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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

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GUIDANCE DOCUMENT No 8

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

Pools

This Guidance document is a non-binding document intended to provide guidelines to help Member States and stakeholders to decide whether or not certain pools are covered by the Toy Safety Directive 2009/48/EC. It expresses the views of the majority of members in the Expert Group on Toy Safety. The images appearing in the document constitute examples intended to facilitate the decision-making. They do not presuppose the conformity of the represented products¹.

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 Definition of toys in 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'.

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.

2 Product categories

In general, pools should be classified in a pragmatic way on a case-by-case basis taking into account the above-mentioned provision of the Toy Safety Directive 2009/48/EC. However, some categories of pools can be distinguished for the purposes of classification. They are presented below.

2.1 Pools for play – Covered by the Toy Safety Directive

2.1.1 Pools with a maximum water depth of 400 mm

Pools for play with a maximum water depth of 400 mm, measured between the overflow level and the deepest point within the pool in accordance with standard EN 71-8 'Activity toys for domestic use', are defined as 'paddling pools' in that same standard. Such pools may contain play elements such as inflatable objects or animal-shaped objects. They can also include partially closed spaces, comparable to small houses. As a rule, they are intended for young children and are covered by the Toy Safety Directive 2009/48/EC. See examples in Annex I.

2.1.2 Pools with a water depth of over 400 mm

Pools for play with a water depth of over 400 mm are considered as toys, but are not covered by the scope of EN 71-8. They therefore require an EC-type examination to assess their conformity with the Toy Safety Directive 2009/48/EC. See examples in Annex II.



2.2 Pools for leisure – Not covered by the Toy Safety Directive

Pools for leisure do not have play elements and have a water depth of more than 400 mm. These pools are not toys, they are covered by the General Product Safety Directive 2001/95/EC. See examples in Annex III.

More information on pools can be found in the following standards (not referenced under GPSD):

- EN 16927 Mini-pools - Specific requirements including safety and test methods for mini-pools
- EN 16582 Domestic swimming pools
 - Part 1: General requirements including safety and test methods
 - Part 2: Specific requirements including safety and test methods for inground pools

ANNEX I: Pools for play with a water depth of maximum 400 mm – Covered by the Toy Safety Directive 2009/48/EC



Pools for play	Comment	Covered by EN 71-8 or not?
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8

Pools for play	Comment	Covered by EN 71-8 or not?
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8

Pools for play	Comment	Covered by EN 71-8 or not?
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8
	Depth: less than 400 mm	EN 71-8

ANNEX II: Pools for play and a water depth of over 400 mm – Covered by the Toy Safety Directive 2009/48/EC

Pools for play	Comment	Covered by EN 71-8 or not?
	<p>Depth: More than 400 mm</p> <p>Glow in the dark figures on the bottom of the pool</p> <p>As soon as the sun goes down, children can doodle on the fluorescent floor with the included LED flashlights. They can create their own designs or use the included stencil.</p>	<p>No, EC-type examination is required</p>
	<p>Depth: More than 400 mm</p> <p>Crystal and fishes in 3D to look at under the water</p> <p>Set includes 2 pairs of 3D goggles and handfuls (10 pieces) of artificial crystal treasure.</p>	<p>No, EC-type examination is required</p>

 	<p>Depth: More than 400 mm</p>	<p>No, EC-type examination is required</p>
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ANNEX III: Pools for leisure – Not covered by the Toy Safety Directive 2009/48/EC

Pool for leisure	Comment	Toy or not?
	<p>Depth: More than 400 mm</p> <p>No play elements</p>	<p>Not a toy</p>
	<p>Depth: More than 400 mm</p> <p>No play elements</p>	<p>Not a toy</p>
	<p>Depth: More than 400 mm</p> <p>No play elements</p>	<p>Not a toy</p>