

**Written Comments on  
Proposal for a Regulation on General Product Safety, amending Regulation (EU) No  
1025/2012 of the European Parliament and of the Council, and repealing Council Directive  
87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council**

**Questions from the Presidency:**

**I - Sample testing of products by the responsible person (Art. 15(2))**

1. Regarding the amendments made to Article 15(2), we maintain the position in relation to block I of the French Presidency, as it considers that the legislation should not establish a specific procedure either for sampling the products to be subjected to laboratory tests or for the frequency of laboratory tests. Such a procedure should be set out in the applicable testing standards (normative acts), namely in the indication of the frequency of sampling or in the case of product verification, it being the responsibility of the economic operator to carry out studies and tests to verify product conformity. The respective rationale is based on the fact that we consider that these measures do not take into account the principle of proportionality, and therefore recital 39a) and article 15(3) should be amended in this sense. It should also be noted that the only means of demonstrating the conformity of a product to market surveillance authorities is by making the technical documentation necessary for this purpose available.
2. Regarding the protection of public interests, EU harmonisation regulation should restrict itself to setting out the essential requirements determining the level of such protection. In addition, it should express those requirements in terms of the results to be achieved and for this reason should not impose the periodicity of testing on random samples, the frequency and quantity of which are representative for such products.
3. Therefore, we consider that it will be up to the economic operator (manufacturer or importer) to decide whether to make a self-assessment or to use a third-party body to make this assessment, in order to ensure that the product complies with the safety requirements imposed by the legislation.

**II – Remedies in case of product safety recalls**

*1) When a product recall is necessary for safety reasons, which option(s) should economic operators propose to consumers: - Should the refund of the product always be included among the options proposed to consumers?*

*2) Should it be mandatory that one or two of the other options (product repair, product replacement) are also proposed to consumers?*

***3) Should some exceptions be allowed to admit that the options of a repair and/or of a replacement cannot be proposed in some cases? (e.g.: technical impossibility and/or at a cost which would not be reasonable)?***

In line with the proposal presented by PT and ES, PT considers that in the case of recall, the economic operator should present the consumer with at least two options, with the final choice being up to the consumer. As stated in the justificatory reasons of the joint proposal presented by PT and ES, it is considered that this solution ensures a greater incentive for the consumer to participate in the recall, as well as ensuring an adequate level of protection. In addition, as it is a matter of violation of an obligation by the economic operator, i.e. product safety, the consumer should not be limited to only one option or options that the economic operator considers as appropriate.

As for the refund option always being one of the proposed options, PT is in favour of this option. On the other hand, it is understandable that there are situations where it is not possible for the economic operator to provide a repair or replacement of the recalled good. Such situations of impossibility or disproportionate costs are recognized in the context of conformity of goods (Directive 2019/771 )<sup>1</sup>

PT considers that the Sale of Goods Directive could be an inspiration as to the solution to be defined under Article 35, and that the circumstances that must be taken into account in order to consider that a repair/replacement is impossible or imposes disproportionate costs must be clarified so that these exceptions are not to the detriment of the consumer.

***2) Considering the environmental impact of the remedies: should the economic operator be required to take into account the environmental impact of each option or should this choice be left to the consumer, provided the economic operator has informed him about the environmental impact of each option?***

PT considers that the environmental impact of the various options available should be taken into account by the economic operator, however the consumer should be able to choose between the option, taking into account the information transmitted. It should, however, be noted that it is considered important to densify the criteria to be taken into account by the operator when assessing the environmental impact in each of the options. This aspect seems important in order to ensure harmonization concerning the assessment procedures to be carried out by economic operators in the various MS.

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<sup>1</sup> 1 When a lack of conformity occurs, the consumer is entitled to a number of rights under certain legal conditions. As a first step, the consumer may freely request the seller to repair or replace the goods, except in situations where this is impossible or would impose disproportionate costs on the seller, taking into account all the circumstances, including the value the goods would have if there were no lack of conformity, the significance of the lack of conformity and the possibility of using the alternative remedy without significant inconvenience to the consumer.

**3) When the remedy is a refund, how should its value be determined?**

In situations where the product is covered by a legal/commercial warranty the consumer should be able to get a full refund of the amount paid when buying the product. In situations outside the warranty, the market value of the good may be one of the criteria to be taken into account in determining the amount to be refunded to the consumer.

**4) How should this article take into account the consumer rights regarding product conformity towards the seller? Should the seller still be responsible of the conformity of the product on the basis of Directive (EU) 2019/771 on certain aspects of contracts for the sale of goods if another economic operator decided the recall?**

It is considered that, as a matter of principle, the consumer who has purchased a good whose recall occurs during the warranty period should not have a lower level of protection than that provided for situations where a lack of conformity of the good occurs during the warranty period.

For example, if the consumer purchased a piece of furniture whose use presented risks and resulted in an accident during the warranty period, under Directive 2019/771, the consumer would, in theory, be entitled to the repair/replacement of the good, or to a price reduction and refund of the amount paid, because of the lack of conformity. However, in the case of a safety problem with the recalled product, Article 35 of the Regulation would apply, which, in its current wording, provides that the economic operator is only obliged to offer one of the remedies listed in paragraph 1. If this is the case, the consumer may be harmed because through the application of Directive 2019/771 the consumer would have the right, for example, to choose freely between repair or replacement of the good, whereas under Article 35 he will be limited to only one option chosen by the economic operator. That is, in the case of the piece of furniture, the consumer, instead of being able to choose between repair or replacement through the application of Directive 2019/771, would be limited to only one option, lowering the level of consumer protection, which is not acceptable.

Therefore, PT considers the seller should still be responsible for the conformity of the product during the warranty period.



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
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**WK 6872/2022 ADD 2**

**LIMITE**

**CONSOM**

**MI**

**COMPET**

**CODEC**

**DIGIT**

**CYBER**

**CHIMIE**

**JAI**

**WORKING PAPER**

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**NOTE**

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

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Subject:	Proposal for a Regulation on general product safety - Portugal's replies to PRES questions on Random samples & Remedies
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