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 Chemicals and Consumer Industries  
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## **GROUP OF EXPERTS ON PYROTECHNIC ARTICLES**

**Subject:           Categorisation of pyrotechnic articles intended for entertainment purposes**

*This document intends to provide guidance in the interest of consistency, and has been drafted by the Commission services responsible for regulation of pyrotechnic articles within the EU, with the aim of finding an agreement with all or a majority of the Member States. Please note, however, that Member States are not legally obliged to follow the interpretation set out in this document, since only the Court of Justice of the European Union can give authoritative interpretations on the contents of Union law.*

This document gives guidance on how to categorise pyrotechnic articles for the general public into the categories of fireworks (F1-F3) on the one hand and other pyrotechnic articles of the category P1 on the other hand depending on their specific intended use. This guidance is not applicable to ignition devices<sup>1</sup> and pyrotechnic articles for vehicles both of category P1.

This guidance has been endorsed by The Group of Experts on Pyrotechnic Articles (E01323) at their meeting of 04 December 2020 and communicated to the Forum of Notified Bodies for Pyrotechnic Articles and the AdCo group for pyrotechnic articles.

### **1. CONCLUSION**

- 1) A pyrotechnic article intended for entertainment purposes shall be categorised under the Pyrotechnic Articles Directive 2013/29/EU<sup>2</sup> (hereafter the ‘Directive’) as a firework<sup>3</sup> belonging to category F1, F2, F3 or F4. This applies even if the pyrotechnic article is *also* intended for *another* purpose.

<sup>1</sup> As per standard EN 16265:2015 Pyrotechnic articles - Other pyrotechnic articles - Ignition devices.

<sup>2</sup> Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (recast), OJ L 178, 28.6.2013, p. 27–65.

<sup>3</sup> Article 3(2): ‘firework’ means a pyrotechnic article intended for entertainment purposes.

- 2) If the manufacturer categorises a pyrotechnic article as an “other pyrotechnic article” belonging to category P1<sup>4</sup>, although it is solely or partially intended for entertainment purposes, the pyrotechnic article is not compliant with the Directive. A notified body must not issue a certificate or approve a quality system for such a pyrotechnic article, and a market surveillance authority must take the actions prescribed by the Directive for non-compliant products.
- 3) If there are justified grounds to believe that a pyrotechnic article, albeit categorised by the manufacturer as P1, is actually solely or partially intended for entertainment purposes, an entertainment purpose can be assumed, unless the manufacturer proves that the pyrotechnic article is intended solely for a different purpose.

## **2. BACKGROUND**

- 4) The issue of pyrotechnic articles meant for entertainment purposes and used by the general public for entertainment purposes, and of related consequences, such as injuries or damage to property, has been reported to the Commission services multiple times, and has also been discussed in various fora on pyrotechnic articles: Group of Experts on Pyrotechnic Articles, AdCo Group on Pyrotechnic Articles, and Notified Bodies Forum on Pyrotechnic Articles. Some manufacturers choose to categorise entertainment articles as ‘other pyrotechnic articles’, main reasons being
  - a. Willingness to access the MS markets where the sales to general public of some fireworks are restricted under Article 4(2) of the Directive, whereas there are no restrictions introduced for P1 articles;
  - b. Willingness to avoid application of requirements for fireworks, such as sound pressure level allowed.
- 5) For the moment, there are no harmonised standards for P1 pyrotechnic articles, except for pyrotechnic articles for vehicles, whereas there are harmonised standards for categories F1, F2 and F3 fireworks. This leaves more room for interpretation of essential safety requirements under the Directive for P1 articles than for fireworks, which some manufacturers take advantage of by categorising their pyrotechnic articles as P1.
- 6) Also the Directive itself sets different requirements for fireworks (Annex I, A) than for other pyrotechnic articles (Annex I, B), therefore it is very important that all the entertainment pyrotechnic articles are categorised as fireworks and subsequently follow the essential safety requirements that are adapted for such use.

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<sup>4</sup> Article 6(1)(c): Other pyrotechnic articles: (i) category P1: pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard; (ii) category P2: pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which are intended for handling or use only by persons with specialist knowledge.

