



Grey Area Products

Toys and Non-Toys Decision Process

Version Control

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LEGAL NOTICE

This document contains guidance only. It is intended to explain obligations and how to fulfil them. However, readers are reminded that the text of the original regulation, directive or standard is the only authentic legal reference and that the information in this document does not constitute legal advice.

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1. Introduction

Although there is a definition of a toy within the Toy Safety Directive it is not always clear with certain products whether they should be categorised as a toy or handled under different legislation. This guide attempts to add a structure to this decision-making process and gives an opportunity to document the outcomes. The document has been developed by the BTHA in conjunction with the BTHA Toy Retailer Safety Forum.

At the time of writing 14 EU Commission guidance documents have been published to help make decisions on many grey area product categories. It is strongly recommended that readers consult this guidance when making decisions about grey area products. These documents can be found here: https://ec.europa.eu/growth/sectors/toys/safety/guidance_en.

2. Overview

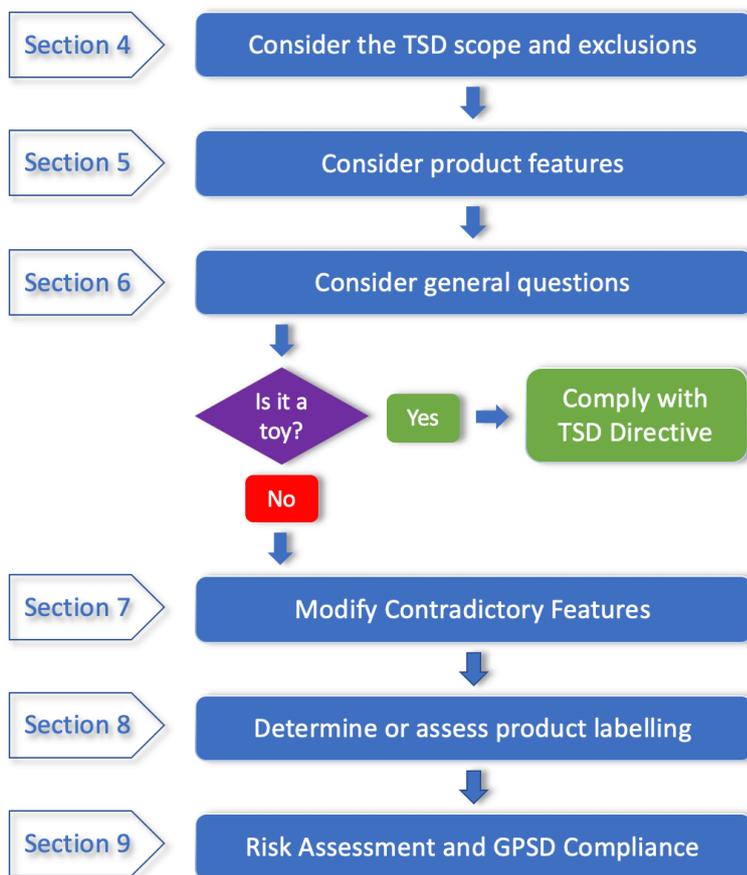
Products should be classified correctly to ensure that appropriate compliance measures are taken. It is important to note that the consequences of wrongly classifying a product as a toy are great as it can generate considerable costs and extra compliance steps may make it uncompetitive or impossible to run.

Manufacturers must be able to support any classification of a product and this guide provides a process that can be followed and documented when making toy / non-toy decisions. More detailed guidance regarding Christmas decorations can be found in Appendix B.

Readers should be aware however that there will still be some subjectivity in the final decision that is impossible to remove.

3. How to use this Guide

The following chart gives an overview of the steps in this document. Users are advised to document the process and decisions made with any “grey area” products and a suggested format can be found in Appendix A.



4. Toy Safety Directive Aspects

The Toy Safety Directive provides the following helpful sections:

- a. A definition of a toy
- b. Exclusions in Annex I - a List of products that, in particular are not considered as toys within the meaning of the Toy Safety Directive in Annex
- c. Exclusions in Article 2 - further exclusions that exist for certain toy types

4.1 The definition of a toy - Does the product match the definition of a toy under the Toy Safety Directive?

The Directive applies to *products designed or intended, whether or not exclusively, for use in play by children under 14 years of age*. This scope of application can be broken up into four statements:

- Is the product designed or intended,
- whether or not exclusively
- for use in play?
- by children under 14 years of age?

