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**Review of general issues of compliance and
implementation under the Convention:
national legislation: guide for the development
of national legal frameworks**

National legislation

Guide for the development of national legal frameworks¹

Note by the Secretariat

As referred in document UNEP/CHW/CC.13/6, a draft guide for the development of national legal frameworks to implement the Basel Convention is set out in the annex to the present note, for the consideration of the Committee.

* UNEP/CHW/CC.13/1.

¹ This document has not been formally edited.

Annex

Guide for the development of national legal frameworks to implement the Basel Convention

(Draft of April 2018)

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Foreword

The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention/ Convention) was adopted in 1989 and entered into force on 5 May 1992. As of [February 2018, 185] States and the European Union were Parties to the Convention. The Convention aims to protect human health and the environment against the adverse effects resulting from the management and disposal of hazardous wastes and other wastes, including by establishing a prior informed consent procedure to control transboundary movements of such wastes.

This guide has been prepared with a view to supporting Parties that require assistance with transposing the provisions of the Basel Convention into their national legal framework. The guide is not legally binding and in no way supersedes or otherwise affects each Party's authority to interpret the Basel Convention and to implement it at the national level according to its own rules, modalities and national circumstances.

The preparation of the guide was initiated under the 2016-2017 work programme of the Committee Administering the Mechanisms for Promoting Implementation and Compliance (Implementation and Compliance Committee/ Committee), whereby the Conference of the Parties requested the Committee, among other things, to improve implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention by considering additional steps to support the implementation and compliance with these provisions. Paragraph 4 of Article 4 provides that "[e]ach Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention." Paragraph 5 of Article 9 reads: "Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view of achieving the objects of this Article."

At its twelfth meeting, the Implementation and Compliance Committee considered a report on additional steps to improve implementation and compliance with the abovementioned provisions, including draft examples of transposition of the Basel Convention provisions in national law.¹ On the basis of this report, the Committee requested the Secretariat to initiate the development of a comprehensive *Guide for the development of national legal frameworks to implement the Basel Convention*, building on and integrating existing guidance and material, and to revise the draft examples of transposition, taking into account comments from the Committee, lessons learnt from the use of the draft by Parties concerned by a submission,² as well as from the Secretariat's technical assistance activities.

At its thirteenth meeting, the Conference of the Parties invited Parties to submit comments on the first draft version of the guide.³ The finalization of the guide was undertaken under the 2018-2019 work programme of the Committee, taking into account the comments received.⁴ [It was adopted by the Conference of the Parties at its fourteenth meeting by decision BC-14/[...]].

The development of this guide was made possible thanks to the financial support provided by the European Union.

¹ See document UNEP/CHW/CC.12/9, annex.

² As at January 2018, the Committee has assisted eight Parties towards the development of national legislation implementing the Basel Convention: Bhutan, Cabo Verde, Central African Republic, Eritrea, Guinea-Bissau, Liberia, Swaziland, and Togo. See: <http://basel.int/Implementation/LegalMatters/Compliance/SpecificSubmissionsActivities/tabid/2310/Default.aspx>.

³ See decision BC-13/9. The draft is available in Annex I of document UNEP/CHW.13/INF/27.

⁴ These comments are available at: <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201819/Nationallegislation/tabid/6141/Default.aspx>.

Introduction

1. The *Guide for the development of national legal frameworks to implement the Basel Convention* provides guidance to Parties on transposing the provisions of the Basel Convention into their national legal framework. It may serve as reference to any Party or future Party to the Basel Convention facing difficulties in drafting implementing legislation, in particular Parties that have limited or no relevant legislation in place. The guide also provides information and examples of interest to Parties revising their implementation legislation. It is primarily directed to legal drafters and other persons directly involved in the drafting process.
2. For the purposes of this guide, “implementation” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives, that contracting Parties adopt and/or take to meet their obligations under a multilateral environmental agreement (MEAs) and its amendments if any.⁵ It includes both legally binding and other implementing measures. References to “legislation” or “legal frameworks” encompass legislation, regulations or other types of instruments having a legally binding effect.
3. The guide builds on existing guidance developed under the Basel Convention and complements existing documents, in that it focuses on the specific challenges related to drafting Basel Convention implementing legislation. Related guidance materials include:
 - (a) The *Manual for the Implementation of the Basel Convention* (Implementation Manual), including the *Checklist for the Legislator*⁶ adopted by the Conference of the Parties at its twelfth meeting. The manual was developed to assist Parties and others in understanding their obligations under the Basel Convention, and, as regards the checklist, to help Parties assess national waste legislation in terms of their conformity to the obligations set out in the Basel Convention;
 - (b) The *Guide to the Control System*⁷ adopted by the Conference of the Parties at its twelfth meeting. This guide provides practical guidance for use by any person involved in transboundary movements of hazardous wastes or other wastes, including graphic illustrations of the prior informed consent procedure;
 - (c) The *Compilation of national laws*,⁸ which includes national laws and regulations submitted by Parties following an invitation by the Conference of the Parties to make available texts of national legislation and other regulatory measures adopted to implement and enforce the provisions of the Basel Convention;
 - (d) The *Glossary of terms*⁹ adopted by the Conference of the Parties at its thirteenth meeting. Its purpose is to clarify certain terms, in particular in relation to the distinction between wastes and non-wastes, in order to improve the implementation of the Convention and the application of technical guidelines and guidance documents developed under the Convention. It includes definitions of terms and further explanations.
4. It is important to note that a proper understanding of the Basel Convention provisions is a prerequisite for the drafting of implementing legislation. The abovementioned Implementation Manual and the Guide to the Control System include detailed explanations of the various Basel Convention provisions, including the Basel Convention control procedures for transboundary movements of hazardous and other wastes. The attention of the reader is therefore directed to these resources.
5. The present guide is designed to be flexible to fit the variety of existing legal approaches and traditions. The objective is not to provide an all purpose model of national waste management legislation, but rather to highlight core elements to be reflected in Basel Convention implementing legislation. Parties are strongly encouraged to tailor their implementing measures to national circumstances, traditions and priorities. The guide includes practical examples of how various Parties,

⁵ This definition is taken from the UNEP Manual on compliance with and enforcement of Multilateral Environmental Agreements. See http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf, page 59

⁶ Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁷ Guide to the Control System (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁸ Compilation of national laws, available at <http://www.basel.int/Countries/NationalLegislation/tabid/1420/Default.aspx>.

⁹ The glossary of terms is available in document UNEP/CHW.13/4/Add.2, Annex.

including Parties that have been assisted by the Implementation and Compliance Committee (e.g. Bhutan, Cabo Verde, Togo and Swaziland), have proceeded to develop implementing legislation.

6. The guide has three sections: preparing the drafting process; drafting implementing legislation; and ensuring effective implementation and enforcement.

1. Preparing the drafting process

7. The process of drafting legislation usually begins with the issuance of a drafting instruction. Before starting the actual drafting of the legal text, the drafting process should be adequately prepared. Thorough preparation with the aid of the Implementation Manual and Checklist for the Legislator will help ensure that Basel Convention implementing measures accurately transpose the treaty provisions into national law, including by effectively addressing possible gaps in current waste management legislation and ensuring that provisions that may contravene the Basel Convention are amended as needed. The present section provides guidance on how to prepare the drafting process. It suggests a four-step approach:

- (a) To identify the Basel Convention provisions that need to be incorporated and further specified in national law;
- (b) To identify a suitable combination of different implementing measures;
- (c) To embed implementing measures into the national waste management framework;
- (d) To make provision for the involvement of relevant actors.

1.1 Incorporating the Basel Convention into national law

8. The first step in preparing the drafting process consists in identifying the process that is necessary for the Basel Convention to gain domestic application. This process differs in so-called *monist*, as opposed to *dualist* countries. However, to give full effect to the Convention at the national level, both monist and dualist States will need to further specify at least some of its provisions at the national level. This chapter gives an overview of different modalities and techniques to incorporate treaty obligations and provides guidance on selecting an appropriate implementing technique for the Basel Convention.

1.1.1 Modalities for treaty incorporation

9. Under the Basel Convention, States and political and/or economic integration organizations may express their consent to be bound.¹⁰ Upon expression of their consent to be bound and entry into force of the Convention, the Parties become responsible for giving effect to the Convention domestically.

10. The extent to which the Basel Convention provisions need to be transposed into national law in order to gain full legal effect is contingent upon each country's own modalities to implement treaty obligations, the relevant rules often being constitutional in character. In some countries treaties must be submitted to the national legislative body for incorporation into the national legal order before they become legally effective under national law. These countries are generally referred to as having a dualist legal system. For example, Swaziland has a dualist legal system. For countries with a so-called monist legal system, treaties gain direct domestic application upon their entry into force for that country such as through ratification, without any need for prior approval or transposition by the national legislative body. For example, both Togo and Bhutan have a monist legal system.

11. Being acquainted with the national provisions and jurisprudence regarding the status of treaty provisions in national law is crucial for drafting authorities to understand the legal effect of the Basel Convention in national law upon its entry into force for the country.

1.1.2 Implementing techniques for treaty provisions

12. Treaties differ greatly in their level of specificity. Some treaty rights and obligations are very detailed, while others are open-ended in their formulations thus leaving flexibility to Parties in how they implement them at the national level. To account for this difference, many countries distinguish between self-executing and non-self-executing treaty provisions for the purpose of their implementation at the national level. Treaty provisions are considered self-executing in the sense that, once the treaty has been incorporated at the national level, they do not need to be complemented by other measures: they are sufficiently precise and clear in their formulation for authorities and courts to directly apply them. Conversely, treaty provisions are not self-executing, if they need to be further specified through legislative or administrative measures to become fully operational and applicable at the national level. The specific criteria for deciding which treaty norms are self-executing or not vary between countries.

¹⁰ Articles 22 (1) and 23 (1) of the Basel Convention. For guidance on how to express consent to be bound, see the United Nations Treaty Handbook available at: <https://treaties.un.org/doc/source/publications/THB/English.pdf>.

13. In dualist countries, treaties can usually either be incorporated by reference or by transposition. Incorporation by reference means that the text of the Convention is annexed to a short statute, providing for the incorporation of the treaty without adjusting or completing the treaty text. Incorporation by transposition refers to the case where the treaty text is adjusted and completed to fit into the national context, which may involve amendments to various national laws. Treaties or treaty norms that are too vague to be directly applied at the national level would thus normally be implemented by transposition, to provide an opportunity to the legislator to flesh out the treaty provisions and make them operational at the national level. The adjustments or fleshing out of the treaty provisions cannot however contradict the treaty itself.

