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Amendments to the Federal Law on Technical Regulation

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Report Highlights:

Federal Law #385-FZ of December 30, 2009, amended the Russian Federal Law on Technical Regulation. These amendments potentially allow business to choose either Russian technical regulations or technical rules and standards based on “approved” foreign standards and norms. The amendments also give the Russian government the authority to introduce, on a temporary basis, the technical regulations of the Custom Union, and norms and rules of the EU, in the spheres where Russian technical regulations have not been adopted yet.

General Information:

Background and Status of Technical Regulation

Early in December 2009 the Russian President Dmitriy Medvedev acknowledged that the law on technical regulation (Federal Law No 184-FZ) adopted in December 2002 was “an absolute fiasco”. The Federal Law No 184 was designed to bring Russian legislation into compliance with the WTO by replacing all Russian state standards and quality and safety regulations with a set of 400 technical regulations (all having status of federal laws), including framework regulations on safety of environment, means of transportation, constructions objects, food, biotech plants and food products, etc ^[1].

In December 2009, the President commissioned the government to set up a specific body that will report to one of the Ministries and will elaborate and approve technical regulations. In an effort to address the President’s instruction, on December 16, 2009, the Presidential Administration submitted to the State Duma a draft of substantial amendments to the Federal Law on Technical Regulations. The Federal Law No 385-FZ “On amendments to the Federal Law “On Technical Regulation” was adopted by the State Duma on December 23, approved by the Federation Council on December 25, 2009, signed by the President of the Russian Federation on December 30, 2009 and went into effect on January 11, 2010.

Federal Law #385 “On Amendments to the Federal Law “On Technical Regulation”

The Federal Law No 385-FZ changes some procedures for adopting technical regulations, expands the list of authorities which can adopt technical regulations and allows wider use of international, regional standards and rules, as well as standards and rules of the foreign countries if these standards are in compliance with the Russian technical regulations and registered in the Russian Federal Information Fund of Technical Regulations and Standards ^[2]. Some amendments that will influence the procedure of adoption of technical regulations and use of international standards and norms are listed below:

Amendment 1) to Article 2 **Basic Definitions** expands the means for adopting technical regulations by granting respective authority to a “federal body of executive power for technical regulation”. However, this federal body was not specified in the text of the FL No 385-FZ. This Amendment also defines the terms “regional standardization organization”, “foreign state standard”, “regional standard”, “foreign state set of rules”, and “regional set of rules”.

Amendment 8) to Article 13 **Documents in the Area of Standardization** broadens the list of national standards and regulations to include “international standards, regional standards, regional sets of rules, foreign countries’ standards, and foreign countries’ sets of rules registered in the Federal information fund of technical regulations and standards; duly certified translations into Russian international standards, regional standards, regional sets of rules, foreign countries’ standards, and foreign countries’ sets of rules taken into account by the national body for standardization of the Russian Federation”.

Amendment 11) adds to the Article 16 **Rules of Development and Adoption of National Standards** Article 16¹ **Rules of forming a list of documents in the sphere of standardization, use of which will provide for meeting the requirements of technical regulations.** Paragraph 1 of Article 16¹ stipulates that not later than 30 days before the technical regulation comes to force the national body for standardization shall make available to the public the list of documents in the sphere of

standardization, which, if used on voluntary basis, provides for meeting the requirements of the adopted technical regulation. This list may include national standards and sets of rules, as well as international standards, regional standards, regional sets of rules, foreign countries' standards, and foreign countries' sets of rules under condition that they are duly registered in the Federal Information Fund of Technical Regulations and Standards. The use of these standards and sets of rules on voluntary basis is considered a sufficient condition of meeting the technical regulation requirements. The procedure of registration of these standards and sets of rules is determined by Article 44 of the Federal Law on Technical Regulation (with amendments).

Amendment 14) to Article 44 **Federal Information Fund of Technical Regulations and Standards** stipulates that international standards, regional standards, regional rules, foreign countries' standards, and foreign countries' sets of rules, use of which on voluntary basis provides for meeting the requirements of the adopted technical regulation shall be registered in the Federal Information Fund of Technical Regulations and Standards. This Amendment also determines the procedure of this registration.