Products need to meet each **and every** statement to be defined as a toy. However certain exclusions may need more consideration, for instance, justification may be required for items said to be for children over 14 years and more work may need to be done in further questions listed below. All of the questions in sections 4.1a – 4.3 need to be considered separately and a conclusion made considering all of the points.

4.1a Has play value been intentionally added?

The EU Commission guide states *“The main difficulty of this definition is the concept of “use in play” or “play value”. Virtually everything has play value for a child, but this does not make every object fall into the definition of toy.”* For instance, a bicycle helmet with a Mickey Mouse logo is appealing to children but it is not intended for use in play and it would be far safer if it was assessed against the Bicycle Helmet standards.

Play is an unstructured, child-led activity taking place without, or with only cursory, adult supervision and prone to a wide range of possible outcomes and risks.

The EU Commission guide states that to be considered as a toy for the purpose of the Directive, the playing value has to be intentionally introduced in an intended way by the manufacturer.

This means that a design feature that stimulates play in some way must be added, the addition of a logo or image does not necessarily stimulate play, it can stimulate interest but not play itself. For example, a Christmas decoration that is a rigid shape can be considered a non-toy decoration. However, if a pull cord is added that can animate legs and arms then play value has been intentionally added. On the other hand articulation does not always mean the product becomes a toy; a collector’s item or decorative product may have some “poseable articulation” as this feature can be used for the purpose of display rather than play.

4.1b Is the product intended for children over 14 years old?

If a product is considered to be intended for children over 14 years of age, there needs to be a clear and understandable reason for this. It is not permissible to attempt to exclude products from the scope of the TSD by adding a 14 years or older age recommendation when children of younger ages are very likely to play with the item.

Items for children over 14 years are often collectible items, hobby items, items requiring considerable skill or products that are intended for adults not children. The product or its packaging must bear 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
- (c) folk dolls and decorative dolls and other similar articles
- (d) historical replicas of toys
- (e) reproductions of real firearms

How the product is marketed must be considered. If all pack and marketing copy shows children under 14 years, then this may contradict any decision above (see question 6.2). Also see EU Commission Guidance No.6 and note the Toy Safety Directive also excludes products for collectors in Annex 1 (see question 4.2).

4.2 Is the product excluded from the Toy Safety Directive under Annex I?

Once it has been established that the product may be classed as a toy, the specific exclusions from the Toy Safety Directive need to be considered. The first are those product types listed in Annex I.

List of products that, in particular are not considered as toys within the meaning of the Toy Safety Directive in Annex I

No.	Exclusion	Comments / EU Guides
1	Decorative objects for festivities and celebrations	
2	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 (c) folk dolls and decorative dolls and other similar articles (d) historical replicas of toys (e) reproductions of real fire arms	EU Commission Guidance No.6
3	Sports equipment, including roller skates, inline skates, and skateboards intended for children with a body mass of more than 20 kg	EU Commission Guidance No.14
4	Bicycles with a maximum saddle height of more than 435 mm, measured as the vertical distance from the ground to the top of the seat surface, with the seat in a horizontal position and with the seat pillar set to the minimum insertion mark	Self-Explanatory
5	Scooters and other means of transport designed for sport or which are intended to be used for travel on public roads or public pathways	Self-Explanatory
6	Electrically driven vehicles which are intended to be used for travel on public roads, public pathways, or the pavement thereof	Such vehicles will be covered by specific national legislation, such as the Motor Vehicles Construction and Use Regulations
7	Aquatic equipment intended to be used in deep water, and swimming learning devices for children, such as swim seats and swimming aids	EU Commission Guidance No.2 EU Commission Guidance No.7
8	Puzzles with more than 500 pieces	Self-Explanatory
9	Guns and pistols using compressed gas, with the exception of water guns and water pistols, and bows for archery over 120 cm long	Self-Explanatory