Example — Applicability of treaty provisions in monist and dualist countries

Switzerland is a monist legal country. Accordingly, treaty obligations gain legal force with the entry into force of the treaty for the country, e.g. upon ratification of the treaty. However, this does not mean that all treaty norms will be directly applicable at the national level, i.e. self-executing. A treaty norm is considered self-executing, if it has been drafted with the intent to be directly applicable by state authorities and if its content is sufficiently precise and clear for that purpose. Self-executing treaty provisions, as opposed to non-self-executing provisions, can be directly binding on private parties.

Germany follows the dualist legal tradition. In general, international treaties need to be transposed into the national legal order through a federal law (see Article 59 (2) of the German Constitution). Only after a treaty is transposed into national law the German legal system recognizes the distinction between self-executing and non self-executing treaty provisions. Treaty provisions with self-executing character do not require further specifying laws in addition to the formal transposing law, because the content of obligations may be applied directly in conjunction with the transposing legal act. German courts consider a treaty provision to be non-self-executing where the treaty explicitly excludes direct application, where it states the necessity of further implementation by state parties, or where the provision cannot be applied directly, due to its indefinite or ambiguous wording. This is for example the case if a treaty provision requires a responsible administration or a special administrative procedure without specifying it. Besides, Article 23 of the German Constitution addresses the special relationship with the EU and its legal acts which may have direct application even without additional transposing acts just like in countries with a monist legal tradition. The same is true for fundamental principles of international law. Those principles which mainly evolve through international customary law are directly applicable in the German legal order if they have self-executing character.

Italy follows the dualist tradition, in that treaties produce no direct effect unless they have been integrated via national legislation. In Italy, treaties may be implemented by means of the so-called 'special method', the 'ordinary method', or a combination of the two. The special method incorporates the treaty into national law via a short statute with the treaty annexed. It is used on a case-by-case basis where international norms have an inherent aptitude to be directly applied in the domestic order. The ordinary method reformulates and interprets the treaty before amending national legislation in order to achieve full implementation. It is used when the treaty is incapable of standing on its own feet as a national law and therefore requires legislative elaboration.

14. The Basel Convention, like most other MEAs, is typically a treaty that for many of its provisions requires further specification through implementing measures to gain full legal effect at the national level.¹¹ Parties are therefore encouraged to carefully identify which provisions must be further clarified to become fully operational (non-self-executing norms), and, where applicable, choose an implementing technique that allows for such further specification at the national level, bearing in mind as well that some countries allow for different techniques to be applied to different parts or provisions of the same treaty. In monist countries, the provisions of the Basel Convention that are identified as being directly applicable (self-executing), may usually be used as a direct legal basis, for example, of a decision by a competent authority.

1.1.3 The case of the Basel Convention

15. Identifying the Basel Convention provisions that are not self-executing and need concretization at the national level according to national laws and practices, requires a careful evaluation of each article of the Convention. Generally, the Basel Convention imposes obligations on contracting Parties, without specifying which private actor at the national level will be responsible for ensuring compliance with those obligations. In order to ensure enforceability of those obligations at the national level, implementing measures will need to define the subject or subjects of each obligation and thereby clarify the responsibilities of State authorities and private actors involved in transboundary movements of hazardous and other wastes.

16. As a general rule, it may be helpful to ask for each Basel Convention provision, whether additional legal or other measures will be necessary to ensure that they are fully operational at the national level, and, if so, identify the actor or actors that are best placed to ensure compliance with

¹¹ See in particular article 4 (4) of the Basel Convention: "Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention."

those provisions. Only then will the treaty and the national legislation be effective in achieving its objectives.¹² The Checklist for the Legislator may assist Parties in this evaluation, by providing a good overview on the different Basel Convention provisions, and highlighting for some of them how they could be transposed at the national level. The checklist is in tabular form. Each line of the table will contain:

- (a) A reference to a provision in the Convention;
- (b) A checkbox;
- (c) A description of the obligation that is contained in the provision that must, or should, be implemented by legislation or administratively.

Example — Implementation of non-self-executing provisions

Article 4.7 (b) of the Basel Convention, for example, provides that *each Party* shall “[r]equire that hazardous wastes or other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling and transport and that due account is taken of relevant internationally recognized practices.” Typically, the implementing legislation will need to define the subject of this obligation. Depending on the choice of the implementing Party this may be the exporter, the importer, and/or the transporter, or all of them.

In Canada, for example, implementing legislation designates the exporter as being responsible for ensuring, in case of export, that the applicable safety mark is displayed on each shipment of hazardous waste in accordance with applicable regulation on the transportation of dangerous goods. In case of import and transit, this obligation lies with the importer and the person conveying the wastes in transit respectively. Furthermore, a transporter must not offer for transport, transport or import hazardous wastes unless the required safety marks are displayed in accordance with applicable regulation on the transportation of dangerous goods.¹³

In Switzerland, implementing legislation assigns the responsibility to ensure the correct labelling of the wastes to the exporter, in case of export, and the disposer, in case of import. Moreover, any transporter in Switzerland must ensure that the wastes are duly labelled.¹⁴

1.2 Identifying suitable implementing measures

17. Legislation is one amongst several possible measures to implement the Basel Convention. Identifying the appropriate combination of different implementing measures for a given national context will help ensure that these measures are legally effective as well as politically and technically viable. This chapter highlights which Basel Convention provisions must or should be implemented by means of legislation and provides guidance on selecting appropriate implementing measures, where the Convention does not impose implementation by legislation. The above mentioned Checklist for the Legislator also provides indications of whether a specific Basel Convention provision can or should be implemented through legislation or administratively.

1.2.1 Implementation by legislation

18. For some of its provisions, the Basel Convention explicitly requires or implies the need for the adoption of national legislation.

19. An explicit requirement to adopt legislation is set forth in Article 9.5 of the Basel Convention. This article requires that “each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic.”

20. Other Basel Convention provisions attach international legal effect to national legislation, for example, in that certain rights under the Convention are contingent on the enactment of domestic legislation. These provisions are the following:

- (a) Article 1.1 (b) of the Basel Convention providing that the definition of “hazardous wastes” under the Convention includes “wastes [...] that are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit;”

¹² On the issue of the effectiveness of multilateral environmental agreements, see D. Bodansky, *The art and the craft of international environmental law*, Harvard, England, 2010 Please add the publisher.

¹³ See Subsections 9(i), 16(h) and 22(c) of the Export and Import of Hazardous Wastes and Hazardous Recyclable Material Regulations SOR/2005-149 and Section 4.1 of the Transportation of Dangerous Goods (TDG) Regulations, available at <http://www.basel.int/Countries/NationalLegislation/tabid/1420/Default.aspx>.

¹⁴ See Article 32 of the Ordinance on Waste Movements No 814.610, available at <https://www.admin.ch/opc/fr/classified-compilation/20021080/index.html> (in French).

(b) Article 2.1 of the Basel Convention providing that the definition of “wastes” under the Convention includes “substances or objects which are [...] required to be disposed of by the provisions of national law;”

(c) Article 4.2 (e) of the Basel Convention prohibiting the “export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports.”

21. The Convention further includes a number of provisions that require Parties to “punish or “prohibit” certain activities. Both words arguably require the adoption of national legislation to formally forbid the respective activities or to inflict a penalty or sanction for an offence against the law. One would thus expect that the act that is prohibited or subject to punishment be defined in national legislation. As regards provisions referring to the act of permitting or allowing activities, it can also be assumed that the act would need to be prohibited or otherwise prevented by law, if it has not been permitted or allowed. Finally, it is difficult to imagine how the prior informed consent regime could be achieved without the adoption of any legislative measures.¹⁵

22. The Basel Convention reference to national or domestic ‘legislation’ in some of its provisions, should be understood as covering both primary legislation (e.g. laws, acts, statutes, bills, etc.) and secondary legislation (e.g. regulations, decrees, statutory orders, etc.). Each country takes a different approach in determining how much detail to include in their primary as opposed to their secondary legislation. As a general rule, primary legislation is used to establish basic legal authority and obligations, which include fundamental objectives, requirements, standards, enforcement provisions and institutional structures. Secondary legislation, also referred to as delegated or subordinate legislation, usually sets forth more specific methods or programs to administer and meet the requirements of primary legislation or regulates aspects that require frequent updates (e.g. hazardous waste lists; lists of waste categories subject to import/export bans, etc.). The legal authority to adopt secondary legislation will usually need to be enshrined in primary legislation.

Example — Use of primary or secondary legislation to transpose the wastes lists and characteristics of the Basel Convention annexes

Wastes falling within the scope of the Basel Convention are defined in Articles 1 and 2, as further elaborated in Annexes I, II, III, VIII, and IX of the Basel Convention. Parties have multiple possibilities to reflect these annexes into their national legislation. Some of these options are easier to update than others. National legislation may for example, refer to the specific annexes of the Basel Convention, or reflect the content of the relevant annexes in an annex to the legislation, or make provision for the adoption of a regulatory text identifying the regulated wastes. In case of the first option, any amendment to the annexes of the Convention adopted by the Conference of the Parties would presumably become an integral part of the implementing law, without need to take action at the national level, unless the implementing Party did not accept the amendment. However, this option does not allow for the possibility to include a national definition of hazardous wastes according to Articles 1.1 (b) and 3 of the Basel Convention. The second option has the advantage that the law is complete in its presentation, without having to refer to another legal text. The annex could include a national definition of hazardous wastes pursuant to Articles 1.1 (b) and 3 of the Basel Convention. The third option refers to a subsidiary regulatory text that should reflect the content of Annexes I, II, III, VIII and IX of the Basel Convention and may also include a national definition of hazardous wastes pursuant to Articles 1.1 (b) and 3 of the Basel Convention. Subsidiary regulatory texts are usually subject to less restrictive amendment procedures and can thus be updated more easily than primary legislation.

23. The following factors deserve special attention, when implementing Basel Convention obligations by means of secondary legislation:

(a) Secondary legislation should be entirely consistent with the primary legislation that it is complementing;

(b) The number of different legal instruments (both primary and secondary legislation) applying to a single regulatory community should not be too high, so as not to create unnecessary confusions among implementing authorities and the regulated community;

(c) The development and adoption of secondary legislation that is necessary for the primary legislation to become operational should be prioritized, if possible in accordance with a fixed time schedule.

¹⁵ Strategies to promote full legislative implementation of the Basel Convention amongst its Parties (2014), para 26, available in UN Doc UNEP/CHW/CC.11/9, Annex.

1.2.3 Implementation by non-legislative measures

24. Except when otherwise specified or implied, the Basel Convention leaves it to each Party to determine the exact nature of the measures taken to implement the Convention.¹⁶ Legislation should be recognized as being one tool, but not always the only possible tool, for example, for establishing a comprehensive waste management framework at the national level.¹⁷ Other measures available to Parties include executive/administrative implementation such as waste management strategies, action plans, or other policy documents. These may include voluntary, information and educational programs that supplement binding legislative measures.

