

Environmental safety of consumer products: legal and regulatory issues

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Modern problems of ensuring ecological safety of consumer products in the Russian Federation are considered, and also measures for improvement of the mechanism of regulation of quality and ecological safety in the sphere of consumption are offered.

The methodological basis of the research is the analytical method, which allows to consider the practice of regulation of the environmental safety of products, the formal legal method, which allows to reveal the systemic connections in legal regulation, regulatory features of legal acts, law enforcement practice in Russia and abroad.

The directions of public administration in the field of environmental safety in terms of improving the legislation in the field of environmental requirements for production are analyzed. The criteria for greener products are reviewed, the need to raise awareness among consumers about the product's properties is identified. Practical problems and directions of further development of legislation on environmental safety of products are determined.

The problem in the regulation of quality and safety of products is the presence of a large number of evaluation concepts that carry the initial risk in the regulation of relations between sellers and consumers. The social significance of food, its key role in ensuring human activity causes an increased interest on the part of the state.

Product safety management is carried out by the state within the framework of technical regulation. Exceeding the maximum permissible levels of product safety indicators makes it dangerous for consumption. The world food industry uses a system of hazard analysis according to established criteria. Through the system of hazard analysis at critical points, a technology for the safety of the products was created. In a free market, the legislature has significantly reduced the degree of public danger for violations in the field of environmental safety of products.

The model of legal regulation of product safety issues is based on mandatory technical regulations as framework for regulatory documents. According to the authors, the legislation should be developed in the direction of regulation of environmental protection from the effects of hazardous products. For environmentally hazardous products, all production processes should be regulated, including product operation, transportation, storage, disposal, i.e. at all stages of the life cycle. In solving this problem, it is important to ensure the optimal combination of state technical regulation with the economic freedom of producers.

Regions should independently develop legislative acts relating to the regulation of the quality and safety of products in their territories.

Keywords: environmental safety, product quality, legal regulation.

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Экологическая безопасность потребительской продукции: проблемы правового регулирования

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Рассмотрены современные проблемы обеспечения экологической безопасности потребительской продукции в Российской Федерации, а также предложены меры по совершенствованию механизма регламентации вопросов качества и экологической безопасности в сфере потребления.

Методологическую основу исследования составили аналитический метод, позволяющий рассмотреть практику регламентации вопросов экологической безопасности продукции, формально-юридический метод, позволяющий раскрыть системные связи в правовом регулировании, регулятивные особенности правовых актов, правоприменительную практику в России и за рубежом.

Проведён анализ направлений государственного управления в сфере экологической безопасности в части совершенствования законодательства в сфере соблюдения экологических требований к производству продукции. Рассмотрены критерии экологичности продукции, выявлена необходимость повышения информированности потребителей о свойствах продукта. Определены практические проблемы и предложены направления дальнейшего развития законодательства в области экологической безопасности продукции.

Ключевые слова: экологическая безопасность, качество продукции, правовое регулирование.

At present one of the main social benefits guaranteed by the international legislation is the security of an individual and a citizen. One cannot overestimate the significance of the right to security. It is both a constitutional value and a comprehensive right or guarantee which facilitates the realization of all other human and citizens' rights. Fundamentally, security is directly linked to realization of the right to life, which is, as it is known, an inherent and natural right of every individual.

The product quality and safety are the issues of crucial significance in relations between the producer and the consumer. The goods (works, services) are produced (performed) only for consumers and satisfaction of their interests. These relations should be built in such a way that it is guaranteed that the consumers' rights to get the product which fully meets their needs in respect to the price, quality and safety are ensured. Thus, it is of current concern to study the legal and regulatory issues of product environmental safety [1–4]. The purpose of the study is to consider the problems of legal regulation and practical environmental safety of products for the consumer in modern conditions.

The organizational and legal mechanism of ensuring the requirements of environmental safety of products in Russia and abroad is considered. The analytical method, the method of the description allowing to consider practice of regulation of questions of ecological safety of production is used.

In Russia the issues of realization of goods to consumers are regulated by the civil legislation (Civil Code of the Russian Federation, part one of 30.11.1994, No. 51-FZ [5] and part two of 26.01.1996, No. 14-FZ) [5], as well as by Federal law of 07.02.1992 No. 2300-14 “On Protection of Consumers' Rights” [6]. At the same time, the specified legislation regulates only general issues of product turnover; however, in terms

of quality and safety, it describes only general norms (articles 4 and 7 of the Law on Protection of Consumers' Rights) and evaluation categories or makes a reference to other regulatory legal acts.

The practice of foreign states, including the United States and the European Union determines the necessary requirements for the level of environmental friendliness of consumer products in the legislation [7–16]. Within the European Union, great importance is attached to the various directives on product sustainability and cycling to be followed by member states [17–21]. To streamline the process of regulation, based on the use of these numerous legal and political instruments in relation to the same products or groups of products from the point of view of their “circularity”, it is necessary to explore further the interaction between these instruments.