10	Fireworks, including percussion caps which are not specifically designed for toys	Self-Explanatory
11	Products and games using sharp-pointed missiles, such as sets of darts with metallic points	Self-Explanatory
12	Functional educational products, such as electric ovens, irons or other functional products operated at a nominal voltage exceeding 24 volts which are sold exclusively for teaching purposes under adult supervision	Self-Explanatory
13	Products intended for use for educational purposes in schools and other pedagogical contexts under the surveillance of an adult instructor, such as science equipment	Self-Explanatory
14	Electronic equipment, such as personal computers and game consoles, used to access interactive software and their associated peripherals, unless the electronic equipment or the associated peripherals are specifically designed for and targeted at children and have a play value on their own, such as specially designed personal computers, key boards, joy sticks or steering wheels	EU Commission Guidance No.16
15	Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as CDs	Self-Explanatory
16	Babies' soothers	Self-Explanatory
17	Child-appealing luminaires	<p>A separate standard exists for this BS EN 60598-2-10.</p> <p>The scope of this standard is as follows: Portable luminaires for children for use with tungsten filament lamps or single capped fluorescent lamps on a supply voltage not exceeding 250V.</p> <p>It does not include:</p> <ul style="list-style-type: none"> - Portable luminaires typically place as an extra ornamental element in temporary decorative configurations due to festivities or celebrations - Low illuminance background luminaires integral with a plug (plug in device) - Battery driven luminaires not for direct mains connection - Toys - Luminaires clearly for adult use - Luminaires with two-dimensional graphic reproductions of persons or animals (real or imaginary) on removable shades
18	Electrical transformers for toys	Self-Explanatory
19	Fashion accessories for children which are not for use in play	

4.3 Is the product excluded from the Toy Safety Directive under Article 2 (2)?

Further exclusions exist for certain toy types and are listed in Article 2 Paragraph 2.

- (a) playground equipment intended for public use
- (b) automatic playing machines, whether coin operated or not, intended for public use
- (c) toy vehicles equipped with combustion engines
- (d) toy steam engines
- (e) slings and catapults

5. Product Feature Questions

If the category of the product is still unclear, then the additional questions below may clarify it's category or help make a decision on the final outcome. Users are advised to consider all questions to support their final decision in all cases.

5.1 Is the product child appealing?

Product can be made more appealing to children by using primary bright colours, adding functions that require interaction e.g. pulling a cord to move arms and legs to a decoration, or adding character figures.

However, it should be noted that a bicycle helmet with a Mickey Mouse logo is more appealing to children but it is not intended for use in play and it would be far safer if it was assessed against the Bicycle helmet standards.

5.2 Does the product category have its own safety standard?

Many products will have their own specific safety standards such as adult bicycles, kick scooters, child appealing luminaires, soothers etc. If a product has its own standard this likely means that the product is not a toy however the scope of the standards should be checked. For instance, a bicycle is considered a toy if the saddle height is below a specific value and is addressed in the EN 71 toy safety standards and all other bicycles have their own standard. In other cases, other safety standards may apply (e.g. BS7272 for Pen Tops and Caps) but they may not give an exclusion for products which could still be a toy.

5.3 Is the product a toy version of an adult product e.g. sports equipment, musical instrument, fashion accessory?

Certain products can be hard to define. EU Commission Guidance exists for certain items (Sports equipment (Guide 14), Musical Instruments (Guide 10)) however a more general guide can be found below:

Feature	Indications that an item may be a toy	Indications of non-toy
Materials and finish	Cheaper/different materials are likely used in toy versions. Colours of toys likely to be different from the “real” equivalent e.g. primary colours.	Materials used equivalent to adult product. Adult like colours. More expensive and durable construction. Adult features such as mobile phone or key holders.
Marketing and packaging	Marketed to children for use in play. Toy like packaging. Usually they will be part of a range or selection of similar products and may be marketed in cases or on plinths for display.	Indications of adult product usage. No images of children.
Use	Toys unlikely to be able to accurately replicate real usage. Lower power. Tones but not tuned sounds for Musical instruments.	Can reproduce real usage, e.g. Tennis Racquets can reproduce a shot of expected power and distance. Musical instruments tuned correctly (where possible).
Size and weight	Lighter, smaller versions of real equipment. Designed for children’s hands.	Heavier than expected for children. Adult sizes.
Skill	Does not require a great level of skill to use	Requires skill to assemble and use.
Price	Toy items are very likely to be cheaper.	Adult items more likely to be a higher price.

6. GENERAL QUESTIONS

6.1 Where will the product be sold?

Where the product will be finally sold can have a huge impact on whether it is to be considered a toy. Retailers will be able to accurately predict this where sold in store or online. Other economic operators (manufacturers, importers and distributors) will only know where and how they intend to market the products and will have to make assessments based on this.

