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EXPERT GROUP ON TOY SAFETY

Document number: EXP/2022/004 Rev 7
Date: 11 December 2023

SUBJECT: Revised version of Guidance document No 7 on toys and other products used in or on the water

Provided by the Commission services.

Message:

Please find overleaf the revised version of Guidance document No 7 on toys and other products used in or on the water (EXP/2022/004 Rev7), as endorsed by the Expert Group.

This version will be published on the [Europa website dedicated to guidance on toy safety](#), where also the translations into FR and DE will be published, once available.

Field Code Changed

Please also note that on the same website it will be clarified that Guidance Document No 2 on Community legislation applicable to 'floating seats' will become disused, as incorporated into the revised version of Guidance document No 7.

ACTION: version endorsed by the Expert Group on Toy Safety for publication on the Europa website

**GUIDANCE DOCUMENT No 7
ON THE APPLICATION OF
DIRECTIVE 2009/48/EC ON THE SAFETY OF TOYS
Toys and other products used in or on the water**

This Guidance document is a non-binding document intended to provide guidelines to help Member States and stakeholders making the distinction between toys to be used in and on the water and other products to be used in and on the water not classified as toys. It expresses the views of the majority of members in the Expert Group on Toy Safety¹.

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. This guidance document (including its classification criteria) is not meant to affect products already placed on the market before the revised document has been published on the Europa website.

1. Provisions of the Toy Safety Directive 2009/48/EC

Article 2 of the Toy Safety 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’. Aquatic toy is defined as ‘a toy intended for use in shallow water which is capable of carrying or supporting a child on the water’.

Annex I of the Directive classifies ‘aquatic equipment intended to be used in deep water, and swimming learning devices for children, such as swim seats and swimming aids’ as products not regarded as toys.

According to Annex II, Part I, point 5 of the Directive, ‘aquatic toys must be designed and manufactured so as to reduce as far as possible, taking into account the recommended use of the toy, any risk of loss of buoyancy of the toy and loss of support afforded to the child.’ Furthermore, Annex V, Part B.6 provides that ‘aquatic toys shall bear the following warning: “Only to be used in water in which the child is within its depth and under adult supervision.”’

2. Product categories covered by the Toy Safety Directive

¹ 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.

In general, products used in or on the water should be classified in a pragmatic way on a case-by-case-basis taking into account the above-mentioned provisions of the Toy Safety Directive. However, some categories of aquatic products can be distinguished for the purposes of classification. They are presented below, and photographs are given further on for illustration.

2.1 Bath toys

These are very simple, brightly coloured toys, often animal-shaped, and generally used in the bath. As a rule, they are intended for very young children (under 36 months of age) and are covered by the Toy Safety Directive.

2.2 Small, battery powered toy vessels (remote controlled or not)

These products are intended for children of 36 months and over, generally for use in city fountains or in rivers, lakes, swimming pools, at the seaside, etc. They are covered by the Toy Safety Directive. Toy vessels do not necessarily need to be operated by remote control in order to be considered as toys.

2.3 Inflatable PVC toys²

2.3.1 Simple inflatable toys

These toys are for use at home or at the beach, not exclusively for use in water and not designed to bear the weight of a child. Examples are: large balls with multi-coloured segments; big or small self-righting dolls intended for children of all age groups. They are covered by the Toy Safety Directive.

2.3.2 Inflatable toys for use in water and intended to be played on

The position of the user on these aquatic toys is on the buoyant structure, e.g. small mattresses (not exceeding 1,20 m), small boats (not exceeding 1,20 m) and small or large ride-on toys. Products in this category which children can ride on are usually considered toys (provided they are intended to be used in play by children in shallow water), even if they exceed 1.20m (note: extremely large items e.g. large enough to accommodate several users may not be toys, even in those cases when they are appealing to children). According to EN 71-1:2014+A1:2018, clause 4.18, ride-on toys exceeding 1,20 m must also fulfil the applicable requirements of EN ISO 25649^{3,4}.

Boats and mattresses exceeding 1,20 m are normally intended to be used in deep water and

² Toys may also be made of other material than PVC, such as foam. The same principles of classification as those presented in this document for inflatable PVC products can be applied to products made of other material, too.

³ EN ISO 25649 series is referenced and provides for conformity under the GPSD. EN 71-1 is in the process of having the reference to EN 15649 updated.

⁴ EN ISO 25649 – Floating leisure articles for use on and in the water – Parts 1-7, as applicable

are therefore not considered to be toys⁵.

