#### **GUIDANCE DOCUMENT No 20**

### ON THE APPLICATION OF DIRECTIVE 2009/48/EC ON THE SAFETY OF TOYS

### **Decorative products and products for collectors**

This Guidance document is a non-binding document intended to provide guidelines to help Member States and stakeholders making the distinction between toys and other consumer products. It expresses the views of the majority of members in the Expert Group on Toy Safety<sup>1</sup>.

The images appearing in the document constitute examples intended to facilitate the decision-making. They do not presuppose the conformity of the represented products.

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 2009/48/EC or within the scope of application of other sectoral legislation. The Court of Justice of the European Union 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' which 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 prevent a national authority from consulting with colleagues from other regulated sectors concerned in order to reach a complete view on all aspects related to a given product.

### 1. Background

According to Article 2 (Scope) of the Toy Safety Directive 2009/48/EC (TSD) the Directive shall apply to products designed or intended, whether or not exclusively, for use in play by children under 14 years of age ('toys').

According to Annex I 'List of products that, in particular, are not considered as toys within the meaning of this Directive', inter alia the following products are not considered as toys:

- Decorative objects for festivities and celebrations;
- Products for collectors, provided that the product or its packaging bears a visible and legible indication that it is intended for collectors of 14 years of age and above.

Manufacturers are responsible for the correct classification of a product before placing it on the market.

Decorative products can be divided into two categories:

Decorative products which are toys and have a double function;

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

Decorative product which are not toys but can be confused with toys.

Products which are clearly just decorative products or which are clearly just toys are not covered by this guidance document.

### 2. How to classify a product?

The definition in Article 2 (1) of the TSD provides the following criteria for deciding whether a product falls under the scope or not:

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

The words 'whether or not exclusively' indicate that the product does not have to be exclusively intended for playing purposes in order for it to be considered as a toy, but it can have other functions as well (double function). For further reference see the TSD explanatory guidance document.<sup>2</sup>

The main difficulty of this definition is the concept of 'use in play' or 'playing value'. Virtually everything has a 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 declaration by the manufacturer of the intended use is a criterion to be considered. However, the reasonably foreseeable use shall prevail over the declaration of intended use by the manufacturer. If the manufacturer labels products as not being toys, he has to be able to support this claim.

Besides this, the following indicative criteria could be considered to decide (see also guidance document No 4: Grey zone problem) if a product should be classified as a toy or not:

- Way of advertising/target audience;
- Place of selling;
- Size;

Markings on the product;

- Pictures on the packaging;
- \_ Price

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- Kind/size of clothing (e.g. normal, traditional, removable).

If a product is classified as a decorative product by the annexes to this document and a manufacturer would classify the same product as a toy, he has to be able to support this claim. This should be done in the technical documentation, e.g. in the description of the intended and foreseeable use. More information can be found in part 3.1 of the Technical documentation guidance document<sup>2</sup>.

http://ec.europa.eu/growth/sectors/tovs/safety/guidance

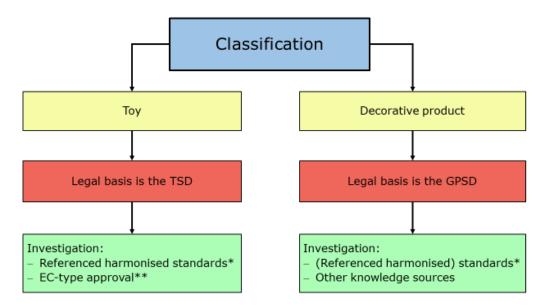
However it goes against the TSD if a manufacturer marks a product with 'This is not a toy" and therefore does not classify it as a toy, although the annexes to this document suggest that it is to be classified as a toy.

### 3. Decorative products

Based on the TSD explanatory guidance document<sup>3</sup>, the category 'Decorative objects for festivities and celebrations' includes a variety of decorative objects, for example for Christmas or birthdays. They can be child appealing, such as a decorative Santa Claus for Christmas. Nevertheless, a child appealing decorative product which is not considered as a toy still needs to be safe including for children in accordance with the provisions of the General Product Safety Directive 2001/95/EC (GPSD).