Just because an item is sold in a toy store does not make it a toy. Many toy stores have separate areas for different product types and separate displays for concessions and similar products. Separate range types within a toy area can still be perceived as different to the main toy range.

It should be noted that manufacturers of a product may have already determined that an item is not a toy and as such should communicate this to retailers. Retailers should respect this classification and merchandise the toy accordingly.

6.2 Are children under 14 at unsupervised play used in product marketing and pack images?

How a product is marketed can have an impact on a consumer's perception of the item. An adult product that is advertised with children playing with it *may* suggest that it might be a toy however it is entirely appropriate for certain children's products that are not toys to feature children, e.g. children's products to be used in an educational setting.

6.3 In normal use is the product intended to be handled or be within the reach of children?

Many products may be child appealing but their normal position is generally considered to be away from a child. For instance, decorative bunting is usually displayed higher up and therefore not normally near younger children. Mobiles are generally out of the reach of children and include advice to move away from the child when they start to push themselves up to a sitting position.

7. Contradictory Features

After having worked through sections 4-6, if it is concluded that the product is not a toy, it still may be the case that there are features of the product that may contradict this conclusion. E.g. an item that is deemed not to be a toy, but illustration on the packaging shows the product being played with by a child or a CE mark added.

In these cases, it will be necessary to modify the product, its packaging or labelling to remove these contradictory features. Furthermore, it would be prudent to ensure that marking and packaging clearly reflects what the product is and that it is not a toy, e.g. with appropriate warnings/instructions (see section 8).

8. Labelling Guide

Whilst there is no legal obligation there are some points worth considering when drafting warnings and text for products not considered to be Toys. In many cases companies are tempted to label the item with "This is not a toy". However, it is generally considered that this implies that the item may well be a toy and using this label does not remove any related legal obligations.

General advice would be to:

- Label the product to indicate it's actual use - e.g. "This is a Decoration"
- Do not use Toy warning formats and logo's with non-toys but change them to more generic statements e.g. "Keep away from young children"
- Where relevant the product or its packaging must bear a visible and legible indication that it is intended for collectors of 14 years of age and above or other suitable age recommendation.

9. Risk Assessment and GPSD compliance

If the Item is not a toy, the product should not be CE marked as a toy but there is an obligation to perform a risk assessment and certain hazards presented must be managed under the GPSD/GPSR using, for example:

- a. toy safety legislation
- b. specific standards applicable to the product
- c. other standards and directives

Any hazards presented must be addressed and It may be possible to address these hazards using appropriate safety standards, labelling, warnings or instructions.

It may be prudent to refer to the Toy Safety Directives requirements for Safety Assessments and assess the mechanical, physical, flammability, chemical, hygiene and radioactivity hazards presented. Further assessment of the severity of the harm and likelihood of it occurring would be recommended.

Appendix A - Grey Area Product Worksheet

Product Details:

Product Picture

Toy Safety Directive Aspects

4.1 Does the product match the definition of a toy under the Toy Safety Directive? Y/N

Additional details:

4.1a Has play value been intentionally added? Y/N

Additional details:

4.1b Is the product intended for children over 14 years old? Y/N

Additional details:

4.2 Is the product excluded from the Toy Safety Directive under Annex I? Y/N

Exclusion:

4.3 Is the product excluded from the Toy Safety Directive under Article 2 (2)? Y/N

Exclusion:

Is it a toy?	Yes	<input type="checkbox"/>	Comply with TSD Directive
	No unsure	<input type="checkbox"/>	Continue with worksheet

PRODUCT FEATURE QUESTIONS

5.1 Is the product child appealing? Y/N

Additional details:

5.2 Does the product category have its own safety standard? Y/N

Standard(s):

5.3 Is the product a toy version of an adult product e.g. sports equipment, musical instrument, fashion accessory? Y/N

Additional details:

GENERAL QUESTIONS

6.1 Where will the product be sold?

6.2 Are children under 14 at unsupervised play used in product marketing and pack images? Y/N

Additional details:

6.3 In normal use is the product intended to be handled or be within the reach of children? Y/N

Additional details:

CONCLUSION

<input type="checkbox"/> Toy	<input type="checkbox"/>	<input type="checkbox"/> Comply with TSD Directive
<input type="checkbox"/> Non Toy	<input type="checkbox"/>	<input type="checkbox"/> Continue with worksheet

Contradictory Features

Are there any contradictory features of the product that need consideration or modification?