The evaluation of the effectiveness of state regulation of product quality is performed, regulatory and technical criteria to determine the safety of products are identified. Formal-legal, comparative-legal methods, the method of interpretation, allowing to reveal system communications in legal regulation, regulatory features of legal acts, law enforcement practice in Russia and abroad in the sphere of ensuring environmental safety of production are used.

Ecology and product safety: state regulation

The social significance of food, its key role in ensuring that human activity causes an increased interest on the part of the state. The RF 2020 Policy on Healthy Nutrition (the Russian Federation Government Decree No. 1873-r dated October 25, 2010) was developed in Russia [22]. Among the main tasks of this document there is an increase in domestic production of the main

types of food raw materials which should meet present-day quality and safety requirements.

Product safety management is carried out by the state within the framework of technical regulation. Federal Law No. 184-FZ of December 27, 2002 “On Technical Regulation” (further referred to as FZ No. 184-FZ), Article 2 [23] defines product safety as a condition ruling out the possibility of inadmissible risk associated with harm to be caused to individuals’ life or health while using and operating the goods. This is the absence of risk to life and health during the operation of goods. Safety of goods is a mandatory requirement, which is established by the relevant technical regulations. All consumer goods must have safety as a quality. This is the main consumer property, and is associated with the need to determine the levels of safety of goods. Exceeding the maximum permissible levels of product safety indicators makes it dangerous for consumption. This issue is particularly acute with regard to food.

The world food industry uses a system of hazard analysis according to established criteria. In particular, Hazard Analysis and Critical Control Point (HACCP) is an internationally recognized system used most often and allowing for controlling the process of food production and its quality on the basis of hazard criteria. In general, the HACCP system has developed a system of management of safety of the produced food products. Through the system of hazard analysis at critical points, a technology for the safety of the products was created. In Russia, as well in the developed Western countries currently recognize the Codex Alimentarius, a collection of food standards, guidelines and codes of practice contributing to the safety and quality of the food products.

Environmental friendliness of products: approaches to defining criteria

Criteria for the environmentally friendly products were defined in the subordinate legislation act: Order No. 21 of the All-Russia Scientific Research Institute for Certification of February 17, 1992 “Recommendations. Requirements for environmentally friendly products: standards and technical conditions. R 50-601-22-92” (hereinafter – VNIIS Order) [24]. The document was not published. The order of VNIIS defined the terms “environmentally safe products” and “environmentally hazardous products”. The first included products whose impact on the environment does not expose it to risk and meets the

established standards and requirements of organizations that control environmental protection.

The order of VNIIS did not fix what requirements the products must meet in order to be safe, establishing only that it must meet the requirements of organizations that control environmental protection. It is advisable to talk about the safety rules enshrined in the law. Environmentally hazardous products, in accordance with the VNIIS Order, are the products which expose the environment to risk and their use should be limited due to non-compliance of their properties and characteristics with the established environmental safety standards and requirements. The risk categories are defined in Federal Law No. 184-FZ dated December 27, 2002 “On Technical Regulation”. Any product to a certain degree affects the environment [25].

It is worth mentioning that the term “environmentally friendly product” is not clearly defined in the legislation and is not scientifically justified; there is no regulation concerning the sales and circulation of environmentally friendly products. This has negatively affected the situation in regard to the observance of the rights of consumers who, according to Art. 10 of the Law on Consumers’ Rights Protection, have the right to get the necessary and reliable information about the goods (works, services). Thus, in 2009, there was adopted an addition to the Resolution of the Chief Sanitary Inspector of the RF No. 36 of November 14, 2001 “On Implementation of Sanitary Rules” (hereinafter – Resolution No. 36) [26] prohibiting the use of the phrase “environmentally friendly product” in the product name and in the information given on the product packaging not to mislead the consumers.

Resolution No. 36 establishes the basis for informing consumers of the composition of products. Along with the term of “environmentally friendly products”, the term “ecological products” is used as a more neutral one but reflecting the position of products in relation to the environment. The use of the latter term is more preferable since it does not mislead consumers about the safety of products.

The terms “environmentally friendly product” and “ecological product” are used in the federal programs and plans aimed at establishing and developing a market for such products, including the international market. At the same time, the term “ecological product” has not received wide recognition, and is only used in product labeling as well as in the documents defining plans and forecasts concerning the development of the market for ecological products.

The current legislation allows for several characteristics applicable to the term “ecological product”. This may be, firstly, a product of natural origin, and secondly, a product in the life cycle of which only environmentally friendly technologies are used. The term “environmentally friendly technologies” is used in the legislation, but it is not clearly defined and not scientifically justified either.