There are many different kinds of decorative products, e.g. for festivities and celebrations such as birthday parties, Christmas, Easter, European/World championship sports events. Other decorative products (not specific for festivities and celebrations) are for example products for the children's room, souvenirs or gadgets. These products should be classified on a case by case basis.

For examples see annexes 1 to 5.



\* A harmonised standard is a European standard developed by a recognised European Standards Organisation (CEN, CENELEC, or ETSI) following a request from the European Commission to one of these organisations. Manufacturers, other economic operators, or conformity assessment bodies can use harmonised standards to demonstrate that products, services, or processes comply with relevant EU legislation. The references of harmonised standards must be published in the *Official Journal of the European Union*.

\*\* Internal production control based on the manufacturer's own responsibility for the conformity assessment has proven adequate in cases where it has followed the harmonised standards, the references of which has been published in the *Official Journal of the European Union*, covering all the safety requirements for the toy.

In cases where such harmonised standards do not exist, the toy should be submitted to third party verification, in this case EC-type examination. The same should apply if one or more such standards have been published with a restriction in the *Official Journal of the European Union*, or if the manufacturer has not followed such standards completely, or only in part. The manufacturer should submit the toy to EC-type examination in cases where it considers that the nature, design, construction or purpose of the toy necessitates third party verification.

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https://ec.europa.eu/growth/sectors/toys/safety/guidance en. Section 10.1.1, p. 80.

In case of child appealing decorative products the standards for toys or parts of them may be used to ensure their safety if no specific standards for these products exist.

Manufacturers are often selling products with a play value as decorative products. An example is the plush bear which is dressed as Santa Claus, which is considered as a toy in Guidance document No 11.

#### 4. Products for collectors

According to Annex 1 of the TSD the following are not considered as toys: Products for collectors, provided that the product or its packaging bears a visible and legible indication that it is intended for collectors of 14 years of age and above.

Examples of this category are:

- a) detailed and faithful scale models.
- b) kits for the assembly of detailed scale models (see also guidance document No 5).
- c) folk dolls and decorative dolls and other similar articles (see also guidance document No 6).
- d) historical replicas of toys.
- e) reproductions of real fire arms.

In this guidance document specific criteria are given to make a distinction between toys and products which should be regarded as products for collectors of 14 years of age and above ('adults'). These products for adults can also be considered as a kind of decorative products.

For examples see annex 6.

#### 5. Annexes

This document contains several annexes which treat different product categories relating to decoration, festivities or collector products. They are divided as follows:

- Annex 1: Dolls, animals, figures.
- Annex 2: Decorations for interior design.
- Annex 3: Souvenirs.
- Annex 4: Party novelties for celebrations / parties.
- Annex 5: Other, various and dual use.
- Annex 6: Products for adult collectors.
  - Part A: Detailed and faithful scale models;
  - Part B: Folk dolls and decorative dolls and other similar articles.

## 6. Other (guidance) documents

On the following website you can find the guidance documents related to toy safety: http://ec.europa.eu/growth/sectors/toys/safety/guidance.

- Guidance document No 4: Grey zone problem: Is a specific product covered by the Toy Safety Directive 2009/48/EC or not?
- Guidance document No 5: Grey zone products: Criteria to classify products consisting of miniatures to be assembled and painted and their support products.

- Guidance document No 6: Grey zone' products: Criteria for differentiating dolls for adult collectors from toys.
- Guidance document No 11: Guidance document on the classification of toys intended for children under 3 years of age.
- TSD Explanatory guidance document.

