/EC

Article 2 of the Safety of Toys 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".

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 definition provides the following criteria for deciding whether a product falls under the scope of the Directive:

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

The Directive does not contain any specific provisions concerning writing materials.




2. Product categories

2.1 Colouring and painting articles

Colouring and painting articles are considered as toys according to the Toy safety Directive 2009/48/EC, provided that these products are not intended for artistic use.

Examples of colouring and painting articles intended for use in play:

Colour pencils	
Felt tip pens	
Wax crayons	
Chalk	

Toy tubes of painting	
Toy stamps (self inking or with ink pad)	
Finger paints	

Elaborated coloring or painting articles, sold in shops or departments which are specialized in artists' equipment (drawing charcoal, pastels, drawing pencils, color pencils with a lead that dissolves in water to produce a watercolor effect, tubes of gouache and especially oil paints) are not considered as toys.

Examples of colouring and painting articles not regarded as toys:

Gel pens	
Elaborate coloring and painting articles	

However, these products have to comply with the general safety requirement contained in Directive 2001/95/EC (General Product Safety Directive).




2.2 Writing or drawing articles

Writing or drawing articles which can not only write, but can also be used for play (blowing bubbles pens, animal shaped pens, etc) are considered as toys and have to comply with the Toy safety directive's requirements.

Pencils or pens of which one end (often removable) is shaped like a clown's head, or animal's body or head are classified as toys.



These products are not strictly functional, and the intention of the manufacturer was not neutral with regards to children when introducing additional features.

Examples of writing articles intended for use in play:

Blowing bubbles pens	
Animal shaped pens	
Pens with (removable) shaped ends	

Pens and pencils having exclusively a functional writing purpose are not considered as toys. Pens and pencils having additional elements (such as decoration, smell, etc) are not considered as toys, if the additional elements do not incite to play.



Examples of writing articles not regarded as toys:

<p>Pens and pencils having exclusively a functional writing purpose</p>	
<p>Pens and pencils with additional elements</p>	

However, these products have to comply with the general safety requirement contained in Directive 2001/95/EC (General Product Safety Directive).

2.3 Other stationery products

Stationery items generally have an educational and functional purpose. Adding features and decorations is not generally considered as enough to change the purpose of these products, as no play value is introduced. This line of reasoning may apply to notebooks, address books, kits containing pencils, stickers, writing sets containing pads of paper, envelopes and sometimes a pen, all colored or decorated with coordinated patterns, sheets of stickers for decorating letter paper, rulers, compasses etc.

<p>Notebooks and address books</p>	
<p>Kits containing pens</p>	

Sharpeners	
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These products have to comply with the general safety requirement contained in Directive 2001/95/EC (General Product Safety Directive).

However, when a play value is intentionally introduced by the manufacturer in addition to the functional and education value of stationery items and according to indicative criteria laid down in "Guidance document nr 4 on the classification of grey zone products", the product can be considered to be a toy and has to comply with the Toy safety directive's requirements.

Toy sharpener	
Erasers	

Writing instruments and stationery classified as toys have to comply with the Toy safety directive 2009/48/EC and other applicable EU legislation, e.g. entries 51 and 52 of the REACH² Regulation related to phthalates. Requirements covered by harmonized and referenced standards benefit presumption of conformity. Manufacturers may also refer to international standards such as ISO 11540 "Caps for writing and marking instruments intended for use by children up to 14 years of age - Safety requirements" when assessing the hazards the toy may present.

² OJEU, 30.12.2006, L396, p.1