In a free market, the legislator has significantly reduced the degree of public danger for violations in the field of environmental safety of products. The onset of administrative responsibility is now possible for non-compliance with the quality and safety of a particular product. Only cases of violation of security requirements will be a criminal offence here. The legislator thereby tried to create a balance between the interests of producers, without constraining their entrepreneurial activity by excessive tightening of responsibility in the field of product safety, and the interests of the consumer who wants to buy a quality and safe product for health.

The regulation of purity within the framework of environmental regulations and requirements can only provide a level of safety, but not purity of products. This suggests that the term “environmental friendliness” should be used in the system of voluntary certification and labeling of products.

The effective regulation of the market for ecological goods is only possible through a systematic approach which assumes establishing the basis for the environmental safety of products in the environmental legislation and specifying the criteria for classifying products as ecological. In addition, it is important to establish a higher level of voluntary requirements for the production processes in relation to certain obligatory technical regulations. It is the effective development of the system for ecological standardization that can contribute to the production of higher quality products.

It is important to establish a higher level of voluntary requirements for production processes in relation to mandatory, defined technical regulations. It is the effective development of the environmental standardization system that can contribute to the production of higher quality products.

Directions of development of legislation on environmental safety of products

The role of legal regulation of product quality can be manifested along two lines: specifying

certain requirements for products in technical and legal provisions; providing with legal means (guarantees) for manufacturing and sale of products in accordance with the specified requirements.

The model of legal regulation of product safety issues is based on obligatory technical regulations considered to be the normative framework. The respective legal regulator of the production processes is the standard or a system of standards. It should be noted that the voluntary standardization covers issues that are not regulated by binding legal documents (technical regulations, standards) [27].

Meanwhile, in developed Western countries, namely in the United States, an important role in the regulation of the product safety is assigned to the public. Public and professional associations actively participate in the development of standards. Moreover, their participation is not limited only to the control of the compliance with the existing regulatory documents but also includes monitoring the level of rules and standards, assessing their efficiency on the basis of current scientific and technological achievements, so that the needs and requirements of consumers are fully met [28].

As for further focus areas to achieve the goals and objectives of the Ecological Doctrine, one should think of ways of adopting by the legal system of the Russian Federation of the international environmental standards which reduce the anthropogenic load on the environment. Development of the state environmental policy is also associated with ensuring the environment quality optimal for human life on the basis of scientifically based and sound management of economic and environmental interests.

In addition, the development of legislation should be continued in the sphere of regulating the environment protection from hazardous products. We believe that all production processes with respect to environmentally hazardous products, including operation, storage, transportation, sale and reclamation, i. e. all stages of their life cycle should be regulated.

Some scientists consider it necessary to ensure the uniformity of legal regulation of the entire production cycle, which can be possible as a result of systematization of the current normative and regulatory standards. One of the solutions to the problem of regulating the product life cycle is the development and adoption of the Technical Regulation Code, which will allow for concentrating the main directions of economic, industrial, and technological activity [28]. The

key task of this kind of systematization of the normative and regulatory framework should be achieving an optimal balance between the state technical regulation and the economic freedom of producers.

Legislative acts have been adopted in some constitutive entities of the Russian Federation (for example, Moscow, the Republic of Bashkortostan, Buryatia, Tatarstan, the Krasnodar Krai and the Krasnoyarsk Krai, the Voronezh, Kurgan, Kursk and Tomsk regions) which regulate product safety and quality issues or some specific issues of food quality and safety. As one can see from the list, only a few regions of the Russian Federation pay enough attention to the regulation of product quality and safety at the sub-national level. Meanwhile, it is worth reminding that the issues under consideration are the issues of joint jurisdiction of the Russian Federation and its entities, therefore the RF regions should independently develop legislative acts regulating the product quality and safety standards in their territories.

Conclusion

To draw a conclusion, the present study analyses current problems in the sphere of ensuring the environmental safety of consumer products in the Russian Federation and suggests measures to improve the mechanism for regulating environmental safety and quality issues in the sphere of consumption.

The successful implementation of the suggested measures will assist the implementation of the state environmental policy in the field of healthy public nutrition and increase the effectiveness of legal regulation of public relations in the field of safety and quality of consumer products.

References

1. Latyntsev A.V. To the question of effective mechanisms of strengthening of responsibility for offences in sphere of the consumer market // *Administrativnoye pravo i protsess*. 2011. No. 6. P. 30–34 (in Russian).
2. Kuznetsova Y.A. The concept of quality of civil contracts // *Rossiyskiy sudya*. 2012. No. 6. P. 28–31 (in Russian).
3. Andreeva L.V. Legal means of ensuring the quality and safety of goods // *Kommercheskoye pravo*. 2010. No. 1. P. 6–12 (in Russian).
4. Baturova T.A. To regulate the quality of goods in the international law // *Kommercheskoye pravo*. 2010. No. 1. P. 13–16 (in Russian).

