

Regulatory Alert

EU Prior Informed Consent (PIC) Regulation (EU) No 649/2012
Amendments to Annex I and V (Regulation (EU) 2020/168)

Country: European Union

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INTENDED AUDIENCE

Companies in the Aerospace and Defense (A&D) industry who import and export certain substances, mixtures, articles and finished products from European Union (EU) member states to non-EU countries.

EXECUTIVE SUMMARY

Background on Regulation:

Regulation (EU) No 649/2012 concerning the export and import of hazardous chemicals (EU PIC) is the Regulation of the European Parliament and of the Council concerning the export and import of hazardous chemicals. It entered into force on 1 March 2014 and implements within the EU the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. EU PIC includes a number of additional provisions that go beyond the requirements of the Rotterdam Convention to achieve a higher level of protection of human health and the environment. The structure of EU PIC also differs as it further divides the two use categories under the Rotterdam Convention (pesticides and industrial chemicals) into four subcategories: pesticides used as plant protection products (PPPs); other pesticides, such as biocidal products, disinfectants and insecticides; industrial chemicals for use by professionals; and industrial chemicals for use by the general public. It should be noted that import of chemical substances is mostly covered by other EU legislation such as the REACH regulation or the Biocidal Products Regulation.

EU PIC is generally updated in line with any changes made during the Conference of the Parties for the Rotterdam Convention (held every 2 years). It is also updated to reflect changes made under other EU Legislation, such as Reg No 1107/2009 on Plant Protection Products (PPP), Reg No 528/2012 - Biocidal Products Regulation (BPR) and Reg No 1907/2006 (REACH).

Recent Amendments

The latest amendment to EU PIC (Regulation 2020/1068) concerns the addition of several products to Annex I and Annex V of the Regulation following the 9th meeting of the Conference of the Parties in May 2019 and recent changes made to Reg No 1107/2009 on Plant Protection Products (PPP) and Reg No 2017/852 on Mercury.

APPLICABILITY

EU PIC applies to:

- Chemicals listed under Annex III of the Rotterdam Convention on Prior Informed Consent (PIC).
- Chemicals banned or severely restricted under European Union or member state law.
- Chemicals when exported in so far as their classification, labelling and packaging are concerned.

EU PIC does not apply to the following:

- Wastes covered by the Waste Framework Directive (2008/98/EC)
- Radioactive materials and substances covered by Council Directive 96/29/Euratom
- Chemical weapons covered by Regulation (EC) No 428/2009
- Food and food additives covered by Regulation (EC) No 882/2004
- Foodstuffs covered by Regulation (EC) No 178/2002
- Genetically modified organisms covered by Directive 2001/18/EC
- Medicinal products covered by Directives 2001/82/EC and 2001/83/EC
- Narcotic drugs and psychotropic substances covered by Regulation (EC) 111/2005

EU PIC does not apply to chemicals exported for the purpose of research and analysis in quantities that are unlikely to affect human health and the environment and in any event do not exceed 10 kg from each exporter to each importing country per calendar year.

RELEVANT DATES

- Regulation (EU) 2020/168 (i.e., Amendments to Annex I and V) published: 21 July 2020
- Regulation (EU) 2020/168 in force: 1 September 2020

REGULATORY OBLIGATIONS

Annex I of EU PIC:

Chemicals listed in Annex I of EU PIC are assigned to one or more of three groups listed under Part 1, Part 2 or Part 3 of the Annex. Chemicals listed in each part are subject to different obligations:

Part 1 chemicals are subject to export notification - export notification requires the exporter of a substance, mixture or article to notify the competent authority of the EU member state in which they are established no later than 35 days prior to export. The notification should contain all the information required under Annex II of EU PIC. Chemicals listed here are banned or severely restricted in the EU in at least 1 product category.

Part 2 chemicals are subject to export notification as well as PIC notification which requires the explicit consent of the importing country to export such chemicals. Export notification requirements also apply to finished products and articles that contain Part 2 chemicals in unreacted form or mixtures obtaining such substances in a concentration that triggers labelling obligations under the EU classification, labelling and packaging (CLP) legislation.