25. Each country will have its own set of practices and approaches to determine the appropriate combination of legislation, including secondary legislation, and other instruments to implement the Basel Convention. However, whatever instrument or instruments are used, it may be considered important that the core obligations of the Basel Convention, in particular those relating to transboundary movements of wastes, are reflected in an instrument having legally binding effect at the national level. Legally binding measures will usually be the most effective in ensuring that obligations are met.

26. Parties may wish to refer to the Checklist for the Legislator¹⁸ for guidance with respect to individual Basel Convention provisions. The checklist is designed to:

(a) Assist Parties to deliver full legislative implementation of the Basel Convention, by separating out and listing each obligation that must, or should, be implemented by legislation (laws or regulations);

(b) Ensure consistency in implementation, which is an important objective for a global treaty establishing a transboundary regime that depends on Parties' legislation working together to create a coherent and functioning international system to control transboundary movement of hazardous wastes.

27. Unless otherwise noted, the checklist focuses on the Basel Convention provisions that generally require legislative implementation. Examples where administrative, as opposed to legislative, implementation is considered practicable, include:

(a) The establishment of a mechanism for the designation of one or more competent authorities and a focal point (Articles 2.6, 2.7 and 5 of the Basel Convention);

(b) The implementation of measures related to the exchange of information with the Secretariat (Article 3.1 and 3.2 of the Basel Convention); or

(c) the implementation of principles governing waste management at the national level, such as the minimization of waste generation (Article 4.2 (a) of the Basel Convention), the availability of disposal facilities (Article 4.2 (b) of the Basel Convention) and the minimization of transboundary movements (Article 4.2 (d) of the Basel Convention).

1.3 Relevant legal frameworks and policies

28. Measures to implement and further specify the Basel Convention at the national level usually need to be embedded into a broader national waste management policy and linked to other national legal frameworks. To avoid the creation of legal loopholes and contradictions, the relationship between newly enacted legislation and the existing legal and policy framework should be examined and, if needed, clarified or adjusted. This chapter provides guidance on the identification of relevant national legislation and on the integration of new legislation into an existing national framework for waste management. It also discusses possibilities for implementing the Basel Convention in conjunction with related regional and international agreements.

¹⁶ Article 4 (4) of the Basel Convention reads as follows: "Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention." The Checklist for the Legislator provides specific guidance in this regard.

¹⁷ Guidelines for Framework Legislation for Integrated Waste Management (2016), page 15, available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

¹⁸ Annex I to the Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

1.3.1 Identification and review of relevant national legislation

29. Most countries have a basic legal and institutional framework for the management of waste that addresses to some extent the generation and management of wastes falling within the scope of the Basel Convention. For example, environmental framework legislation often covers all environmental concerns, including waste issues. Other categories of legislation that may include provisions of relevance to waste issues include legislation addressing pollution prevention and control, industrial activities, public health, or agriculture.

30. Implementing the Basel Convention provides an opportunity to ascertain the existing national legal framework for waste generation and management. Any legislation that could be of relevance, including regulatory texts (e.g. decrees, statutory orders), should be considered. Once the existing laws and regulations governing the generation and management of hazardous and household wastes have been identified, the implementing Party will need to review whether and to what extent they cover all aspects of and do not contradict any mandatory aspects of the Basel Convention.

31. Again, the Checklist for the Legislator¹⁹ can be a useful tool to help structure the review process. It covers the main obligations of the Basel Convention and thereby provides a quick overview on the various aspects addressed in the Convention.

32. There are different possibilities for including the various provisions of the Basel Convention in an existing national waste management framework. For example, countries that are in the process of or have developed environmental framework legislation may consider integrating the Basel Convention obligations into that legislation. Other countries may prefer developing a stand-alone legislation implementing the Basel Convention. Still others will build on multiple existing pieces of legislation and amend them as needed, either by repealing provisions that are contradictory to the Basel Convention or supplementing them with provisions adding new sets of norms. Parties should weigh the advantages and disadvantages of each available option to identify the optimal solution for their country.

33. Other drafting tools to clarify the relationship between different legal instruments with overlapping scopes of application are exclusions or legal preponderance. Exclusions serve to establish separate scopes of application for different legal instruments and may, for example, be used for waste streams or types of waste that are covered by specialized legislation (e.g. the disposal of explosives). The specialized legislation should be at least as protective of human health and the environment as the general legislation, so as not to create legal loopholes. The concept of subsidiary applicability serves to assign preponderance to one legal instrument over another, without excluding continued applicability of the subsidiary legal instruments, as long as its provisions are not in contradiction with the provisions of the preponderant law.

34. A review of the existing national framework would ideally be complemented by an inventory of the wastes generated and managed at the national level²⁰ so as to ensure that Basel Convention implementing legislation is tailored to the particular circumstances and needs of the implementing State.

35. In addition, it may be useful to take into account experience – both successes and challenges – with the implementation of existing legal provisions of relevance to the generation and management of wastes as this can also provide lessons learned towards the development of effective and efficient legal frameworks implementing the Basel Convention. Examples of challenges may include lack of awareness of the regulated stakeholders (whether from the private or public sector), fragmented or lack of clarity of the legal framework, lack of political will, and lack of technical knowledge. Successes may stem from a strong political will, the availability of sufficient resources, and cooperation with partners.

1.3.2 Opportunities for synergies

36. The development or review of legislation implementing the Basel Convention may provide an opportunity to put in place legislation that also reflects the provisions of related MEAs.

¹⁹ Manual for the implementation of the Basel Convention (2015), Annex I, available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

²⁰ For guidance on the development of an inventory, see the Methodological Guide for the development of inventories of hazardous wastes and other wastes under the Basel Convention available at <http://basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

37. The relevant provisions of regional waste management treaties concluded pursuant to Article 11 of the Basel Convention, such as the Bamako Convention²¹ and the Waigani Convention,²² can, with limited additional effort, be integrated within national legislation implementing the Basel Convention.

38. Other international treaties that could be taken into account include, for example, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention)²³ and the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention).²⁴ The implementation of the three conventions can be promoted through the development of legislation based on a life-cycle approach to chemicals management. This approach will substantially enlarge the scope of the legislative project though and may be challenging for Parties that have been struggling to adopt implementing legislation. Alternatively, Parties may look for opportunities to creating more targeted synergies when implementing different MEAs, for example, at the institutional level.

Example — Synergies at the institutional level

The Basel, Rotterdam and Stockholm Conventions each provide for the designation of an entity responsible for communicating with the Secretariat of the conventions (focal/contact points). The designation of this entity provides an opportunity for synergies at the institutional level. Gambia's National Environmental Agency (NEA), for example, is the focal point/official contact point for the Basel, Rotterdam and Stockholm Conventions.

Another example is the use of synergies within Customs authorities. Customs authorities may consider taking a comprehensive and integrated approach to preventing and reacting to illegal imports and exports of chemicals and wastes covered by the conventions.²⁵

1.4 Involving interested actors into the drafting process

39. Meaningful involvement of interested government entities and stakeholder groups in the drafting process plays an important role in securing the quality of implementing measures, as well as broad support for their implementation. This chapter provides guidance on planning the drafting process, including the involvement of interested state agencies and stakeholder groups into the drafting process.

1.4.1 Process to draft legislation

40. A number of activities are likely to be undertaken when developing or reviewing legislation and regulations, including the following:

- (a) Establish or implement a mechanism for appropriate coordination among or consultation with relevant governmental authorities;
- (b) Establish or implement a mechanism for appropriate consultation with other interested stakeholders;
- (c) Ensure access to technical and legal expertise;

²¹ Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of hazardous Wastes within Africa (1991, 1998), available at <http://www.unep.org/delc/BamakoConvention/BamakoBackgroundDocuments/tabid/106424/Default.aspx>.

²² Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control Transboundary Movement of Hazardous Wastes within the South Pacific Region (1995, 2001), available at <http://www.sprep.org/legal/the-convention-waigani>.

²³ The text of the Rotterdam Convention is available at <http://www.pic.int/TheConvention/Overview/TextoftheConvention/tabid/1048/language/en-US/Default.aspx>. Guidance towards the development of legislation is set out in the publication Guide on the Development of National Laws to Implement the Rotterdam Convention, available at: <http://www.pic.int/Implementation/ResourceKit/tabid/1064/language/en-US/Default.aspx>.

²⁴ The text of the Stockholm Convention is available at <http://chm.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx>. Guidance towards the development of legislation is set out in the publication Developing National Legal Frameworks to Implement the Stockholm Convention on Persistent Organic Pollutants – A Guide, available at <http://chm.pops.int/Implementation/Publications/Guidelines/tabid/3071/Default.aspx>.

²⁵ See the Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions available at <http://synergies.pops.int/Implementation/TechnicalAssistance/ToolsandMethodologies/ManualforCustomsOfficers/tabid/4457/language/en-US/Default.aspx>.

(d) Provide accessible, understandable information about the law development process to the public and opportunities for public participation and input.

41. As a general rule, it is desirable that government officials entrusted with drafting Basel Convention implementing legislation actually lead and are substantially involved in this process. A recurrent challenge in developing countries is the limited resources, both in time and in expertise, of public servants. To overcome this challenge, some States have hired private consultants for drafting implementing legislation, which has led to mixed success.²⁶ It is recommended that in the event it is necessary to hire a consultant from a different country, this consultant be paired with a local consultant or institution that is familiar with the legal, policy, institutional and socio-economic context.²⁷

1.4.2 Inter-agency cooperation

42. Waste generation and management measures usually touch upon the competences of several ministries, including ministries of environment, ministries of public health, ministries of industry and commerce, ministries of agriculture and ministries of justice. Other potentially interested entities include sub-national authorities (e.g. provinces, states, municipalities). The involvement of sub-national authorities is particularly relevant to federal states and other states with decentralized waste management competences, to help ensure that the goals and strategies for waste management defined at the national level are realistic and will be reflected in sub-national policies.

43. The involvement of interested ministries and sub-national authorities in the drafting process can take many forms, from providing opportunities to comment on draft legislation to the constitution of inter-agency drafting groups. Whatever approach is preferred, it might be useful to designate a lead agency for the process, responsible for meeting the time schedule and coordinating the input from different entities.

1.4.3 Stakeholder consultations

44. Consulting interested stakeholders on draft legislation can improve the quality of the legislation and increase their commitment to the objectives of the legislation, with positive effects on compliance rates.²⁸ Relevant stakeholder groups include representatives from the waste generation and management sectors, including the major waste generators, waste collectors, waste transporters, waste disposers, and the informal waste sector. A number of states also allow the public to participate in the development of legislation, for instance through non-governmental organizations.

