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NOTE

From:	Delegations
To:	Working Party on Consumer Protection and Information

Subject:	Proposal for a Regulation on general product safety - Lithuania's replies to PRES questions on Random samples & Remedies
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**Written comments of the Lithuanian delegation
on certain issues related to Proposal for a Regulation on General Product Safety (GPSR)**

These comments are submitted following the meeting of Working Party of Consumer Protection and Information on 6 May 2022.

1. Stand-alone software

We support the approach that GPSR should act as a safety net and the text of the regulation should be future proof. Therefore, in general, we support the inclusion of software in the scope of GPSR. The functional equivalence of standalone software should be recognized. At the same time, it is obvious that market surveillance authorities will face tremendous new challenges regarding market surveillance of standalone software. In this context it might be envisaged to reflect how to facilitate market surveillance authorities to deal with standalone software under GPSR in practical terms.

2. Sample testing of products by the responsible person (Article 15(2))

Responsibility for the sample testing

GPSR should function as a safety net and therefore requirements for responsible persons set out in GPSR should not go further than Market Surveillance Regulation (Regulation (EU) 2019/1020). Besides, the obligation to carry out sample testing of all products falling into the scope of GPSR irrespective of the risk of a product doesn't seem to be proportionate and well justified, it would create unnecessary significant administrative burden for businesses.

If new obligation of responsible person to carry out sample testing is introduced into GPSR, certainly, the option which allows delegation of sample testing to a third party would be more flexible and less burdensome.

However, in such a case remains the risk that market surveillance authorities will not have adequate powers and/or resources to ensure that product manufacturers outside the EU do not place products on the market without a responsible person being in the EU.

Scope of the sample testing

Obligation to carry out sample testing could be justified only in relation to products bearing serious risk to health and safety of consumers. Furthermore, we find acceptable the suggestion to include the exception for manufacturers engaged in series production which demonstrate that they have internal processes for product safety in place.

In our opinion, GPSR should not regulate procedure of sample testing, including selection, frequency, requirements for procedure, testing facilities, etc.

3. Remedies in case of product safety recall (Article 35)

Remedies/options

In our opinion, in case of a product safety recall economic operator should decide which remedies should be offered to the consumer considering all the circumstances of the situation (technical limits, costs for economic operators, environmental impact, market value, life-cycle of a product, etc.). Market surveillance authorities should monitor if remedies offered comply with the requirements of GPSR. The obligation to offer a refund in all cases could reduce incentives for economic operators to recall products. Therefore, refund should not be necessarily included as an option in any product safety recall.

Environmental impact

In our opinion, environmental impact might be one of the criteria for economic operator to decide which remedy (remedies) are effective and should be offered to consumers. If consumer is given a choice between remedies, economic operator should inform consumer about environmental impact of each option (remedy).

Calculation of value in case of refund

When refund of the value of the recalled product is applicable, refund should be adequate.

Relationship with Sales of Goods Directive (SGD)

Our position is that GPSR should not affect the application of the provisions of SGD, including provisions on consumer remedies. That means that if a product is still covered by legal or commercial guarantee, consumer is entitled to remedies for lack of conformity set out in SGD. It should be noted that the legal framework of consumer remedies under SGD provides for more favourable rules to consumer than product safety recall remedies proposed under Article 35 of GPSR (e.g. consumer may get full refund under SGD while GPSR provides only for adequate refund; consumer has certain choice of remedies under SGD while GPSR might not provide for such a choice). Besides, it is easier for consumer to invoke remedies against the seller than manufacturer, importer or distributor which are not parties to the contract with consumer. Furthermore, it should be noted that SGD establishes the reversed burden of proof which is favourable to consumer.

It might be argued that in situations where legal or commercial guarantee is still valid (not expired) and a product turns out to be dangerous it would constitute non-conformity *per se* (see Article 7(1)(a) and (d) of SGD).

If Article 35 of the GPSR were to apply by way of derogation from the Directive, the seller would be allowed to refuse any remedy to the consumer even though SGD does not provide for such a possibility. Consumer would have to invoke a remedy against the economic operator (manufacturer, importer, distributor) which is not a contracting party with a consumer. Such rules would significantly worsen the legal position of consumer.

If Article 35 of the GPSR were not to affect the Directive, the consumer would still be entitled to request a remedy from the seller under SGD when a situation falls into the scope of SGD.

To avoid situations where consumer is entitled to request remedies from the seller and at the same time from another economic operator (duplication of remedies) product safety recall remedies under GPSR should be applicable inasmuch as such cases do not fall into the scope SGD.