

# Russia: a case study in responding to REACH

**The entry into force of the REACH Regulation in 2007 created a new benchmark that other countries have felt compelled to consider, whether in order to improve their own national system, to prevent REACH from becoming the new *de facto* world standard on chemicals management, or more straightforwardly to facilitate exports of domestic products into the EU market and to create a level playing field for EU imports. But how to respond? Igor Danilov of Mayer Brown explores the question.**

Simply copying REACH into national legal systems is likely to be both difficult and dangerous. The complexity of the REACH Regulation may place an unacceptable burden on purely domestic industries, in particular, in developing countries, and affect their competitiveness. It would also require substantial resources on the part of local authorities that might also lack the necessary background and expertise, in particular in countries still heavily reliant on a standardisation approach to product chemical safety. This is the case with the Russian Federation.

## Regulatory delays

The Russian regulatory system is currently in a transitional state, undergoing continuous legal and administrative reform. The main aim is to replace the old system based on numerous product-specific mandatory standards – so-called “GOSTs”, largely inherited from the former USSR – with a more limited number of federal ‘technical regulations’ that set minimum regulatory and safety requirements for a particular industry, industry sector or wider group of products. This reform is taking more time than expected, with only a handful of regulations having been developed and having entered into force in the last decade.

When REACH was adopted, Russian authorities intensified their work on elaborating a Regulation on the safety of chemical products. The original view of the drafters was that the Regulation should take on board most of the concepts and provisions of REACH as a way to enhance the Russian regulatory system governing

chemicals, adapt it to international standards – a requirement under international trade rules – and potentially allow future “mutual recognition” of registrations of chemical substances between the EU and Russia. Indeed, early drafts of the Regulation were, to a large extent, translations of many provisions of the REACH Regulation.

However, the Russian authorities soon realised that obtaining from the EU the recognition of Russian registrations was a dream that may never come to fruition and that the adoption and implementation in Russia of such a complex Regulation would be virtually impossible given the current Russian – economic and administrative – realities. Moreover, the non-discriminatory application of the Regulation to domestic and foreign products – an obligation under the World Trade Organization rules – would provide substantial benefits to the producers already in compliance with REACH but would be extremely burdensome for Russian companies exclusively targeting domestic or non-EU markets – even if it did facilitate their access to the EU market.

## Moving away from REACH

As a consequence, subsequent drafts of the Regulation included significant differences compared to the EU REACH text, with a trend towards leaving only those REACH provisions that were perceived to have either direct product safety and/or “retaliatory” implications. Also, later drafts of the Regulation took more account of both domestic economic and regulatory realities as well as of well-established Russian concepts and practices on chemical safety.

More specifically, the latest version of the draft Regulation, which was issued for consultation in the latter part of 2008, takes on board some of the REACH concepts, such as no data/no market, registration of substances, authorisation of substances of very high concern, the need for chemical safety assessments and reports, and the need for only representatives for non-Russian producers and distributors. However, it leaves out, for instance, the REACH provisions on substances in articles, as well as those concerning data sharing and joint submission

of registration dossiers.

In parallel, the draft Regulation preserves many of the product safety mechanisms and procedures already in place in Russia, including a list of “chemical products” including “preparations”, declarations/certificates of conformity, accredited laboratories to certify conformity, and others.

The current Regulation is still in draft form. It lacks proper definitions and contains ambiguous concepts, procedures and other inconsistencies. Importantly, it also grants discretionary powers to the competent authorities on procedural issues, such as the granting and amending of authorisations. It also duplicates control functions by different Russian authorities which, taking into account the current enforcement practices in Russia, is of particular concern.

As the debate continues on the draft Regulation, it is possible – even likely – that future drafts will contain yet more departures from the original REACH Regulation.

Companies buying and selling chemicals are likely to want either a simple, industry-friendly system that takes into account each country’s realities, or the convergence of any new legislation with established benchmarks such as the REACH Regulation to aid compliance efficiency and ensure the free circulation of the same products globally. But the legislation proposed by Russia may end up meeting neither of these objectives.

It is important that companies wishing to trade with Russia take advantage of the current opportunity to monitor and engage in order to influence the shape of the country’s answer to the REACH Regulation.

## Igor Danilov

is an Associate at Mayer Brown in Brussels, specialising in international trade law and the Russian regulatory system.



 idanilov