45. Stakeholder consultations can be organized in a variety of ways. A common way of requesting input from interested groups and members of the public consist in publishing the draft legislation with a call for comments. Other means of stakeholder consultation could involve the publication of the draft legislation on the government website or in newspapers, or the organization of consultative meetings. In order to gain real support from interested stakeholder groups, consultations should be meaningful, in that received comments are taken into account as far as compatible with the objectives of the draft legislation.²⁹

²⁶ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 330, available at

http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

²⁷ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 330, available at

http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

²⁸ Translating Environmental Law into Practice: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia (2007), page 25, available at <https://www.oecd.org/env/outreach/39236907.pdf>.

²⁹ Translating Environmental Law into Practice: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia (2007), page 29, available at <https://www.oecd.org/env/outreach/39236907.pdf>.

Example — Involvement of government institutions and stakeholder consultations in the drafting process

In South Africa, for example, the draft language of the 2008 waste management law was developed by a group of lawyers and thereafter submitted to the Minister of Environmental Affairs and Tourism, the provincial governments, and other governmental institutions (e.g. government institutions responsible for transport and agriculture) for their consultation and comments. Prior to its adoption in 2008, a draft version of the law was also published in the Gazette with a corresponding call for comments, to gather input from interested stakeholders and the public in general.³⁰

2. Drafting implementing legislation

46. The process of drafting Basel Convention implementing legislation usually involves the consideration of multiple drafting options and development of numerous successive drafts until the desired final draft is achieved. The rights of and obligations on Parties set forth in the Basel Convention are the bedrock of that process. The present section provides guidance on how to transpose the Basel Convention provisions into the national legal framework at the level of individual Basel Convention articles. Implementing legislation should tackle the different provisions from the perspectives of a State of import, export and transit, to account for each situation in which the implementing Party might find itself. The section is organized under nine thematic headings:

- (a) Objective;
- (b) Scope;
- (c) Definitions;
- (d) Institutional framework;
- (e) Waste management principles;
- (f) Transboundary movements;
- (g) Illegal traffic;
- (h) Enforcement;
- (i) Information exchange.

47. The suggested categorization of the Basel Convention provisions and the drafting examples included at the end of each drafting element may serve as a starting point for the drafting process. They should be further developed to account for existing waste management legislation, the national status of waste management, institutional capacities, political realities, technological capacities and any other relevant information identified during the preparatory process. Draft texts should be checked against the background of the legal system to avoid inconsistencies with existing legal, including constitutional norms.

2.1 Objective

48. Knowing the purpose of a legal instrument and the principles upon which it was predicated may assist the regulated community, administrative authorities and courts in ascertaining the legislative intent when applying or interpreting the law. In some countries, it is therefore common drafting practice to explicitly state the objective of legal instruments in the operative part of the law, while in others, this is contained in the preamble. The objective of a legal instrument may be expressed as a single-purpose or a multi-purpose statement at different levels of specificity.

49. The objective of Basel Convention implementing legislation may be defined as being the implementation of that Convention. A direct reference to the Basel Convention in the legislative text or preamble can be useful to domestic courts in interpreting the law.

50. Another approach could consist in re-phrasing the objective of the Basel Convention. While the Convention does not state an “objective” in its operative part, the preambular paragraphs of the Convention help clarify its object and purpose. The last paragraph of the preamble stating that the Parties to the Convention are “determined to protect, by strict control, human health and the

³⁰ This example is cited in the Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 318, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

environment against the adverse effects which may result from the generation and management of hazardous wastes” may be seen as particularly relevant.

Example — Definition of objective of the implementing legislation

Australia, for example, is a contracting Party of the Basel Convention and the Waigani Convention, a regional convention adopted pursuant to Article 11 of the Basel Convention. The main implementing legislation for both conventions is the Hazardous Waste (Regulation of Exports and Imports) Act of 1989.³¹ Object and aims of that Act are defined in section 3 of the Act. The section includes a reference to both the general purpose of protecting the environment from harmful effects of wastes (Section 3.1) and the specific aim to implement the Basel and Waigani Conventions (Section 3.2).

– Section 3.1 on the object of the Act reads: “The object of this Act is to regulate the export, import and transit of hazardous waste to ensure that exported, imported or transited waste is managed in an environmentally sound manner so that human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste.”

– Section 3.2 on the aims of the Act reads: “The aims of this Act are: (a) to give effect to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and (b) to give effect to agreements and arrangements of the kind mentioned in Article 11 of the Convention.”

51. Some countries’ legislation also cites general principles of environmental law or waste management that informed the legislative project as part of the objective or preamble of the Basel Convention implementing legislation. These may include the following principles:

- (a) Sustainable development;
- (b) Precautionary principle;
- (c) Pollution prevention;
- (d) Polluter pays principle;
- (e) Life-cycle approach
- (f) Waste hierarchy;
- (g) Environmentally sound management;
- (h) Public participation and right to know.

52. Ideally the operative provisions and requirements of the legal instrument should provide effective means to achieve the defined objective.

Example — References to general waste management principles in the preamble of the implementing legislation

The main Basel Convention implementing legislation of the European Union is Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006. Paragraph 1 of the preamble defines the Regulation’s main objective as follows: “The main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental.”

Other paragraphs of the preamble refer to relevant decisions and regulations of the European Union, as well as several waste management principles, such as the principle of minimization of transboundary movements of hazardous and other wastes (paragraph 8 of the preamble) and the right of each Basel Convention Party to prohibit the import of hazardous or other wastes (paragraph 9 of the preamble).

Example of transposition

Art [...]	Aim and objective	BC provision:
¹	The aim of this law is to give effect to the Basel Convention on the Control of Transboundary movements of Hazardous Wastes and Their Disposal (Basel Convention).	> Preamble
²	The objective of this law is to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes	

2.2 Scope

53. A clear definition of the scope of the Basel Convention implementing legislation is essential for the regulated community to understand its obligations. The legal instrument should therefore

³¹ The Act is available on the Basel Convention website at <http://www.basel.int/Countries/NationalLegislation/tabid/1420/Default.aspx>.

specify its exact scope or provide for subsequent definition of the scope by means of secondary legislation.

54. Basel Convention implementing legislation should, at a minimum, apply to those categories of waste covered by the Basel Convention. Article 1 of the Basel Convention read in conjunction with Article 2.1 sets forth the scope of the Convention by indicating the categories of wastes to which the Convention applies.

55. The starting point is the definition of the term waste as “substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law” (Article 2.1 of the Basel Convention). By including wastes that are “required to be disposed of by national law”, the Basel Convention allows for the possibility that certain substances or objects are considered wastes in some countries, but not in others.

Example — National definition of wastes

The Basel Convention definition of “wastes” allows Parties to bring substances and objects under the scope of the Convention by the adoption of national law requiring their disposal.³² For example, State A prohibits the use of paint containing lead by the adoption of a new law requiring that all remaining stocks are subject to environmentally sound disposal. Obsolete stocks of lead paint would then fall within the definition of “waste” in State A and are subject to the requirements of the Basel Convention in case of transboundary movement into, out of, or through State A (See Annex I, Entry Y31). If State A exports its obsolete stocks to State B, the Basel Convention applies, even if State B does not consider the stocks to qualify as wastes. This means, in particular, that the exporter or competent authority of State A (State of export) must notify and obtain consent from State B and any State of transit before authorizing the transboundary movement. Conversely, if State B proposes to export such paint to State A, the transboundary movement is subject to the prior written consent of State A (State of import), and of any State of transit which is a Party. Pursuant to Article 6.5 (b) of the Basel Convention the obligation to notify the competent authority of State A (State of import) and the competent authority of any transit State lies, in this case, with the importer or disposer in State A, as opposed to the exporter in State B. For further clarifications on the application of the prior informed consent procedure in cases where not all States concerned by a transboundary movement consider those wastes to be hazardous please refer to subsection 2.6 on transboundary movements.

56. The Basel Convention applies to any such wastes falling within the category of “hazardous wastes” or “other wastes”. The definition of hazardous wastes was developed in two stages. When the Convention was adopted, Annexes I to III were included, listing those wastes that were to be controlled and their characteristics. A waste which falls under any of the categories of waste in Annex I (Y1-Y45) to the Convention is considered to be hazardous wastes and subject to the Basel Convention, unless it can be shown that the waste does not possess or exhibit any of the hazardous characteristics described in Annex III to the Convention. In 1998, the Conference of the Parties adopted two additional annexes (Annexes VIII and IX), which provide more details as to which wastes are covered or not by the Convention. Annex VIII (list A) lists wastes that presumably fall within a category of Annex I and are characterized as hazardous. As with Annex I, if Annex VIII wastes do not possess any of the characteristics described in Annex III (explosiveness, corrosivity, toxicity, etc.) they are not subject to the Convention controls. Annex IX (list B) contains wastes that are not hazardous unless they contain Annex I material to an extent that makes them exhibit an Annex III characteristic. If they do exhibit an Annex III characteristic, the wastes are covered by the Convention. Under Article 1.1 (b) of the Basel Convention Parties have the possibility to adopt a national definition of hazardous wastes that extends the scope of application of the Basel Convention.³³ In order to do so, the implementing Party must consider the additional wastes as hazardous in their implementing legislation and notify the Secretariat thereof (Article 3 of the Basel Convention).

57. So-called “other wastes” include the categories of wastes listed in Annex II to the Convention (Article 1.2 of the Basel Convention), namely wastes collected from households (Y46) and residues arising from the incineration of household wastes (Y47). “Other wastes” are treated identically to hazardous wastes in the operative part of the Convention.

58. Radioactive wastes that are subject to other international control systems (Article 1.3 of the Basel Convention) and wastes deriving from the normal operation of ships, the discharge of which is covered by another international instrument (Article 1.4 of the Basel Convention), are excluded from the scope of application of the Basel Convention.

³² Glossary of terms (2017), Part II: Waste definition (a) (iii), available at [...].

³³ For further clarifications on the application of the prior informed consent procedure in cases where not all States concerned by a transboundary movement consider those wastes to be hazardous please refer to subsection 2.6 on transboundary movements.

59. The *Glossary of terms* adopted by the Conference of the Parties at its thirteenth meeting provides further guidance on the definition of the terms “hazardous wastes” and “other wastes”, including on when a particular substance or object becomes waste and ceases to be waste.³⁴

60. Parties have multiple possibilities to include the Basel Convention waste definition based on Annexes I, II, III, VIII, and IX of the Basel Convention into their national legislation. Basel Convention implementing legislation may for example, refer to the annexes to the Basel Convention, reflect the content of the relevant annexes in an annex to the legislation, or make provision for the adoption of a regulatory text identifying the regulated wastes. The first option, as opposed to the second and third options, does not allow for the possibility to include a national definition of hazardous wastes according to Articles 1.1 (b) and 3 of the Basel Convention.