Details:

Labelling Guide

Are there any modifications to the labelling required?

Risk Assessment and GPSD compliance

Appendix B - Christmas Decorations

Christmas decorations are a category of product that are often confused with toys. This annex applies the guidance to a series of example Christmas decoration products.

Part 1 of the Annex shows how the various sections of the guide can be applied.

Part 2 shows pictorial examples with explanations as to why these are considered toys or not.

Part 3 gives guidance on mitigation techniques, contradictory features, labelling, risk assessment and the General Product Safety Regulation.

Part 1 – Application of the Guide

Section 4

The Toy Safety Directive applies to *products designed or intended, whether or not exclusively, for use in play by children under 14 years of age*. Many Christmas decorations are representations of a toy such as dolls, trains, dolls clothes etc. It should be noted that this representation does not necessarily mean they are toys. The following are decorations and are not representations of toys, so are not within the scope of this guidance.



4.1a Has play value been intentionally added?

Examples given in this annex will explain what is meant by intentionally added play value. The applicability of the Toy Safety Directive to Christmas Decorations centres on the question of play value and specifically, question 4.1a of the guide, “Has play value been intentionally added?”

4.1b Is the product intended for children over 14 years old?

If the intent is for the product to be decorative, there is no need to include a recommended age of play. It is not permissible to include an age grade of 14 years or older simply to remove products from the scope of the Toy Safety Directive. It has been assumed that the products in the guide, have not been provided with any age recommendation.

4.2 Is the product excluded from the Toy Safety Directive under Annex I?

Christmas decorations are covered by Annex I point 1: Decorative objects for festivities and celebrations. However, this exemption applies to solely decorative objects only, not to those that have intentionally added play value. This exemption does not allow companies to place on the market items, which are obviously toys, and label them as non-toys in order to avoid the need to comply with the Toy Safety Directive.

4.3 Is the product excluded from the Toy Safety Directive under Article 2 (2)?

There are no exemptions which might pertain to Christmas decorations.

Section 5

5.1 Is the product child appealing?

Most Christmas decorations will be child appealing; it has been assumed for the purposes of this guide that the decorations will have at least some appeal to children.

5.2 Does the product category have its own safety standard?

There are standards for child appealing luminaires and Christmas lights etc, however on writing this annex only products without their own safety standards have been considered.

5.3 Is the product a toy version of an adult product e.g. sports equipment, musical instrument, fashion accessory?

Given the broad range of this category, it may not be impossible, but it has been assumed for the purposes of this guide that Christmas decorations are not toy versions of adult products.

Section 6 General questions

For the purposes of this guide, the following assumptions have been made:

6.1 Where will the product be sold?

It has been assumed that the products in question are sold within the Christmas section of retailer's range, either online or in store. If an item is sold amongst toys, it will almost certainly be considered a toy.

6.2 Are children under 14 at unsupervised play used in product marketing and pack images?

Children may well be used in the marketing of products but in writing this guide it has been assumed that there are no images of children "at play".

6.3 In normal use is the product intended to be handled or be within the reach of children?

It has been assumed that in most cases children are not intended to handle the decorations but that it cannot be ruled out.