#### Some other guidance documents:

- Atlas to uniformly recognise household appliances with child appealing designs. See scope of the Atlas and <a href="https://ec.europa.eu/docsroom/documents/8712?locale=en">https://ec.europa.eu/docsroom/documents/8712?locale=en</a>.
- Atlas to uniformly discriminate between portable luminaries for children and adults.
   See scope of the Atlas and <a href="https://ec.europa.eu/docsroom/documents/8772/attachments/1/translations">https://ec.europa.eu/docsroom/documents/8772/attachments/1/translations</a>
- CEN ISO/TR 8124-8:2014 Safety of toys Part 8: Age determination guidelines
- CPSC (US Consumer Product Safety Commission), Age determination guidelines: Relating Children's Ages To Toy Characteristics and Play Behaviour <a href="https://www.cpsc.gov/s3fs-public/pdfs/blk">https://www.cpsc.gov/s3fs-public/pdfs/blk</a> media adg.pdf

### Annex 1. Dolls, animals, figures

Criteria for classification as toys:

- 3D shaped.
- (Partly) soft filled.
- (Partly) for cuddling.
- Easy to handle

- Product is completely or mainly made of hard and easily breakable material (e.g. porcelain, glass).
- Low play value.
- 2D shaped.
- Not easy to handle due to the weight, the dimensions, or a combination thereof.

Dolls, animals, figures	Toy or not	Description of product	Criteria
	YES	Napkin holder.  Product is a soft filled toy, metal wires in the arms (3D and soft).	3D shaped. Size 10 – 15 cm. Soft toy with movable arms. Play value.
	YES	Soft filled toy with audio speaker.	This toy can be marketed with or without a cable.  Soft filled toy.  Play value.
	YES	Animal or human figure partly filled with sand and soft material (fuzz).  Rope on top for hanging e.g. in a tree.	Soft products which can be Christmas decorations.  Height about 10 - 15 cm.  3D shaped.  Lightweight (circa 100 g).  Easy to handle.  Filled with soft material (e.g. fuzz) and highdensity materials (e.g. sand) whereby it can stand upright on his own.  Play value.

YES	Baby teeth mouse.	Product is a soft filled toy. Size 12,5 cm tall. Play value.
YES	Toy filled with sand or other filling material.	Product (completely) filled with sand.  Product is soft.  Easy to handle due to the size (5 – 20 cm) and weight (15 – 500 g).  Play value.
YES	Rabbit with purse.	Product is a soft filled toy 3D shaped. Size 10 – 15 cm. Play value.

	NO	Product	Product
		ballasted with sand.	(partly/completely) filled with sand.
			The body is hard due to the rate of filling or armature is made of metal.
			They are heavy and big (approximately 40 – 50 cm tall).
			Not easy to handle due to the weight (circa 1,5 kg).
			Not for cuddling.
351			Low/no play value.
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	NO	Bookend, doorstopper,	The body is rather hard (leather (look)).
		paper weight	Product (completely)
			filled with sand.
			Not easy to handle due to the size (small animal
			approximately 11x17x26
Company of the Compan			cm) and weight (approximately 1,5 kg).
			Not for cuddling.
			Low/no play value.
			20 mile play value.

NO	Easter decoration.	Product consists of iron wires and textile, without filling.  Not for cuddling.  Details basic and rough.  Easter decorations on tables, book shelves, windows, etc.  Low/no play value.
NO	Doll Head, hands and feet are made of wood, cap made of textile. Rope on top for hanging. Legs and arms made of wire.	Body is flat, made of felt.  Size is very small, about 8 cm.  Cannot stand on its own.  Not for cuddling.  Sold in a book store together with wrapping paper and congratulation cards as a little gift with labelling like 'Good Luck' or 'Get well soon' or 'Sleep well' etc. (as a kind of decorative product for gifts and/or a kind of lucky charm).  Low play value.

# **Annex 2. Products for interior decoration**

Criteria for classification as toys:

- Play value.
- Removable/Reusable: intended to be put on and taken off by children.

- Permanent fixed to, e.g. wall, bed, door.
- No play value.