Example — Transposition of the hazardous waste and other waste definitions

Singapore’s Hazardous Waste (Control of Export, Import and Transit) Act of 1998 applies to “hazardous wastes” and “other wastes”, using the same terminology as the Convention. The definitions of those terms are contained in Section 4 of the Act.

“Hazardous wastes” means:

- Waste prescribed by any regulation made under the Act, where the wastes has any of the characteristics mentioned in Annex III to the Basel Convention;³⁵ or
- Waste that belongs to any category contained in Annex I of the Basel Convention, unless it does not possess any of the characteristics contained in Annex III of that Convention.³⁶

“Other wastes” means:

- Household waste; or
- Residues arising from the incineration of household waste.

Wastes derived from the normal operations of a ship and radioactive wastes are excluded.

Australia’s main legal instrument implementing the Basel Convention, the Hazardous Waste (Regulation of Exports and Imports) Act of 1989,³⁷ regulates the export, import and transit of hazardous wastes. For the purpose of the application of the Act, “other wastes” are subsumed under the “hazardous wastes” definition in section 4 of the Act, which includes:

- Wastes covered by Article 1.1 (a) of the Basel Convention³⁸ (i.e. wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III);
- Wastes prescribed as hazardous by regulation, where the waste has any of the characteristics mentioned in Annex III of the Convention;
- Household wastes; and
- Residues arising from the incineration of household wastes.

Wastes covered by Article 1.4 of the Convention³⁹ are excluded.

Under the Act, “other wastes” are thus subject to the same obligations, as wastes that are defined as hazardous under the Convention, without them being specifically mentioned each time. Note however that the definition of hazardous wastes of Section 4 applies to the interpretation of the Act only. While the definition accounts for the possibility to extend the hazardous waste definition by the adoption of regulation pursuant to Article 1.1 (b) of the Convention, it does not itself constitute a definition of “hazardous wastes” for the purpose of Article 1.1 (b) of the Convention.

Togo’s implementing legislation of the Basel Convention, the Hazardous Waste (Control of Export, Import and Transit) Act, only applies to “hazardous wastes” as defined in [annex 1] [the annexes] to the Act. [Annex 1 of the Act corresponds to Annex I of the Convention]. “Other wastes” (household wastes and residues arising from the incineration of household wastes) are regulated in the framework law on the environment (loi-cadre sur l’environnement). In this situation, it is important to ensure that the legal instrument covering “other wastes” also implements all aspects of and does not contradict any mandatory aspects of the Basel Convention. The Basel Convention subjects “other wastes” to the exact same obligations as “hazardous wastes”. For example, a transboundary movement of household wastes without prior written consent from the State of import is considered illegal traffic pursuant to Article 9.1 of the Basel Convention.

61. From a practical point of view, legal drafters should bear in mind that Annexes VIII and IX of the Convention were adopted for the purposes of providing greater clarity to Annex I. Both Annexes may be amended from time to time. Six months after their adoption, the amendments automatically

³⁴ The glossary of terms is available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

³⁵ Translates the possibility of Article 1.1 (b) for the implementing Party to extend the definition of hazardous wastes by the adoption of domestic legislation.

³⁶ Corresponds to Article 1.1 (a) of the Basel Convention.

³⁷ The Act is available on the Basel Convention website at <http://www.basel.int/Countries/NationalLegislation/tabid/1420/Default.aspx> (under Australia).

³⁸ These are wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.

³⁹ These are wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III.

become effective for Parties that have not notified the depositary that they are unable to accept them. Parties should provide for a mechanism to keep track of amendments to those annexes and transpose them in a timely manner into national legislation.

– Where the implementing Party opts for defining the scope of the implementing legislation by reference to the annexes to the Basel Convention, any amendment to the annexes of the Convention adopted by the Conference of the Parties would become an integral part of the implementing law, without need to take action at the national level, unless the implementing Party did not accept the amendment.

– Where the implementing Party chooses to reflect the content of the Basel Convention annexes in the implementing legislation itself (e.g. in one or several annexes) or in a subsidiary regulatory text, the waste lists will need to be updated to reflect an amendment Annexes VII and IX of the Basel Convention. Subsidiary regulatory texts are usually subject to less restrictive amendment procedures and can thus be updated more easily than primary legislation.

62. Some countries may use the momentum of the implementation of the Basel Convention at the national level as an opportunity to design comprehensive waste management legislation, governing the management of all types of wastes. The scope of the draft instrument may then be broader than the scope of the Basel Convention. It is however important to remember that other Parties to the Convention are only bound to respect the Basel Convention procedures vis-à-vis the implementing Party in respect of those categories of wastes that fall within the scope of the Basel Convention. This definition includes wastes that are defined as “hazardous” by national legislation, if notified to the Secretariat of the Basel Convention according to Article 3 of the Basel Convention, but cannot be extended to non-hazardous waste beyond the categories listed in Annex II of the Basel Convention, for example.⁴⁰ Where the provisions transposing the Basel Convention are included into a broader waste management legislation governing all types of wastes, the narrower scope of application of the section or provisions on transboundary movements (hazardous wastes and other wastes) should be reflected in the text of this section or provisions.

63. Finally, Parties are encouraged to clearly state the relationship of the draft legal instrument with existing laws, such as framework laws on the environment, more general laws on the generation and management of wastes, or regulatory texts adopted in related areas (e.g. health, labor protection, chemicals, industrial sectors, agriculture, urbanization, accident prevention, etc.). Such clarification may, for example, be included in the article defining the scope of application of the legal instrument.

Example of transposition

Art [...]	Scope	BC provision:
¹	This law applies to hazardous wastes and other wastes.	> Art 1
²	The law does not apply to:	
	a. Radioactive wastes subject to other international control systems and international instruments applying specifically to radioactive materials;	> Art 1.3
	b. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.	> Art 1.4
³	“Wastes” are substances or objects which are disposed of or are intended to be disposed of.	> Art 2.1
^{3 ALT}	“Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed according to the provisions of this law, namely:	
	a. [...]	
	b. [...]	
⁴	“Hazardous wastes” are wastes subject to transboundary movement that belong to any category contained in Annex I or VIII of the Basel Convention, unless they do not possess any of the characteristics contained in Annex III to the Basel Convention. The categories of waste contained in Annex IX of the Basel Convention are presumed non hazardous, unless they contain material of Annex I to Basel Convention to an extent causing them to exhibit a characteristic of Annex III to the Basel Convention.	> Art 1.1 + Art 3
^{4 ALT}	“Hazardous wastes” are wastes subject to transboundary movement that belong to any category contained in Annex I of this law to an extent causing them to exhibit a characteristic of Annex III to this law.	

⁴⁰ For further clarifications on the application of the prior informed consent procedure in cases where not all States concerned by a transboundary movement consider those wastes to be hazardous please refer to subsection 2.6 on transboundary movements.

⁴ ALT BIS “Hazardous wastes” are wastes subject to transboundary movement, as identified by decree of [NAME OF AGENCY].

⁵ “Other wastes” are wastes subject to transboundary movement that belong to any category contained in Annex II of the Basel Convention. > Art 1.2

⁵ ALT “Other wastes” are wastes subject to transboundary movement that belong to any category contained in Annex II of this law.

2.3 Definitions

64. A cornerstone of legal drafting is the definition and consistent use of the terminology employed in the legal instrument. Definitions of key terminology are often included at the beginning of a legal instrument, or the relevant section of the legislation, for the reader to be able to easily refer to them.

65. Article 2 of the Basel Convention defines the terminology used in the Convention. Most definitions of Article 2 are directly relevant to understanding the scope of the Basel Convention. The glossary of terms⁴¹ further clarifies some of these terms. An easy way to ensure that the scope of the Basel Convention implementing legislation covers all aspects of the Basel Convention is to adopt the definitions as used in the Basel Convention and draft the implementing legislation on this basis.

66. Where the definition of a particular term in the Convention is inconsistent with how this term is used under national laws, and the implementing Party wishes to maintain the national definition, legal drafters need to be particularly careful in ensuring consistency between the implementing legislation and the Basel Convention.

Example — Use of national terminology in Basel Convention implementing legislation

The term “disposal”, for example, is used under the Basel Convention to refer to any operation listed in Annex IV to the Convention. Annex IV includes both final disposal operations (Annex IV-A) and recovery operations (Annex IV-B). In some countries, “disposal” and “recovery” are distinct terms, with the term “disposal” only covering final disposal operations (Annex IV-A). If Parties decide to continue using their national terminology they must be careful not to limit the scope of the Basel Convention obligations when transposing them into national law. In the mentioned example, whenever the Basel Convention refers to “disposal”, the term would need to be replaced by a reference to “disposal and recovery”. Similar problems may, for example, arise with the definition of the term “waste management”.

67. Drafters are also encouraged to complement the list of definitions of Article 2 of the Basel Convention and adapt Basel Convention definitions to national circumstances, if necessary, and to clarify grey areas, where appropriate. However, unless the Convention provides otherwise (e.g. definition of “hazardous wastes”), extending the scope of Basel Convention definitions at the national level does not create new obligations on other Parties.

Example — National clarifications to Basel Convention terminology

Other terms that may require clarification under national law include the terms “Basel Convention”, “movement document”, “notification document” or “transit State”, among others. The term “notification document” can, for example, be defined as “the document used to notify the competent authority of any proposed transboundary movement of hazardous or other wastes and that provides the declarations and information specified in Annex V-A of the Basel Convention according to the format approved by the Conference of the Parties to the Basel Convention” (Annex V-A). The term “movement document” could be defined as “the document that each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign either upon delivery or receipt of the wastes in question and that provides the declarations and information specified in Annex V-B of the Basel Convention according to the format approved by the Conference of the Parties to the Basel Convention” (Annex V-B).

The term “State of transit” is defined in Article 2 of the Basel Convention as any State, other than the State of export or import, through which a movement of hazardous wastes or other waste is planned to take place. At the national level, the term “transit” can, for example, be defined in a way that clarifies whether it covers, for example, the exclusive economic zone, the territorial sea, free zones, entering a port, docking or the unloading of the wastes.