Part 2 – Examples and Assessment

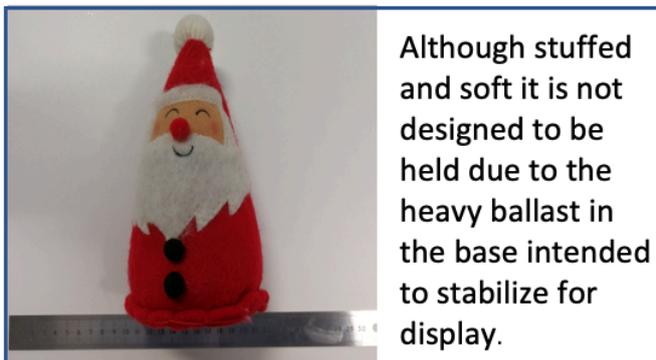
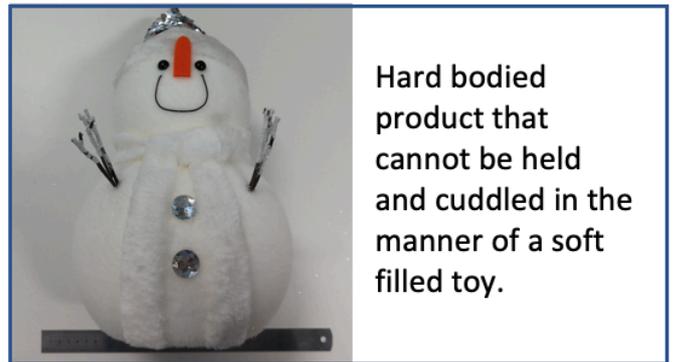
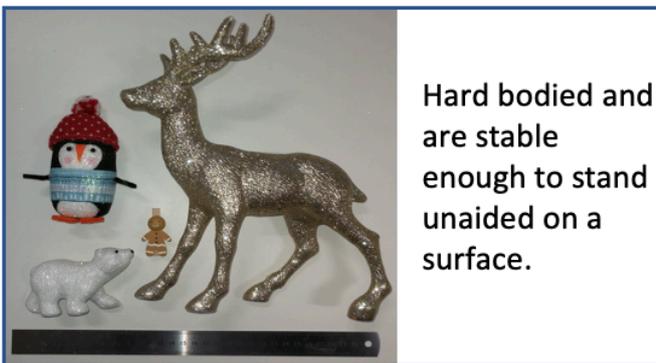
The following examples will help guide the decisions. There are several sections.

- *Products for display on a surface*
- *Products intended to be hung from a tree or other structure*
- *Products that are adjusted or articulated for display*
- *Product for display that are switched on and watched*

Products considered to be toys:

- Products with intentionally added play value
- Christmas themed traditional toys

Products for display on a surface – Not considered toys



Products intended to be hung from a tree or other structure – Not considered toys



The products are all hard bodied.

They include permanent hanging hooks or loops.

There are no additional features that introduce play



The products are all soft bodied, however due to the presence of the permanent hanging attachment they are not intended to be held or cuddled.

There are no additional features that introduce play.



This product is intended for display by hanging.

It cannot be detached from the hanging mechanism so not intended to be played with.

Products that are adjusted or articulated for display – Not considered toys



Product is for display and is adjusted as a countdown to Christmas.

