

Is it a toy?

To know what safety requirements and administrative requirements are applicable, it is important to determine whether a product is considered a toy or not.

What is the difference between a toy and a product?

A product classified as a toy must comply with the Toy Safety Directive (TSD). This means compliance both with the requirements set out in the applicable standards for toy safety, and the administrative requirements in the TSD (e.g. CE marking, Declaration of Conformity, etc.).

A product that is not classified as a toy and does not fall under any other CE-marking directive (such as the RoHS Directive for electrical and electronic products), must not carry the CE-marking, and there is also no requirement for a Declaration of Conformity. However, the product must still be safe for the user. This means that if the product is intended for children, it should be safe for them to use. Therefore, toy standards are very often considered as good guidance when it comes to the level of safety also for these products.

Consumers are often advised to buy only CE-marked toys and in one sense that is a good advice. The problem is that there are many other products for children which must not be CE-marked (such as strollers, pacifiers, etc) and it can be difficult for consumers to understand where the boundaries are between toys and other products for children. It would be unfortunate if, for instance, consumers would not dare buy a pram simply because the CE-marking is “missing”.

Who decides on classification?

The starting point is the manufacturer’s classification (toy or not) which in normal cases would also be the classification that applies. However, it is important to bear in mind that national authorities have the right to question the manufacturer's classification and decide on a different one. In case of a conflict, the ultimate decision would (legally speaking) sit with the European Court of Justice.

The scope of the TSD is what determines the general classification, and it defines as a “toy”:

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

This implies that it is not the “play value” that determines whether a product is considered as a toy or not. Children can play with almost anything (for example with a pair of car keys) but this does not mean all such items must be legally classified as toys. It is key that the manufacturer has intentionally introduced the play value. However, if it is obvious (or reasonably foreseeable) that the product will be used as a toy, this should also be considered when the product is classified, regardless of the original intention of the manufacturer. When a manufacturer classifies an item as a product rather than a toy, he must be able to support/defend this decision if challenged.



How does one draw the line?

Many products are in a grey zone and difficult to classify. To help manufacturers and authorities, the European Commission has published a series of guides with images and guiding examples, giving a better understanding of where the boundaries between a toy and a product are.

Guide Number 4 is a general guide for 'grey zone products'. In addition to referring to the definition in the directive, it specifies additional criteria that may be indicative, such as:

- The point of sale (for example, if the product was sold in a toy store/department or in a special store of craft/hobby kits)
- The product packaging and marketing (e.g. if the packaging is attractive to children and/or shows children playing with the product)
- The price may also be relevant, for example, to determine whether it is a collector's item or a toy version

In addition to this general guide, there is a further dozen of guides that can be helpful:

- Scooters (Guide No 1)
- Miniature models to be assembled / painted (Guide No 5)
- Collectibles for adults (Guide No 6)
- Products for use in and on water (Guide No 7)
- Pools (Guide No 8) –
- Books (Guide No 9)
- Musical Instruments (Guide No 10) –
- Crafts (Guide No 13)
- Sports equipment (Guide No 14)
- Stationery (Guide No 15)
- Electronic equipment (Guide No 16)
- Disguise costumes (Guide No 17)

The guides mentioned in the article can be found on the Commission website: http://ec.europa.eu/growth/sectors/toys/safety/guidance/index_en.htm. In addition to the classification of "toy or not" it is important for manufacturers to make a correct age classification of the toy. Read more about this topic in the article published in June 2016 [here](#).