

Note

Duty of Care in REACH

- Norwegian experiences with a legal provision

Duty of care in Norway

A provision regarding legal **duty of care** has been a part of the Norwegian legislation for several years, cf. the Product Control Act, act no 79 of 11 June 1976. The provision states an obligation for producers, importers and downstream users to prevent damage to health and the environment and to obtain knowledge as is necessary to evaluate whether they can cause such effects. It is valid for all kinds of products; chemicals, chemical preparations and articles.

The Norwegian experience is that such a provision is helpful in establishing the responsibility of firms to have knowledge of the chemical properties of their products and their responsibility to avoid risks associated with their products. This provision is not seen as problematic by the Norwegian industry, and it forms a basis for assuming responsibility of their own products.

It is a general provision and it needs further clarification through detailed regulations to be enforceable in practice. However, it also serves as a source of interpretation of other legislation and as a general safety net where no detailed legislation exists.

Duty of care in REACH?

The REACH regulation should incorporate the concept of duty of care. Society expects producers to take responsibility for the safety of their products, and this should of course also be valid for producers and importer of chemicals. A legal duty of care is an important message to producers and importers to take the responsibility of their products.

This is particularly important when prioritising efforts towards some areas, groups of substances etc, since the basic obligation of knowledge gathering and risk management should be valid for all chemicals and form a basis for industry's self regulation.

Note

Substitution in REACH

- Norwegian experiences with substitution

Substitution in Norway

A statutory requirement to apply the **substitution principle** entered into force 1 January 2000 in Norway. The requirement was introduced in a new section of the Product Control Act. The requirement implies that enterprises must evaluate whether they can replace hazardous substances with less hazardous alternatives. The alternatives must be assessed in the same way as the chemicals that are to be replaced. If less hazardous alternatives exist, the enterprise shall use these provided that this does not cause unreasonable cost or inconvenience. Information material was produced to help the enterprises starting the substitution process, including guidelines describing the substitution process step by step. The Norwegian environmental authorities have also established an observation list. This list includes substances particularly hazardous to health and the environment and are used in such amounts that they may cause specific problems at national level. The observation list can be a useful tool when companies review their use of chemicals in connection with substitution.

Substitution in REACH

Substitution is a relevant tool for the management of all chemicals. However, it is of particular importance that REACH addresses the challenges from the substances of highest concern for human health and the environment; this will be a real test of the efficiency of the proposal. The authorization scheme set up for the substances of highest concern must therefore be an effective tool in eliminating the unacceptable risks from releases and exposure of these substances. Where substitutes with less risk are readily available on commercial terms, authorization should in general not be given.

If one does not make industry consider substitutes in the authorisation process, the authorisation scheme could result in an overly bureaucratic and ineffective system. One must avoid that the authorities have to administrate the continued use of substances of very high concern, even when safer alternatives are readily available.