Amendment 15) to Article 46 **Transitional Provisions** stipulates that where a technical regulation for certain products are not adopted, until its adoption and coming to force, the Russian Government may introduce mandatory requirements from technical regulations of countries, members of the Custom Union, or from the European Union documents. The same Amendment determines the procedure of informing the public of the relevant documents used in the Custom Union member countries or in the European Union.

Comments and Russian Business Reaction

After the Russian technical regulation is adopted and comes to force the new law potentially allows business to choose either Russian technical regulations or technical rules and standards based on "approved" foreign standards and norms. The choice of foreign standards is limited by those, which have been previously registered and approved in Russia. The amendments also give the Russian government the authority to introduce, on a temporary basis, the technical regulations of the Custom Union (Belarus and Kazakhstan), and norms and rules of the EU, in the spheres where Russian technical regulations have not been adopted yet. Mass media reports that the last idea is borrowed from Kazakhstan that have already adopted 50 technical regulations, mostly based on the EU standards and norms, and most of these documents have already been translated into Russian.

Russian businesses welcome the changes, but expect that the process to register foreign regulations will be burdensome. It will be necessary to get approval from the technical committee in the Federal Agency for Technical Regulation and Metrology (FATRM or Rostekhnregulirovaniye) under the Ministry of Industry and Trade. This Agency manages product assessment, processing, and servicing to determine if products conform to national standards and certification criteria. According to business representatives, the idea of applying foreign standards will facilitate renovation of the system as a whole; however, businesses believe that for the companies it might be a challenge to get an approval from the government officials.

Press Reports and Views

Reaction to the Amendments to the Federal Law on Technical Regulation appeared in mass media in December 2009 shortly after Russian President Dmitriy Medvedev initiated these amendments. Thus, Sergey Migin, Deputy General Director of the National Institute for Systematic Research and Entrepreneurs, said that the primary objective of the 2002 reform of the technical regulation was to ease administrative burden. However, most of the few technical regulations adopted since then complicate the life of businesses, including small and medium, by creating excessive rules. According to Sergey Migin, government officials “are not interested in implementing new transparent rules”. Large businesses are not interested in the reform either, since they are better off if they can resolve an issue on case by case basis. Basically, the small and medium businesses that initiated the reform also do not seem to benefit because the technical regulations that are being approved recently and those waiting approval have excessive administrative burden for the companies. For example, currently technical regulation on food safety is under review within different ministries and agencies. In addition to sanitary and epidemiological testing, there is still a requirement for mandatory certification. As a result, entrepreneurs will have to go through the same procedures twice, such as sampling and testing in the Federal Service for Consumer Rights and Welfare Protection Supervision (Rospotrebnadzor) at the Ministry of Health and FATRM (Rostechregulirovanye) at the Ministry of Industry and Trade. The author hopes that transition to a new system of technical regulations is one of the key factors of modernization and increased competitiveness of the Russian business if this system set up minimal procedures necessary for ensuring products safety”.

Ministry of Industry and Trade official has stated that the objective of the reform is to simplify process for adoption of technical regulation. According the Head of FATRM Grigoriy Elkin, FATRM will get the right to register foreign, international standards as well as develop them. According to the official, “currently Russia is on the way to using European directives, and the regulations that are being developed are basically similar to the EU. According to the same source, about 40 percent of Russian standards have been harmonized with the European ones.

The Russian text of the Federal Law #385-FZ is on the site:

<http://graph.document.kremlin.ru/doc.asp?ID=56606>

The text of the original Federal Law #184-FZ of December 27, 2002, with all amendments, including the amendments made by the Federal Law #385-FZ of December 30, 2009, can be found on the site:

<http://www.consultant.ru/popular/techreg/>. This text (in Russian) is also attached.

^[1] As of January 10, 2010, Russia has adopted only 12 technical regulations, including four in the sphere of agriculture and food products: on tobacco and tobacco products, on milk and dairy products, on fats and oils, on fruit and vegetable juices

^[2] The Federal Information Fund of Technical Regulations and Standards is a special body established by the GOR Resolution #500 of August 15, 2003, in accordance with the Federal Law on Technical Regulation No 184-FZ of December 27, 2002. At present this Fund is part of the Federal Agency for Technical Regulation and Metrology (FATRM) at the Russian Ministry of Industry and Trade. The web-site of the Federal Agency is <http://www.gost.ru/wps/portal/pages.Main>.