⁴¹ Glossary of terms (2017), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

Example of transposition

Art [...]	Definitions	BC provision:
¹	“Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites.	> Art 2.2
²	“Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement.	> Art 2.3
³	“Disposal” means any operation specified in Annex IV to the Basel Convention.	> Art 2.4
^{3 ALT}	“Disposal” means any operation specified in Annex IV of this law.	
⁴	“Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located.	> Art 2.5
⁵	“Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.	> Art 2.8
⁶	“Area under the national jurisdiction of a State” means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health of the environment.	> Art 2.9
⁷	“State of export” means a Party to the Basel Convention from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated.	> Art 2.10
⁸	“State of import” means a Party to Basel Convention to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State.	> Art 2.11
⁹	“State of transit” means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place.	> Art 2.12
^{9 ALT}	State of transit” means [...]	
¹⁰	“States concerned” means Parties to the Basel Convention which are States of export or import, or transit States, whether or not Parties to the Basel Convention.	> Art 2.13
¹¹	“Person” means any natural or legal person.	> Art 2.14
¹²	“Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported.	> Art 2.15
¹³	“Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported.	> Art 2.16
¹⁴	“Carrier” means any person who carries out the transport of hazardous wastes or other wastes.	> Art 2.17
¹⁵	“Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes.	> Art 2.18
¹⁶	“Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes.	> Art 2.19
¹⁷	“Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article [...] of this law.	> Art 2.21

2.4 Institutional framework

68. The Basel Convention requires each Party to designate one or several competent authorities and one focal point (Article 5 of the Basel Convention). The competent authority receives and responds to notifications of transboundary movements of hazardous and other wastes, and any related information (Article 2.6 of the Basel Convention). The focal point is responsible for receiving and submitting information to the Basel Convention Secretariat (Article 2.7 of the Basel Convention). Only one focal point is to be designated. One or more competent authorities may be designated to respond to notifications for export and import, however, only one competent authority for transit notifications.

69. Parties are obliged to inform the Secretariat of their designations within three months of the date the Convention enters into force for them and of any subsequent changes in designations (Article 5.2 and 5.3 of the Basel Convention). More information on the frequency and format of notifications

of designations of contacts to the Secretariat, as well as a list of competent authorities and focal points may be found on the Convention website.⁴²

70. The control system under the Convention cannot function properly unless each Party has designated its competent authorities and focal point and notified them to other Parties through the Secretariat. Parties are free to determine the structure to be given to such authorities, its staffing, the particular ministry under which to establish them, and so forth, depending on factors such as the legal context and existing institutional constraints, traditions and resources availability. Parties, e.g. federal states and states with decentralized waste management systems, may designate different competent authorities depending for instance on the geographical area.⁴³

71. Focal points and competent authorities do not necessarily need to be designated by legislation. However, national administrative authorities generally operate on the basis of legal mandates and legal authorities contained in relevant laws. Parties should therefore ensure that the focal point and competent authorities are vested with the necessary legal authority to carry out their functions.

72. The implementation and enforcement of the Basel Convention usually also involves other entities than the competent authorities and focal point, such as administrative authorities with primary responsibility to implement related laws, specialized enforcement agencies, and subnational authorities. Parties should therefore define by regulation or other administrative means, how the competent authorities will coordinate with other governmental entities and the public in carrying out their specified functions. This involves establishing sufficiently clear divisions of responsibilities among national authorities, as well as developing mechanisms for cooperation (information sharing, databases, advisory bodies, inter-ministerial committees, procedures for communication, memoranda of understanding, guidelines for cooperation, joint work programs, etc.).

Example — Cooperation with subnational entities

An important aspect of the cooperation with subnational entities is to ensure the exchange of information between the subnational and the national authorities. In countries where regional authorities are responsible for authorizing transboundary movements, the national government may play a role in collecting, analyzing, and making the data available at the national level. The role of national authorities may also go beyond data collection and information exchange. Some countries' waste legislation specifies that waste management plans adopted at the subnational level must be communicated to (e.g. Switzerland)⁴⁴ or approved by (e.g. South Africa)⁴⁵ the national government.

73. As for competent authorities and focal points, it may be necessary to adjust the mandate of other involved institutions to provide them with the discretion needed to fulfill their respective responsibilities. Enforcement agencies, for example, usually need to base their actions on a clear legal mandate, such as for having access to the relevant facilities for inspection, appropriate investigative powers and in some instances, for imposing sanctions.

74. Finally, legal drafters should include provision to secure the necessary financial resources for the designated authorities to execute and implement their assigned responsibilities, unless other national processes exist to do so (e.g. appropriations legislation). Implementing the Basel Convention obligations will entail new financial burdens for the administration. Parties should carefully estimate these costs (equipment for offices; staff; administrative procedures; financial contributions to Secretariat; etc.). Even well-written legislation may have little practical effect in the absence of sufficient levels of funding. A key means to achieve financial viability of the implementing legislation is to include provision for securing financial resources into the legislation itself, e.g. through fees, or ensuring that this is accounted for in the government appropriations process. Implementing measures may for example provide for cost-recovery contributions from the regulated community to reduce the financial burden on the administration. The *Practical manual on financing* developed by the Basel Convention expert working group on environmentally sound management includes further guidance on the topic.⁴⁶

⁴² See <http://basel.int/Procedures/CompetentAuthorities/tabid/1324/Default.aspx>, <http://basel.int/Procedures/FocalPoint/tabid/1325/Default.aspx> and <http://basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>.

⁴³ This is the case for instance in Germany.

⁴⁴ See Article 31.2 of the Swiss Environmental Protection Act (No. 814.01) of 7 October 1983.

⁴⁵ See Section 11.5 of the South African National Environmental Management: Waste Act (No. 59) of 2008.

⁴⁶ *Practical manual on financing (...)*; available at [...].

Example — Cost-recovery through administrative fees

Singapore, for example, chose to levy a fee on the processing of applications for import, export and transit permits. Section 24 (1) of the Hazardous Waste (Control of Export, Import and Transit) Act of 1998 provides the legal basis for the adoption of subsidiary regulations prescribing such fees. The applicable fees are defined in Regulation 32 read in conjunction with the Schedule of the Hazardous Waste (Control of Export, Import and Transit) Regulations of 1998. As of Mar 2018, the payable fee is S\$335 for Basel permits or so-called special permits valid for one year, S\$125 for permits valid for 3 months, and S\$45 per application for variations to a Basel permit or so-called special permit. If an application or a notice is not accompanied by the prescribed fee, the application or notice is taken not to have been received by the competent authority until the fee has been paid (See Section 24 (3) of the Act).

Example of transposition

Art [...]	Authority	BC provision:
¹	[NAME OF AGENCY] is responsible for implementing this law. It shall adopt, as needed, related regulatory texts and take appropriate measures to prevent and punish any conduct in contravention to the provisions of this law, or, if appropriate, cooperate thereto with relevant authorities.	> Art 4.4
²	[NAME OF AGENCY] shall designate a focal point [within three month of the date of entry into force of the Basel Convention for [NAME OF COUNTRY] and inform the Secretariat of the Basel Convention of the designation made, as well as of any changes regarding the designation made, within one month of the date of decision.	> Art 5
³	[NAME OF AGENCY] shall designate or establish one or more competent authorities, one competent authorities being designated to receive the notification of a proposed transit of hazardous wastes or other wastes, [within three month of the date of entry into force of the Base Convention for [NAME OF COUNTRY]] and inform the Secretariat of the Basel Convention of the designations made, as well as of any changes regarding the designation made, within one month of the date of decision.	> Art 5
⁴	[NAME OF AGENCY] shall publicly make available the information and documents necessary to the implementation of this law, such as the notification and movement documents approved by the Conference of the Parties to the Basel Convention.	[> Art 4.4]

2.5 Waste management principles

75. The Basel Convention includes a number of general rules and principles pertaining to the environmentally sound management of hazardous and other wastes. Parties must take appropriate measures to:

- (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects (Article 4.2 (a) of the Basel Convention);
- (b) Ensure the availability of adequate disposal facilities for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal (Article 4.2 (b) of the Basel Convention);
- (c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment (Article 4.2 (c) of the Basel Convention).

76. General principles pertaining to the regulation of transboundary movements are addressed in section 2.6 on transboundary movements.

77. The wastes management principles of the Basel Convention do provide a framework for more specific domestic measures, and should as such be reflected in the national legal and policy framework applicable to the generation and management of hazardous and other wastes. They need not necessarily be implemented through legislation and other approaches (e.g. waste management strategies) can contribute to the achievement of these obligations. Where the implementing Party chooses to include the above principles in their implementing legislation, the legal instrument should preferably also provide for a clear mandate for their further elaboration to ensure their enforceability.

Example — National implementation of waste management principles

The general obligations on wastes management set forth in the Basel Convention usually require further elaboration at the national level, to become fully effective. Article 4.2 (a) of the Basel Convention, for example, requires Parties to ensure that the generation of hazardous wastes and other waste within it is reduced to a minimum, taking into account social, technological and economic aspects. The implementing Party may wish to include provisions to clarify the requirements that will allow monitoring progress in minimization of hazardous and other wastes, bearing in mind the Cartagena Declaration on the prevention, minimization and recovery of hazardous wastes and other wastes adopted by the Conference of the Parties at its tenth meeting.⁴⁷ Other approaches of a purely policy nature can also contribute to Parties meeting these general obligations.

Cabo Verde's Waste Management Act of 2015, for example, includes a range of different measures to minimize the generation of hazardous wastes and other wastes within the country, namely:

- The adoption of a Strategic Waste Prevention and Management Plan to implement waste management principles, which includes a waste prevention program (See Articles 22 and Section II of the Act);
- An obligation on waste generators that produce wastes subject to registration to adopt internal wastes prevention and management plans, which must among others envisage a considerable reduction of the quantity and hazardousness of the produced wastes (See Article 38 of the Act); and
- An obligation on product producer to consider ways to reduce the use of hazardous substances in products and promote product designs that generate less waste during the production process (See Article 17 of the Act).

78. Ideally, the adopted implementing measures should cover all aspects of the hazardous and other wastes management cycle, including generation, collection, transport, and disposal, including storage. Useful guidance materials on developing a comprehensive framework for environmentally sound management of hazardous wastes and other wastes include the following:

- (a) Framework for the environmentally sound management of hazardous wastes and other wastes;⁴⁸
- (b) Basel Convention technical guidelines;⁴⁹
- (c) Guidelines for Framework Legislation for Integrated Waste Management (UNEP).⁵⁰

Example of transposition

Art [...]	Principles of waste management	BC provision:
¹	[NAME OF AGENCY] shall take the appropriate measures to:	
a.	Ensure that the generation of hazardous wastes and other wastes within [NAME OF COUNTRY] is reduced to a minimum.	> Art 4.2 (a)
b.	Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located to the extent possible, within [NAME OF COUNTRY];	> Art 4.2 (b)
c.	Ensure that persons involved in the management of hazardous wastes or other wastes within the country take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.	> Art 4.2 (c)

2.6 Transboundary movements**2.6.1 General principles**

79. The Basel Convention also includes a number of general principles pertaining to the regulation of transboundary movements of hazardous and other wastes. Parties are, in particular required to take appropriate measures to:

⁴⁷ The declaration is available at: <http://www.basel.int/COP10/CartagenaDeclaration/tabid/2433/Default.aspx>

⁴⁸ Framework for the environmentally sound management of hazardous wastes and other wastes (2013), available at <http://www.basel.int/Implementation/CountryLedInitiative/EnvironmentallySoundManagement/ESMFramework/tabid/3616/Default.aspx>.