Products for interior decoration	Toy or not	Description of product	Criteria
	YES	Reusable / removable stickers.	E.g. plastic stickers for placing on windows. Play value.
Stickers	YES	Reusable / removable stickers. Often puffy, but not always.	Stickers that can be affixed and then peeled off again by children, for example on special surfaces like coated paper, plastic or glass.  Play value.
	YES	Pillow in the form of animal.  Product has additional features like a tail, fins.	Soft filled toy. Size: 40-200 cm. Lightweight. Shape of an animal. For cuddling. Play value.

	YES	Jumping Jack.	Jumping Jack is a toy even in the shape of a Santa Claus. Play value.
## Company	YES	Art and craft.  Easter bunnies.  Material bunnies: foam rubber.  Dress material: paper.  Cords:	Easter bunnies that can be dressed up.  Product has a double function: art and craft material (toy) and a decorative function during Easter.  Play value.  See also Guidance document 13 on crafts.
		textile.	

YES	Christmas bear with stocking.	3D shaped. Height approx. 60 cm. Cuddling. Soft filled / plush head + paws bear. Play value.
YES	Musical mobile.  Music box with a self-retraction mechanisms (child has to pull the middle cord).  Movement of the feather as the music plays.	Soft musical-activity toy to hang within the reach of a child over / in the child's cot / bed / playpen.  Size: Two different sizes approx. 10 cm in diameter and approx. 20 cm.  Play value in the form of music and rustle in the feathers when touched by the child.  Can be operated by the child.  Play value.
YES	Toy attached to a spring.  Very colored, long legs.  Spring can be taken off the toy.	Within the reach of the child. See guidance document 4 concerning within the reach or not.  Animals (hard body but soft textile coat) attached to a spiral spring.  Toy is sold together / separately from the spring.  Play value.
NO	Christmas / Santa Claus stocking. Intended to put gifts in.	Stocking is considered as Christmas decoration.  2D shaped.  Low/no play value.

4 5 6 9 10 11 12 13 14 15 16 11 10 19 20 21 22 23 24	NO	Doll / Decorative object for Christmas. Advent calendar made of polyester fleece. Wall decoration.	Body is flat, not flexible.  Dimensions large (e.g. 0,5 m x 0,5 m).  Only head is 3D shaped.  Not easy to handle.  Low/no play value.
MANUE MANUE (NO)	NO	Decorative / poster.  Made of paper.  The clips and carts are permanently attached to the product.	Product is flat.  The position of the round carts with names or, e.g. photos are not removable and cannot change position.  No play value.
	NO	Decorative / photo-montage Photo frame. The rings and hearts are permanently attached to the product. You can insert photos into the hearts.	Product is flat.  Product can stand on, e.g. a table.  It is difficult to change the pictures.  No play value.
	NO	Glow in the Dark.  Made of fluorescent material.	Product is flat.  Single piece.  Permanently fixed by adults.  (Aid for children) Finding the lighting switch / not completely dark in the room.  No play value.

	NO	Decorative stickers. You can affix them on walls, cups, cell phones, notebooks.	Permanently fixed.  No play value.  (Exemption: books with stickers. See Guidance document 9 on books).
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	NO	Snow globes Mostly made of plastic.	Child appealing if it has characters well known for children such as Miffy or Mickey Mouse.  Low play value.
PARTY			

NO	Pillow with childish design.	Round shape (not in the shape of an animal, body, no arms, no head or other details).  Size: 30 cm Ø.  Plain soft filled pillow.  Low/no play value.  See also Guidance document 11 on the classification of toys intended for children under 3 years of age.
NO	Decorative product.  Letter made of wood, with a bear on it.	Sold separately (only one letter in one package).  Height: ca. 8 cm.  Normally the letters are permanently fixed by adults on the door, on the bed, on the wall etc.  No play value.
NO	Hanging decoration  Textile product, no lamp.	Not a mobile.  Dimensions about 25 cm length.  To hang at the ceiling out of the reach of children, with one cord, so it can be turned around.  Product does not turn by itself, produces no sound.  No play value.

