

Briefing note on Regulation (EU) No 649/2012 concerning the export/import of hazardous substances and Brexit.

Background

The directly-applicable PIC Regulation (Regulation (EU) No 649/2012) implements in the EU the international Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, but goes further than the Convention in applying the provisions to chemicals considered to be banned or severely restricted in the EU under other chemicals law, principally the Plant Protection Products Regulation, the Biocidal Products Regulation and REACH. The PIC Regulation requires exports of listed chemicals to be notified to the importing country and for some chemicals the consent of the importing country must be sought before export can proceed.

The European Chemicals Agency (ECHA) facilitates the operation of the PIC Regulation through its ePIC IT system.

Issue

Under “no-deal” Brexit, the UK would establish an independent standalone PIC regime so that the UK can continue to meet its international obligations under the Rotterdam Convention. UK-based companies would no longer have access to ePIC and must use the UK HSE system to notify exports of listed chemicals. New procedures for notifying exports will be implemented ahead of exit day for UK businesses to use them for exports after 29 March. The UK Pic Regulation would apply to export of listed chemicals leaving the country, including to EU countries. Companies that currently only move listed chemicals within the single market and do not export them outside would have to notify these to HSE.

Currently, there is no technical possibility in ePIC to submit notifications for exports to Great Britain. Given the timelines of 35 days for notifications on exports of substances on Annex I part 1 and, in some cases, > 60 days for substances on Annex I part 2, it seems impossible to continue exports of materials subject to EU PIC to Great Britain after Brexit without disruption.

On the other hand, Great Britain being a member of the European Union is informed on the hazardous properties of EU PIC regulated substances, so that a Prior Informed Consent is not relevant for the time being but will after Brexit.

Potential solutions

- 1- Notifications for exports of materials subject to EU PIC to Great Britain may be placed at date of Brexit and will be subsequently activated by ECHA without further checks. This is valid for a transitional period, e.g. until end of 2019.
- 2- Exports of materials subject to EU PIC are allowed without notification until end of 2019. Notification to be required for exports from 2020 onwards.

This would leave time for all stakeholders to make the necessary preparations.