5. Civil code of the Russian Federation (part one) of 30.11.1994, No. 51-FZ and (part two) from No. 14 26.01.1996-FZ // *Sobraniye zakonodatelstva RF*. 1994. No. 32. P. 3301; 1996. No. 5. P. 4–10 (in Russian).
6. The law of the Russian Federation from 2300-1 of 07.02.1992 consumer rights protection // *Sobraniye zakonodatelstva RF*. 1996. No. 3. P. 140 (in Russian).
7. Onida M. Products and Environment // *Reflections on 30 Years of EU Environmental Law: A High Level of Protection?* / Ed. R. Maccrory. Groningen: Europa Law, 2005. P. 236–237.
8. Wood C. Environmental impact assessment: a comparative review, 2nd edition. Essex, UK: Pearson Education Limited, 2003. 230 p.
9. Vanclay F. International principles for social impact assessment // *Impact Assessment and Project Assessment*. 2003. V. 21. P. 5–12. doi: 10.3152/147154603781766491.
10. Partidario M.R. Strategic environmental assessment better practice guide: methodological guidance for strategic thinking in SEA. Lisbon: Portuguese Environment Agency and Redas Energeticas Nacionais, 2012. 76 p.
11. Swiss environmental law: A brief guide. Bern: Federal Office for the Environment (FOEN), 2013. 36 p.
12. Jungbluth N., Nathani C., Stucki M., Leuenberger M. Environmental impacts of Swiss consumption and production. A combination of input-output analysis with life cycle assessment. Bern: Federal Office for the Environment, 2011. 171 p.
13. Harry H.G. Post legal risks in European environmental law and policy // *Legal Risks in EU Law*. Switzerland, 2016. 221 p.
14. Beck U. Risk Society: Towards a new modernity. Munich: Sage Publications Ltd, 1992. 260 p.
15. Decision No. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 “Living well, within the limits of our planet”, OJEU L 354, 28 December 2013. 171 p.
16. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Roadmap to a Resource Efficient Europe, COM (2011) 571 final, Brussels, 20 September 2011.
17. European Parliament and the Council of the European Union, Directive 2009/125/EC of the European Parliament and of the Council, 21 October 2009, establishing a framework for the setting of eco-design requirements for energy related products (recast), OJ L 285/10, 31 October 2009.
18. European Parliament and the Council of the European Union, Regulation (EC), 1907/2006 of the European Parliament and of the Council, 18 December 2006, concerning the registration, evaluation, authorization and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Com-

mission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

19. European Parliament and the Council of the European Union, Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011, on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast), OJ L 174/88, 1 July 2011.

20. European Parliament and the Council of the European Union, Regulation (EC), No. 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel, OJ L 27/4, 30 January 2010.

21. European Parliament and the Council of the European Union, Regulation (EC) No. 122/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organizations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, OJ L 342/4, 22 December 2009.

22. Russian Federation Government Decree № 1873 25.10.2010-r “About principles of State policy of the Russian Federation in the field of healthy nutrition for the period up to the year 2020” // Collected legislation of RF. 2010. No. 45. P. 5869 (in Russian).

23. The Federal law from 27.12.2002 No. 184-FZ “On technical regulation” // Sobraniye zakonodatelstva RF. 2002. No. 52 (Ch. 1). P. 5140 (in Russian).

24. R 50-601-21-92. Recommendations. Requirements for product safety standards and technical conditions (approved and put into effect by an order from the Russian village. No. 21) // [Internet resource] <http://www.lawru.info/dok/1992/02/17/n480941.htm> (Accessed: 20.04.2019) (in Russian).

25. Dubovik O.L., Ivanova A.L., Kalinichenko V.T., Rednikova T.V., Roericht A.A. Environmental policy of the European Union in the field of legal regulation of turnover of products and products // *Ekologicheskoye pravo*. 2008. No. 2. P. 33–36 (in Russian).

26. Decision of Chief State sanitary doctor of the Russian Federation dated 14.11.2001. No. 36 (Ed. on 06/07/2011, 2011). “The introduction of sanitary regulations” // *Byulleten normativnykh aktov federalnykh organov ispolnitelnoy vlasti*. 2002. No. 22 (in Russian).

27. Broslavskiy L.I. Technical regulation of quality and safety of products and environment: problems of theory and practice // *Biznes, Menedzhment i Pravo*. 2015. No. 2. P. 47–54 (in Russian).

28. Zaporozhets A.M. Code of technical regulation (to the question of its relevance in the Russian Federation) // *Pravo i politika*. 2005. No. 4. P. 65 (in Russian).