### **Annex 3. Souvenirs**

Criteria for classification as toys:

- Designed for children.
- Movable arms
- Soft filled

- Fragile materials, e.g. glass.
- Attractive to adults.
- Relation to the place visited.
- Detailed.

Souvenirs	Toy or not	Description of product	Criteria
	YES	Souvenir / plush toy.	Two suction cups at the end of the soft arms for attaching it at, e.g. a car window within the reach of a child.
			Body made of hard plastic, covered with plush (looks like plush).
			Height about 10 cm.
6			Play value.
1	NO	Doll / souvenir.	Figure dressed in a traditional costume.
		Legs and	Height about 10 cm.
		arms not moveable.	Material: hard, fragile.
		1110 / 0000101	Sold in a souvenir shop.
			Not possible to (un)dress.
			Low play value.

### Annex 4. Party novelties for celebrations / parties

Criteria for classification as toys:

- Play value (similar to disguise costumes).
- Possible use like similar toys (for example birthday train can be used like a toy train if the wheels can turn.
- Role play.

Criteria for classification as products other than toys:

• Only for decoration, e.g. garlands fixed on the ceiling / out of children's reach.

Party novelties for celebrations / parties	Toy or not	Description of product	Criteria
	YES	Crowns or basic hats.  Material made of paper, cardboard or	YES, are toys when used for celebrations (e.g. birthday party) and for role play Play value.
	NO	other material	NO, are not toys if only used for religious purpose (e.g. Epiphany crowns), children or adults will not play with it No play value.
	YES	Hats.  Material made of paper, cardboard or other material.	Can be used for celebrations (e.g. birthday party) and for role play. Play value.
	YES	Rollers, whistlers, blowouts, party blowers.	It's also used at times after the celebration.  Mouth activated toy.  Play value.

1225 1225 1225 1225 1225 1227 1221  EYE MASKS WITH PLASTIC NOSES 1222 Suit Plast 1225 Suit Part 1225 Suit Part	YES	Flexible glasses. Frames with plastic noses.	Part of a disguise costume.  Not only for celebration.  Play value.
HOLOGRAPHIC EYE MASKS 1270  SAR PAISO 1270/6 c PAISO 1278/12 12 PAISO 1278/12 PAISO 1278/12 PAISO 1278/12 PAISO 1278/12 PAISO 1278/12 PAISO 12	YES	Eye masks.	Part of a disguise costume.  Not only for celebration.  Play value.
	YES	Birthday train for decoration on the table. Material wood.	Train is a traditional toy.  Wheels can move.  Additional element such as numbers or letters that can be moved between the different wagons.  Play value
	NO	Piñatas.  Made of paper.  Decorative object for celebration.	When hit by a stick the product is destroyed.  For celebration only.  No play value.

	NO	(Paper) Party hats. Party novelties. Material elastic band, head made of paper or cardboard.	Only used for celebrations (e.g. birthday party), not for role play.  No play value.
409) 409) 409) 409) 409) 409) 409)	NO	Lanterns and garlands.	Only for festivities and celebrations.  No play value.
40000 st Balk Park 40000 st Balk	NO	Streamers, confetti, serpentines.	Only used at parties, celebrations, festivities. Can be used only once. No play value.
1931U/48 235 Tage/Display	NO	Party popper It emits a loud popping noise by means of a small explosive charge or compressed air that is emitted by pulling e.g. a string. The charge or compressed air blows out	Only used for parties, festivities and celebrations.  Can be used only once.  No play value.

		some confetti or streamers.	
	NO	Pistol for party popper.	Can only be used with the above mentioned party poppers which contain a small amount of gun powder.  Cannot be used with other projectiles.  Projectiles can be bought separately (refill package).  Annex I of the TSD does not consider "fireworks including percussion caps which are not specifically designed for toys" as toys.
PARTY CRAME	NO	Party streamer.	Only used for parties, festivities and celebrations.  Aerosols producing sticky strings that people use during parties.  Gas under pressure.  No play value.