Part 3 chemicals (substances listed in Annex III of the Rotterdam Convention) are subject to export notification, explicit consent and the PIC procedure, which requires EU member states to make an informed decision on whether to accept or refuse import or to allow import under certain conditions (this is known as an import response). Export notification requirements also apply to finished products and articles that contain Part 2 chemicals in unreacted form or mixtures obtaining such substances in a concentration that triggers labelling obligations under EU CLP legislation.

Annex V of EU PIC:

Annex V of EU PIC lists chemicals (and articles containing them) that are banned from export from the EU. These chemicals are either Persistent Organic Pollutants (POPs) under Annex A and B of the Stockholm convention or banned for export by other EU legislation.

Amendments to Annex I and V under Regulation (EU) 2020/168:

Regulation (EU) 2020/168 added the following substances to Annex I and V of EU PIC:

- Two pesticides to Annex I Part 1: imidacloprid and propiconazole;
- Eighteen pesticides to Annex I Parts 1 and 2: Chlorothalonil, chlorpropham, clothianidin, desmedipham, dimethoate, diquat, diquat dibromide, ethoprophos, fenamidone, flurtamone, glufosinate, glufosinate-ammonium, oxasulfuron, propineb, pymetrozine, quinoxifen, thiamethoxam, and thiram;
- One pesticide to Annex I Parts 1 and 3: Phorate;
- One industrial substance to Annex I Part 3: Hexabromocyclododecane (HBCDD); and
- Two substances to Annex V: Mercury (II) sulfate and mercury including certain additional articles containing certain mercury content.

RISKS TO AEROSPACE AND DEFENSE

Except for the substance HBCDD, the addition of these chemicals is not likely to have impact on the aerospace and defense (A&D) industry and does not introduce additional obligations to A&D companies:

- The addition of HBCDD to Annex I Part 3 of EU PIC may be of concern because exporters of articles and products containing this substance in any amount will need to complete an export notification and be given explicit consent from the importing country. HBCDD is used as a flame retardant in many different articles and products, thus the contents of HBCDD in articles and finished products should be checked. If articles/finished products are known to contain HBCDD, then the export notifications and explicit consent requirements under EU PIC should be complied with if exporting such products. If it is suspected that products may contain HBCDD in any amount, such products should be tested.
- The mercury-added products and mercury compounds added to Annex V of EU PIC were already prohibited under the EU Mercury Regulation and therefore Regulation (EU) 2020/168 does not introduce any new regulatory requirements for such compounds and products. The A&D industry should ensure that they do not export any compounds or products listed under Annex V of EU PIC.
- Of the 22 chemicals added to Annex I, 21 are pesticides. Finished products and articles containing the chemicals listed only in Annex I Part 1 do not require export notification and therefore their listing is likely to have no effect on the A&D industry, because it is unlikely that such pesticides will be exported on their own or in mixtures by the A&D industry.
- Finished products and articles containing chemicals listed under Annex I Part 2 require export notification and explicit consent from the importing country. The listing of pesticides under Annex I Part 2 may affect the A&D industry if they export any products that have been treated with such chemicals for biocidal purposes. However, the chemicals newly listed (see above) under Annex I Part 2 are all subject to restriction under the EU PPP Regulation and therefore are highly unlikely to be used as biocides in the treatment of articles and finished products; therefore their listing under Annex I part 2 is likely to have no impact on the A&D industry.

Failure to comply with export notification (Article 8) and explicit consent (Article 11) obligations may result in penalties. Such penalties will be subject to national law, enforcement and non-compliance penalties may differ by EU member state.

IAEG ACTIONS RELATED TO THIS RISK

IAEG is sending this Alert to its members.

USEFUL LINKS

Regulation (EU) No 649/2012 (EU PIC Regulation): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0649>

Regulation (EU) 2020/168 (Amending Annexes I and V of EU PIC):

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R1068>

EU PIC Official Guidance Document:

https://echa.europa.eu/documents/10162/23036412/guidance_pic_en.pdf/813e3826-5b6d-4a31-9088-6bb9ceae34b4

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