### 3. REASONING

#### 3.1. Lawful categorisation by manufacturers

- 7) Pursuant to Article 6(1) of the Directive, manufacturers are responsible for categorising the pyrotechnic articles they produce. Manufacturers must therefore master the Directive's descriptions of various categories of pyrotechnic articles.
- 8) Article 3(2) of the Directive defines a "firework" as "a pyrotechnic article intended for entertainment purposes". All pyrotechnic articles intended for entertainment purposes thus fall within the four categories of "Fireworks" described in Article 6(1)(a) of the Directive, 'F1', 'F2', 'F3' and 'F4'.
- 9) This raises the question how to categorise pyrotechnic articles intended for another purpose *in addition* to entertainment purposes. In the view of the Commission services in charge of pyrotechnic articles, a pyrotechnic article intended for an entertainment purpose is a firework even if it is *also* intended for another purpose in addition. This is the only interpretation allowing the Directive to fulfil its objectives of protecting health and consumer safety stipulated in Article 1(1). That is because a pyrotechnic article which is *also* used for entertainment will only be safe for people if it complies with all the rules designed for such situations.
- 10) Article 6(1)(c) of the Directive describes two categories of "other pyrotechnic articles", 'P1' and 'P2'. "Other pyrotechnic articles" – contrary to "firework" – is not defined in Article 3. However, it is clear from the description of both categories P1 and P2 in Article 6(1)(c), that both of them include only "pyrotechnic articles, *other* than fireworks and theatrical pyrotechnic articles" (emphasis added). In other words, a pyrotechnic article which is a "firework" cannot belong to category P1 or P2, since it is not a pyrotechnic article "*other* than fireworks".
- 11) It follows from the conclusions in paragraphs 9) and 10) above that a pyrotechnic article for the general public intended at least partially for entertainment purposes is legally speaking a "firework", and therefore excluded from the Directive's category of P1 - "other pyrotechnic articles". In other words, a manufacturer who produces a pyrotechnic article for the general public intended for an entertainment purpose – even if in addition to *another* purpose – must not categorise it as P1.

#### 3.2. Assessment by notified bodies and market surveillance authorities

- 12) Pursuant to Article 6(1) of the Directive, notified bodies are responsible, as part of the conformity assessment procedure, for confirming manufacturers' categorisation of pyrotechnic articles. It follows from this, and from the conclusion in paragraph 11) above, that a notified body assessing a pyrotechnic article, which has been categorised by the manufacturer as P1 although it solely or partially has an intended entertainment purpose, must not issue a certificate or approve the quality system for that pyrotechnic article.
- 13) It also follows from the conclusion in paragraph 11) above that, should a market surveillance authority find a pyrotechnic article on the market under its jurisdiction, which is solely or partially intended for entertainment purposes but nevertheless categorised as P1, it would have to consider the article as non-compliant with the Directive. In consequence, the authority would have to take the measures provided

for by Chapter 5 (Union market surveillance, control of pyrotechnic articles entering the Union market and Union safeguard procedure) of the Directive.

### **3.3. Burden of proof**

- 14) The responsibilities of both notified bodies and market surveillance authorities with respect to categorisation of pyrotechnic articles raise the question of the burden of proof.
- 15) In the view of the Commission services in charge of pyrotechnic articles, both the notified body and the market surveillance authority should first take into account the claims made by the manufacturer in advertisement and on the package. *E.g.*, a picture of a firework or of a festive situation in an on-line advertisement or on a box is a clear indication that the pyrotechnic article is at least partially intended for entertainment purposes. It is difficult to imagine how the manufacturer could prove in such a situation that no entertainment purpose is intended. And even if the manufacturer would prove that the pyrotechnic article is *also* used for another purpose, it follows from the conclusion in paragraph 11) above that the article would nevertheless be incompliant with the Directive if categorised as P1.
- 16) Second, the notified body and the market surveillance authority should make an objective assessment of the most plausible use of the pyrotechnic article. If, *e.g.*, the intended use claimed by the manufacturer is unrelated to entertainment but entirely unrealistic, this can be an indication that the main or sole *de facto* use *will* be for entertainment, and that the manufacturer must be aware of it when he or she places the article on the market. In such a situation, in the view of the Commission services in charge of pyrotechnic articles, in order for the manufacturer to prove that the pyrotechnic article nevertheless qualifies for categorisation as P1, he or she will have to prove that the claimed intended use actually occurs in reality to such an extent that there is a market for the article used for that purpose.