⁴⁹ Basel Convention technical guidelines, available at <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>.

⁵⁰ Guidelines for Framework Legislation for Integrated Waste Management (2016), available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

(a) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement (Article 4.2 (d) of the Basel Convention);

(b) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting (Article 4.2 (e) of the Basel Convention);

(c) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to States concerned, according to Annex VA, to state clearly the effects of the proposed movement on human health and the environment (Article 4.2 (f) of the Basel Convention);

(d) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner (Article 4.2 (g) of the Basel Convention);

(e) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic (Article 4.2 (h) of the Basel Convention);

(f) Ensure that transboundary movements only be allowed if: (a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; (b) the waste in question are required as a raw material for recycling or recovery industries in the State of import; or (c) the transboundary movement in question is in accordance with other criteria to be decided by the parties, provided those criteria do not differ from the objectives of the Convention. (Article 4.9 of the Basel Convention).

80. Furthermore, each Party shall:

(a) Require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere (Article 4.8 of the Basel Convention);

(b) Undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes, which are exported to other States, in particular developing countries (Article 4.13 of the Basel Convention).

81. Measures to achieve those obligations can be implemented together with the provisions regulating the prior informed consent procedure, for example, by subjecting the competent authority's discretion to allow or not allow a particular transboundary movement to specific conditions promoting the achievement of those obligations. However, Parties are not obliged to implement the principles through legislation and other approaches can contribute to the achievement of these obligations.

Example — National implementation of the principle of minimization of transboundary movements

Article 4.2 (d) of the Basel Convention, for example, provides that “[e]ach Party shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes or other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement.” This article can be implemented through a variety of ways:

In Canada, for example, the general obligation under the Convention on Parties to take measures to reduce transboundary movements of hazardous and other wastes to a minimum has been translated at the national level into a specific obligation on exporters to adopt and implement export reduction plans. Subsection 188.1 of the Canadian Environmental Protection Act of 1999 provides the legal basis for the Minister to require an exporter, or a class of exporters, of hazardous waste to submit an export reduction plan at the same time as the notification of a proposed import, export or transit or at any other prescribed time, and to implement that plan, for the purpose of reducing or phasing out the export of hazardous waste or prescribed non-hazardous waste for final disposal. The aspects that those plans must address set out in subsection 38.1 of the Canadian Export and Import of Hazardous Wastes and Hazardous Recyclable Material Regulation. They must, among others, contain information on the quantity exported at the start, export reduction targets to be achieved and a description of how the exports are going to be phased out, including the stages and schedule for phase-out.

In Australia, the general obligation to take measure to minimize transboundary movements of hazardous wastes and other wastes has been translated into a decision-making criterion for granting import and export permits. The procedure applicable to the granting of import and export permits is set out in section 17 of the Australian Hazardous Wastes (Regulation of Exports and Imports) Act of 1989. Subsections 4 and 5 provide for the possibility for the Minister for the Environment and Heritage to deny a permit, if the wastes could be dealt with in another environmentally sound manner that does not involve the proposed export or import:

- Section 17.4 provides that the Minister may decide not to grant the permit if, having regard to Australia’s international obligations, the waste should be dealt with in another way rather than in accordance with the import or export proposal, provided that dealing with the waste in this other way would not pose a significant risk of injury or damage to human beings or the environment;
- Section 17.5 provides that the Minister may decide not to grant an export permit, if, having regard to the desirability of using facilities in Australia for the disposal of hazardous waste, the waste should be disposed of by using that facility rather than in accordance with the export proposal, provided that such disposal is consistent with the environmentally sound management of the waste.

82. Finally, the Basel Convention provides, with regard to safety during the transboundary transport of hazardous wastes and other wastes, that each Party shall:

- (a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations (Article 4.7 (a) of the Basel Convention);
- (b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled and transported in conformity with generally accepted and recognized rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices (Article 4.7 (b) of the Basel Convention);
- (c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal (Article 4.7 (c) of the Basel Convention).

83. The obligation of Parties to prohibit persons from transporting or disposing of hazardous and other wastes unless authorized is usually implemented by way of a license or permit system, requiring the adoption of legislation that specifies the procedures and criteria application for obtaining a license or permit. Such a system may include other waste management activities than disposal and transport, as required under the Basel Convention (Article 4.7 (a) of the Basel Convention).

84. As regards the requirement to ensure that the wastes subject to a transboundary movement be packaged, labelled and transported in conformity with international standards and accompanied by a movement document, Basel Convention implementing legislation will typically need to define the subject of these obligations for them to become fully operational at the national level. Depending on the choice of the implementing Party this may, for example, be the exporter, the importer, and/or reporter, or all of them.

Example — Implementation of Basel Convention transport requirements

The operationalization of the different Convention obligations pertaining to the transport of hazardous wastes are often translated at the national level into specific obligations on the different actors involved in the transport, such as the exporter, the importer or the transporter. There are various ways how these obligations can be distributed among the actors, i.e. who is responsible for ensuring that the wastes are transported in conformity with the different requirements (packaging, labelling, movement document, etc.). The obligation of Article 7.4 (c) of the Convention to require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal can, for example, be translated into national legislation, as follows:

The Canadian Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations of 2005, for example, imposes an obligation on the exporter to ensure that every authorized carrier that transports hazardous wastes and the foreign receiver complete the respective part of the movement document. In case of import, the obligation to ensure that the exporter and the carriers have completed their respective part of the movement document applies to the importer. Furthermore, any carrier of hazardous wastes must ensure at the time the waste enters Canada that the foreign exporter has completed the respective part of the movement document.

The Swiss Ordinance on Waste Movements of 2005 in its Article 31 that the exporter and importer provide a copy of the document to the Custom services. They are also required to keep a copy of the completed movement document for at least five years. The obligation to ensure that controlled wastes that are transported for the purpose of export or import are accompanied by a movement document applies to the carrier.

For an example on the implementation of Article 4.7 (b) of the Basel Convention on packaging, labelling and transport requirements, you may refer to the example at paragraph 16 of this Guide.

2.6.2 Prior informed consent procedure

85. The prior informed consent procedure regulating transboundary movements of hazardous and other wastes is central to the Basel Convention control regime. Under the Basel Convention transboundary movements of hazardous wastes or other wastes are prohibited or not permitted/allowed in the following circumstances:

(a) Export to or import from a non-Party to the Basel Convention with which no bilateral, multilateral or regional agreement or arrangement has been concluded pursuant to Article 11 of the Basel Convention (Article 4.5 of the Basel Convention);

(b) Export of hazardous and other wastes to a Party to the Basel Convention that has prohibited the import of such wastes (Article 4.1 (b) of the Basel Convention; Article 13.2 (c) of the Basel Convention);

(c) Exports of hazardous wastes for disposal to the area of 60° South latitude (i.e. Antarctica), whether or not such wastes are subject to transboundary movement (Article 4.6 of the Basel Convention).

Example — Implementation of Basel Convention export and import prohibitions

The general prohibitions to export or import hazardous wastes in the circumstances described in Articles 4.5, 4.1 (b) and 4.6 of the Basel Convention are often operationalized at the national level as an obligation on the competent authority not to grant a permit in those circumstances.

Singapore's implementing legislation, for example, distinguishes between Basel Convention permits and so-called special permits granted under Article 11 arrangements (an agreement or arrangement Singapore has entered with a foreign State, whether a Party or non-Party to the Basel Convention, under Article 11 of the Basel Convention). The prohibition of Article 4.5 of the Convention to import from or export to a non-Party with which no agreement or arrangement has been concluded under Article 11 of the Convention, is included in Regulation 9 of Singapore's Hazardous Waste (Control of Export, Import and Transit) Regulations of 1998 on the procedure for granting import and export permits. Pursuant to sub-regulation (2) (d) of Regulation 9, "no import permit or export permit shall be granted [...] if the export sought is to, or the import sought is from, a foreign country that is neither a party to the Basel Convention nor a party to an Article 11 arrangement."

In some monist countries some of those general prohibitions, for example the provision that prohibits exports of hazardous wastes for disposal to the Antarctica, may be directly applicable and therefore do not necessarily need to be included in the implementing legislation.

86. In all other circumstances, transboundary movements are subject to the prior informed consent procedure set forth in Article 6 of the Convention. Before transposing the prior informed consent procedure into domestic law, Parties should decide on eventual import, export or transit prohibitions and restrictions. Parties also have the possibility to include provision for the adoption of such measures at a later stage. The Basel Convention requires Parties to notify import, export or transit prohibitions or restrictions to the Secretariat in order for them to gain legal effect vis-à-vis other Parties. Where the implementing Party prohibits, for example, the import of hazardous and other wastes, the prior informed consent procedure will only be applicable to exports and transits of

hazardous and other wastes. This would need to be reflected in the Basel Convention implementing legislation.

87. The prior informed consent procedure under the Basel Convention notably requires that the State of export shall not allow a transboundary movement to begin unless it has received the written consent from the State of import and, if applicable, any State of transit (Article 6.3 6.4) of the Basel Convention). The State of export must further possess confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question (Article 6.3 (b) of the Basel Convention). An alleviated prior informed consent procedure is admissible under specific circumstances (Article 6.4 in fine and Article 6.6 6.8 of the Basel Convention). Basel Convention implementing legislation needs to tackle these different obligations from the perspective of a State of import, export and transit, to account for each situation the implementing Party might find itself in. To facilitate the reading of the legal instrument, it may be appropriate to include separate chapters or provisions for the respective cases of export, import and transit of wastes. For each possible scenario (export, import and transit) the implementing legislation should further outline the specific obligations of the different actors involved (generator, exporter, transporter, importer, disposer), in order to become fully operational.