2.3.3 Bathing rings

These are rings which are able to support the weight of a child. They have a diameter of less than 1,20 m⁶ and are generally used in shallow water (where the child is within its depth) and under adult supervision. They are intended to be used in play by children and are not swimming aids or swimming learning devices and are therefore toys. In accordance with Guidance document no. 4, other indicative criteria such as the declaration of the manufacturer on the intended use, the place of selling, advertising and packaging should be considered as well.

2.4 Fish rings

Fish rings are commonly used in mini pools or small pools, are intended to be thrown at the bottom of the pool/water where the child can simply pick them up while sitting, without having to dive. Even when used in a larger pool where the child has to dive to retrieve it, it has no buoyancy and doesn't provide any aid, while it has a clear play value.

3. Products not covered by the Toy Safety Directive

3.1 Articles designed for life saving

Articles designed for life saving are not considered as toys.

3.2 Floating leisure articles

Floating leisure articles are for use in deep water, have a minimum diameter or length of 1,20 m⁷ and are not considered as toys, although they may be child-appealing due to their bright colours and the objects they represent (nice little cat, watermelon, hotdog, candy, etc). They can be tubes, islands, mattresses, floats, etc. They have to fulfil the applicable requirements of EN ISO 25649⁸.

3.3 Floating seats

These products have an integrated seat with two holes for a child's legs to hang freely in water. Floating seats must be used under constant supervision, preferably within arm's reach. Their use is dangerous in all levels of water. Floating seats fall under the General

⁵ The 1,20 m dimension is to be measured on the uninflated toy as stated in clause 4.18 of EN 71-1.

⁶ The 1,20 m dimension is to be measured on the uninflated toy as stated in clause 4.18 of EN 71-1.

⁷ The test method to measure the minimum diameter or length of 1,20 for floating leisure articles will soon be incorporated by reference into EN 71-1 when inserted into EN ISO 25649-1.

⁸ EN ISO 25649 – Floating leisure articles for use on and in the water – Parts 1-7, as applicable.

Product Safety Directive 2001/95/EC. They are considered as Class A buoyant swimming devices⁹ and are covered by current harmonised standard EN 13138-3 ‘Buoyant aids for swimming instruction - Part 3: Safety requirements and test methods for swim seats into which a user is positioned’ which applies to Class A devices. This document applies only to swimming devices into which the user is placed and which have either inherent buoyancy or can be inflated or a combination of both. It only applies to class A swimming devices intended to introduce the user to the water environment. These swimming devices are only intended for children aged up to 36 months with a body mass less than or equal to 19 kg. It does not apply to class B or class C swimming devices, to pull buoys, lifebuoys, buoyancy aids, lifejackets or aquatic toys.

Floating seats are not personal protective equipment: they fall, therefore, outside the scope of Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment.

Floating seats are learning devices and not toys: they should not be designed in such a way that would lead parents or children to confuse them with toys.

3.4 Swimming aids and swimming learning devices (armbands, swim vests, neck-rings, snorkeling masks, diving rings and other diving products)

This group of products consists mainly of swimming learning rings (or similar shapes), armbands and small jackets. Although they are usually sold in toy shops, they are not intended for play but are flotation aids/swimming learning devices. Therefore, they do not fall under the Toy Safety Directive. They are considered as Class B buoyant swimming devices¹⁰. Swimming armbands are classified as Personal Protective Equipment (PPE) cat II while life- buoys and life-jackets to prevent drowning are classified as PPE cat III. Non-toys buoyancy -aids as referred in this paragraph are considered PPE cat II.

3.5 Other categories: water walking balls

This group of products consists of giant inflatable balls to be used on the water, usually present at holiday camp/resort, activity center or aquatic parks, where children can walk inside the ball under the supervision of an adult.

⁹ Cf EN 13138-3 – Buoyant aids for swimming instruction - Part 3: Safety requirements and test methods for swim seats into which a user is positioned’.

¹⁰ Cf EN 13138-1 – Buoyant aids for swimming instruction – Part 1: Safety requirements and test methods for buoyant aids to be worn.

Products covered by the Toy Safety Directive 2009/48/EC

Bath toys

Very simple, brightly coloured, often animal-shaped, and generally used in the bath.

As a rule intended for very young children (less than 36 months of age)



Small, battery powered (remote controlled) toy vessels

Intended for children of 36 months and over, generally for use in city fountains or in rivers, lakes, swimming pools, at the seaside, etc



Simple inflatable toys

For use at home or at the beach, not exclusively for use in water and not designed to bear the weight of a child





Inflatable bath toys

For use at home (during bath), not exclusively for use in water and not designed to bear the weight of a child. As a rule intended for very young children (less than 36 months of age)





Inflatable toys for use in water and intended to be played on
 User is positioned on the buoyant structure.