NO	Birthday train for decoration on birthday cake. Often made of plastic.	Wheels are fixed and cannot move.  Intended to be light holders.  Often used only once.  Not expensive.  Low/no play value.
NO	Plates and glasses/mugs.	Only for eating.  Only for celebrations depending on the decoration (print).  No play value.
NO	Balloon made of foil in the shape of numbers or letters.  Material foil (not latex).	Balloon mainly for decoration.  Size: numbers over 80 cm, letters around 35 cm.  Difficult to hold for young children.  No play value.
YES	Balloons made of foil, in the shape of animals or other child appealing characters with play value. Made of foil (not latex).	Child attractive, invites to play. Play value.

# Annex 5. Other, various and dual use products

In general the criteria of Guidance document No 4 are applicable.

Criterion for classification as toys:

- 3D shaped
- Play value

- 2D shaped
- No/Low play value

Other/various/double function	Toy or not	Description of product	Criteria
	YES	Magnets / puzzle for e.g. refrigerators.	2D or 3D shaped. Play value.
	YES	Magnets for e.g. refrigerators.	3D shaped. Play value
0 cm 2 4 6 8	YES	Panda bear attached to a key ring.  Material hard.	Animal, doll or other figure attached to a key ring.  3D shaped. Play value.

NO	Key ring.	2D shaped.  Low/no play value.
NO	Magnets for e.g. refrigerators.	2D shaped. No play value.
NO	Figure (rabbit) with a solar cell.  Made of plastic.  The rabbit is wagging with its head and body.	Fixed on a pedestal.  Height about 13 cm.  You can only watch it moving.  Low/no play value.
NO	Baby teeth boxes.	Intended to be used by adults to keep children's teeth.  No play value.

#### Annex 6. Products for adult collectors

#### Part A: Detailed and faithful scale models

Criteria for classification as toys:

- Low price.
- Not traditionally dressed / painted.
- Shaped like a toy (e.g. Barbapapa, Winnie).

- Made of hard material.
- Fixed on, or provided with, a pedestal.
- Detailed.
- Traditionally dressed / painted.
- High price.
- Place of selling.
- Limited number edition.
- Numbered, certificate of authenticity, display packaging (packaging serves as a display).
- Sophisticated and elaborated dress clothes.

Detailed and faithful scale models	Toy or not	Description of product	Criteria
	YES	Dollhouse furniture for children to play with.	Toys for children, sold in toy stores.  Sometimes less detailed than scale models.  Play value.
	NO	Scaled house, furniture and household articles for adult collectors.	Detailed and faithfully scaled models.  Often old-fashioned style or things that were used in the old days.  Should be visibly and legibly marked as intended for collectors of 14 years and above.  Low/no play value.

# Part B: Folk dolls, decorative dolls and other similar products

For the criteria for classification as toys or as products other than toys: See Part A above.

Folk dolls and decorative dolls and other similar articles	Toy or not	Description of product	Criteria
	NO	Products for collectors – folk dolls and decorative dolls.  Doll, made of hard plastic.  Fixed to a pedestal.	Height about 30 cm.  Sophisticated and elaborated dress clothes.  Should be visibly and legibly marked as intended for collectors of 14 years and above.  Low/no play value.
	YES NO	Doll.  Made of plastic and plasticized face.	The price is: 15 – 30 euro (depending on the size).  YES, is a toy when the dress can be removed, arms and legs can move. – Play value.  NO, is not a toy when product is expensive, arms and legs cannot move and the dress cannot
			be removed; a traditional folk doll. – Low/no play value.
	NO	Folk dolls.  Matryoshka.  Also called Babushka dolls (Russian dolls).	Product made of wood, handicraft made, traditionally painted, expensive, sold in a e.g. souvenir shop.  Low/no play value.
	YES	Shape Barba papa. Matryoshka. Product made of e.g. plastic, wood.	Low price, mostly sold in toy shops.  Same product as the traditional Matryoshkas but these products are cheaper and mass produced.  Play value.