This adjustment for display does not constitute play



Product is for display The opening of the Advent drawers do not constitute play

Products that are Switched on and Watched – Not Considered Toys

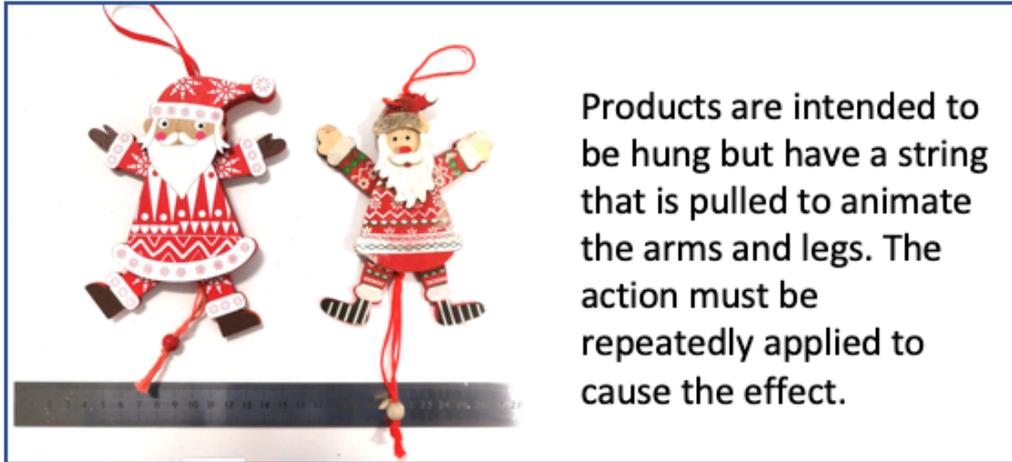


Product contains animated figures that are watched

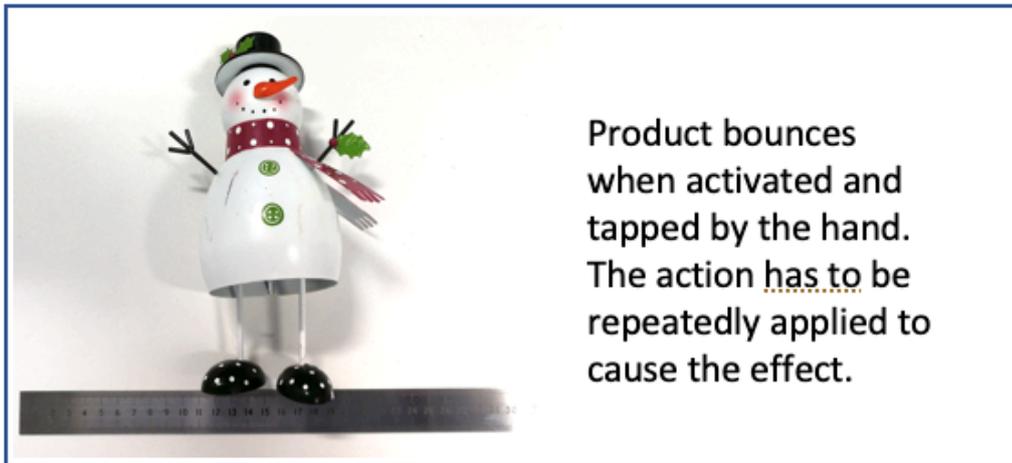


Product has a hard skeleton and is switched on and watched. Designed to be stood on a surface.

Products with intentionally added play value – Considered toys



Products are intended to be hung but have a string that is pulled to animate the arms and legs. The action must be repeatedly applied to cause the effect.



Product bounces when activated and tapped by the hand. The action has to be repeatedly applied to cause the effect.

Christmas Themed Traditional Toys – Considered toys



Part 3 Mitigation techniques, contradictory features, labelling, risk assessment and the General Product Safety Regulation

Mitigation Techniques and Labelling

Even though, when using this guide, the user may conclude that the item is not a toy, features such as articulation, having a soft filled body or having lights and sound will increase a product's attractiveness to a child and increase the possibility of products being considered a toy. Furthermore, products which are more attractive to a child may have an increased exposure to children when considering any risks for the purposes of general product safety. The following can be considered to reduce the possibility of a product being considered a toy and reduce a child's exposure to a product:

- Use hard fillings rather than soft
- Use single sided rather than reversible sequins
- Ensure miniature clothing (e.g. Christmas jumpers, shoes) cannot be used for dressing toy dolls, by making it non-functional (e.g. by stitching up openings)
- Remove articulated detail where not necessary (e.g. moving wheels on trains or poseable arms on tree decorations)
- Give table decorations a suitable ballast if appropriate
- Supply with permanently attached, hanging, or other display features. If they can be removed there is a possibility that the resulting item could be considered a toy
- Do not use Toy Warnings - use phrases such as "Christmas decoration. Keep out of reach of children"
- Do not CE mark under the Toy Safety Directive. If the product requires a CE mark for other regulatory instruments e.g. RED, EMC, LVD etc it should be made clear that the CE mark is for these and not the TSD
- Children may appear in marketing material but ensure they are not shown "playing" with a product

Note: These are mitigation techniques only. A product retaining any of the features described above is not automatically considered a toy.

General Product Safety Regulation and Risk Assessment

Products that are not toys need to be safe products under the meaning of the General Product Safety Regulation. Even though they are not toys, many Christmas decorations have some attractiveness to children. It may be useful to use some parts of the toy safety standards to address safety of these products since we assume they have some appeal to children.

As an example, sharp points and sharp edges on Christmas decorations can be assessed by using the requirements in EN 71-1. The safety of battery powered lights and decorations may be addressed by many of the requirements in EN 62115 (e.g. such as temperature rises or design of battery compartments).

Some parts of the toy safety standards may not be useful. For example, it is unlikely that a child will have sufficient exposure to decorations to make the application of EN 71-3 worthwhile. Additionally, EN71 Part 2 addresses the flammability risks to children when carrying or holding toys.

This section of the guide only applies to the particular risks posed to children from child appealing Christmas Decorations. It should be noted that there may be other risks associated with Christmas Decorations that are not covered by this section of the guide, e.g. flammability of products intended or likely to be used near open flames like candle holders.

It is always recommended to carry out a thorough risk assessment to ensure risks have been suitably reduced, regardless of whether safety standards are applied or not.

Note: Compliance with toy standards does not automatically make a product a toy.