Small boats not exceeding 1,20 m



Small mattresses not exceeding 1,20 m



Aquatic carrying or ride-on toy: intended for use in shallow water which is capable of carrying or supporting a child on the water

- where the legs unrestricted in their sideways motion are aside the body of the toy (ride-on toys), or
- fitted with a platform where it is possible to sit up or lie down (carrying toys).

Small carrying or ride-on toys (not exceeding 1,20 m)



Fish: ride-on toy (not exceeding 1,20 m)

Ride-on toys (Exceeding 1,20 m)

Intended to be used in play by children (in shallow water)



Size: 1,68 m x 0,86 m



Size: 2,13 m



Size: 2,39 m



Size: 1,80 m



Size: 1,32 m

Bathing rings

Less than 1,20 m diameter, able to support the weight of a child, generally used in shallow water (where the child is within its depth) and under adult supervision. They are intended to be used in play by children

**Fish rings**



Size: 18cm Weight: 200g



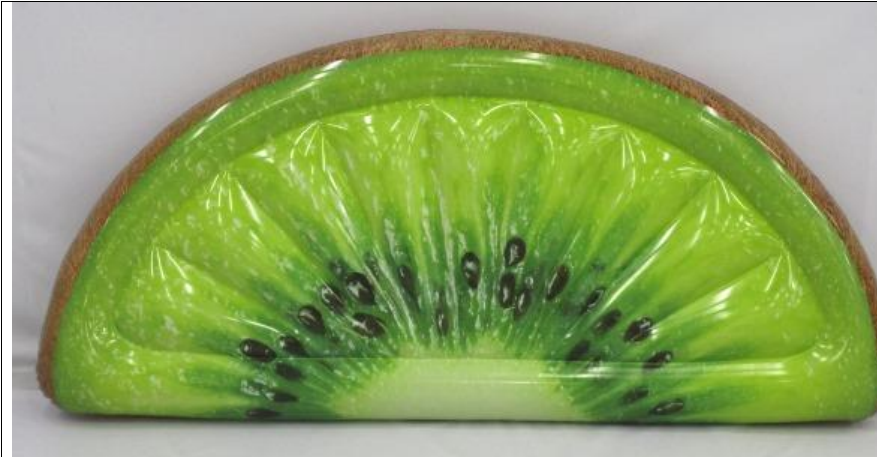
Sand-filled toys intended to be thrown at the bottom of the pool/water. The product is 17 cm long at the longest dimension. The product is very "flat", approximately 2 cm thick



Size: 15cm Weight: 160g



Products not covered by the Toy Safety Directive 2009/48/EC	
Articles designed for life saving	
Floating leisure articles (tubes, islands, mattresses, floats)	
Minimum 1,20 m diameter or length.	
Tubes	
	
	
Islands	
May be child-appealing due to their bright colours and the objects they represent (nice little cat, watermelon, hotdog, candy, motorcycle, etc).	
	



Islands with animal pattern



Animal shaped floats



Mattresses longer than 1,20 m



Swimming aids and swimming learning devices (armbands, swim vests, snorkeling masks, diving rings and other diving products, neck-rings, baby-lying rings)

Buoyant aids for swimming instruction EN 13138 (in brief: Swimming aids)



Buoyant aids for swimming instruction, type Armbands



Buoyant aids for swimming instruction (in brief: Swimming aids) EN 13138, type swim vest)



Snorkeling masks



Diving rings and other diving products

Diving rings: they are intended to be thrown at the bottom of the pool/water.



Neck-rings	
	¹¹NB : not compliant ! The buckles on the product can easily disengage, there is a risk that the small child will be submerged and drowned in the water. No safety standard available: testing possibly on the basis of EN13138 part 1 and 212
Baby lying rings	
	NB : not compliant ! It is an inflatable ring with a support and a belt to hold the baby. The product was recalled by the manufacturer due to the risk of drowning.¹³
Floating seats	

¹¹ Alerts from the Rapid Alert System for dangerous non-food products, published free of charge on the Safety Gate website (<https://ec.europa.eu/safety-gate-alerts>) © European Union, 2005 – 2022

¹² See also risk analysis drafted by CEN Technical Committee 162 Working Group 10, recent tests proved serious deficiencies.

¹³ <https://www.decathlon.fr/static/LP/Services/rappels-produits/assets/pdf/2023/nabaiji-baby-lying-ring.pdf>



¹⁴NB : this yellow and pink floating seat is not compliant !

According to point 3.3 above on floating seats, ‘they cannot be designed in such a way that would lead parents and children to confuse this “learning device” with a toy.

Water walking balls



¹⁴ Alerts from the Rapid Alert System for dangerous non-food products, published free of charge on the Safety Gate website (<https://ec.europa.eu/safety-gate-alerts>) © European Union, 2005 – 2022