88. Some aspects of the prior informed consent procedure may require further specification at the national level.

Example — Clarifications of Basel Convention requirements related to the prior informed consent procedure

For each aspect of the prior informed consent procedure, Parties should consider whether further clarifications in national laws or regulations are necessary to ensure their full effectiveness. Article 6.3 of the Basel Convention, for example, provides that the State of export shall not allow the generator or exporter to commence the transboundary movement until it has received confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question. Some Parties have specified in their implementing legislation, which elements this contract must include. Further guidance on this topic, including a list of basic elements to be included in the contract is available in the *Guide to the Control System*.⁵¹

89. When the wastes are legally defined as or considered to be hazardous wastes only by the State of export, the State of import, the States of import and transit, or the State of transit, the duties to notify the transboundary movement and confirm its completion are shifted to that State (Article 6.5 of the Basel Convention).

90. Paragraph 5 (a) of Article 6 provides that in case a transboundary movement of wastes is legally defined as or considered to be hazardous wastes only by the State of export, the requirements of paragraph 9 of Article 6 that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively. This means that the exporter, rather than the disposer, must inform the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall notify the State of import.

91. Paragraph 5 (b) of Article 6 provides that in case a transboundary movement of wastes is legally defined as or considered to be hazardous wastes only by the State of import, or by the States of import and transit which are Parties, the requirements of paragraph 1, 3, 4 and 6 of Article 6 that apply to the exporter and the State of export apply mutatis mutandis to the importer or disposer and State of import, respectively. This means that in such a case:

(a) The importer or disposer, or the State of import shall be required to notify, in writing, the States of transit and/or import of the proposed transboundary movement of hazardous wastes or other wastes;

(b) The movement shall not be allowed to commence until the notifier has received the written consent from the State of import and the written consent from the State of transit or its tacit consent pursuant to paragraph 4 of Article 6, and the notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

92. Finally, paragraph 5 (c) of Article 6 specifies that in case a transboundary movement of wastes is legally defined as or considered to be hazardous wastes only by any State of transit which is a Party,

⁵¹ Guide to the Control System (2015), Chapter 4.7 and Appendix 4, available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

the provisions of paragraph 4 of Article 6 shall apply to such State. This means that, the transboundary movement can only commence after the State of transit has provided written consent to the movement or, in case the State of transit does not require prior written consent, after 60 days following the receipt by the State of transit of a given notification, provided the State of transit has not objected to the transboundary movement within that time period. The Convention does not specify any changes to the distribution of responsibilities among the different actors in this case. Therefore, the exporter of State of export should make arrangements to notify the competent authority of the State of transit in accordance with paragraph 4 of Article 6.

Example — Implementation of the provisions of Article 6.5 of the Basel Convention

Australia's Hazardous Wastes (Regulation of Exports and Imports) Act 1989, for example, includes specific provisions to address cases where the wastes are classified as hazardous wastes in the State of import (Article 6.5 (b) of the Convention) or in the transit State (Article 6.5 (c) of the Convention), but not in Australia.

To account for cases where the wastes are classified as hazardous in the foreign State of import, but not in Australia, the Act envisages that the definition of hazardous wastes of Section 4 of the Act is in those circumstances extended for the purpose of that specific transboundary movement to cover the substance or object classified as hazardous wastes in the foreign country (See Section 4A of the Act).

Where, in a case of export, the wastes are classified as hazardous in a foreign country of transit, but not in Australia, Section 41A of the Act provides that the export of that substances or object is prohibited, unless the transit transboundary movement has been notified to the competent authority of the transit State and its prior consent has been received.

In some monist countries, the different provisions of Article 6.5, in particular the obligations that concern the competent authority may be directly applicable and therefore need not be reflected in the implementing legislation. If the implementing legislation imposes the obligation to notify transboundary movements on the competent authority (not the exporter or generator), the only obligation of Article 6.5 that applies to a private actor is set out in Article 6.5 (a): Where, in a case of export, the exported wastes are legally defined as or considered to be hazardous only by the State of export (and not by the State of import), *the exporter* must inform the competent authority of reception of the wastes by the disposer and, in due course, of the completion of disposal as specified in the notification. Usually,⁵² this obligation applies to the disposer not the exporter (See Article 6.9 of the Convention). This option presupposes however that the competent authority is fully aware its obligations under the Basel Convention PIC procedure, including under Article 6.5 (b) and (c).⁵³

93. The *Manual for the Implementation of the Basel Convention*⁵⁴ and the *Guide to the Control System*⁵⁵ contain further guidance for Parties and regulatees respectively on the different requirements of the prior informed consent procedure, including on cases where the wastes are legally defined or considered to be hazardous in one or more, but not all of the States concerned.

94. The ultimate goal of the prior informed consent procedure is to ensure the environmentally sound disposal of hazardous and other wastes in case of transboundary movements. Parties are therefore obliged to re-import wastes, if their disposal cannot be completed in accordance with the terms of the contract, unless alternative arrangements for their environmentally sound disposal can be made within the stipulated deadline (Article 8 of the Basel Convention). To ensure that this provision is operational at the national level, Basel Convention implementing legislation should oblige exporter to take-back wastes, or, if applicable, make alternative arrangements for their environmentally sound disposal where a transboundary movement cannot be completed in accordance with the terms of the contract. Where the implementing Party acts as the State of import, it must notify the State of export and the Secretariat of any such situation. The obligation to notify imposed on the competent authority of the State of import does not usually need to be translated into legislation. However, the Implementing Party may consider imposing a corresponding duty on transporters and disposer within its territory, to ensure that the competent authority is readily informed of a situation where the import or disposal of hazardous wastes following an import cannot be completed as planned.

⁵² All cases where the wastes subject to the transboundary movement fall under Article 1.1 (a) or Article 1.2 of the Basel Convention.

⁵³ Under Article 6.5 (b), applicable to imports of wastes that are classified as hazardous in the implementing Party and one or several transit States, but not in the State of export, the competent authority must notify the proposed transboundary movement to those States of transit and obtain consent before authorizing the import. Under Article 6.5 (c), applicable to exports of wastes that are classified as hazardous in a State of transit which is a Party to the Convention, but not in the implementing Party and the State of import, the competent authority must notify the proposed transboundary movement to that State of transit and obtain its consent before authorizing the export.

⁵⁴ Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁵⁵ Guide to the Control System (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

Example of transposition

Art [...]	General provisions	BC provision:
1	[NAME OF AGENCY] shall take the appropriate measures* to:	
	* Full implementation of those general provisions will require their elaboration at the national level, including by placing certain obligations on private actors for example.	
a.	Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;	> Art 4.2 (d)
b.	Prohibit the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties to the Basel Convention, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;	> Art 4.2 (e)
c.	Review periodically the possibilities for the reduction of the amount and/or pollution potential of hazardous wastes and other wastes which are exported to other States, in particular developing countries;	> Art 4.13
d.	Require that information about the proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A of the Basel Convention, to state clearly the effects of the proposed movement on human health and the environment.	> Art 4.2 (f)
e.	Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;	> Art 4.2 (g)
f.	Co-operate in activities with other Parties to the Basel Convention and interested organizations, directly and through the Secretariat of the Basel Convention, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.	> Art 4.2 (h)
g.	Ensure that transboundary movement of hazardous wastes only be allowed if: <ul style="list-style-type: none"> <li data-bbox="555 1189 1197 1294">i. The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; <li data-bbox="555 1310 1197 1368">ii. The wastes in question are required as a raw material for recycling or recovery industries in the State of import, or <li data-bbox="555 1384 1197 1473">iii. The transboundary movement in question is in accordance with other criteria to be decided by Parties, provided those criteria do not differ from the objectives of this Convention. 	> Art 4.9
2	All persons under the national jurisdiction of [NAME OF COUNTRY] are prohibited from transporting or disposing of hazardous wastes or other wastes unless such person has been authorized or allowed to perform such types of operations. [NAME OF AGENCY] shall establish the conditions for the issuance of transport or disposal authorizations for hazardous wastes and other wastes, and shall be competent to grant such authorizations.	> Art 4.7 (a)
3	Hazardous wastes and other wastes that are to be subject to a transboundary movement shall be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and due account shall be taken of relevant internationally recognized practices.*	> Art 4.7 (b)
	* These obligations pertaining to the transport of hazardous and other wastes should be further elaborated at the national level, in particular by defining the subject of each obligation (i.e. the exporter, importer or transporter), in for the case of import and export respectively.	
4	Hazardous wastes and other wastes shall be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.	> Art 4.7 (c)
5	Hazardous wastes and other wastes, to be exported, shall be managed in an environmentally sound manner in the State of import	> Art 4.8

Art [...] **Import conditions* for hazardous wastes and other wastes**

* Parties have the possibility to prohibit the import of hazardous wastes or other wastes pursuant to Article 4 (1) of the Basel Convention either totally or partially. If the import prohibition is only partial (i.e. only applies to some regions or waste streams), those hazardous wastes and other wastes that are not covered by the prohibition would still need to be subjected to the prior informed consent procedure. > Art 4.1
+ Art 13 (2) (c)

¹ The import of hazardous wastes or other wastes from a non-Party to the Basel Convention is prohibited, unless a bilateral, multilateral, or regional agreement or arrangement regarding transboundary movements of hazardous wastes or other wastes has been concluded with the non-Party State, and provided that such agreement is consistent with and has been notified pursuant to Article 11 of the Basel Convention. > Art 4.5
+ Art 11

[³ Each import of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee covering the following risks: > Art 6.11

- a. [...]
- b. [...]

[NAME OF AGENCY] shall define a method to calculate the amount to be covered by insurance, bond or guarantee based on the risks inherent in each transboundary movement considered.]*

* This aspect of the Basel Convention is not mandatory.

Art [...] **Import procedure for hazardous wastes and other wastes**

¹ The import of hazardous waste or other wastes is subject to the written consent of the competent authority. > Art 6.2
+ Art 4.1 (c)

² The competent authority shall acknowledge receipt of the notification to the notifier of a proposed transboundary movement of hazardous wastes or other wastes. > Art 6.2

³ If the notification document is not written in a language acceptable to [NAME OF COUNTRY], if it is incomplete or if the competent authority wishes to receive additional information, it shall request the notifier to provide the information in written form or, if applicable, to submit the notification in an acceptable language. > Art 6.1
+ Art 6.2

⁴ The competent authority may consent to an import of hazardous wastes or other wastes if:

- a. The import under consideration meets the requirements of Article [9];
- b. The submitted notification document is complete and meets the requirements of Article [4 paragraph 24];
- c. The disposal method specified in the notification document complies with the requirements of an environmentally sound disposal.
- d. The importer, carrier and disposer are in possession of a valid authorization covering the type of hazardous wastes or other wastes subject to the transboundary movement; and > Art 4.7 (a)
- e. The exporter and the disposer concluded a contract specifying environmentally sound management of the wastes in question. [Art 6.3 (b)]

⁵ The assessment of the disposal method specified in the notification document shall take account of the technical guidelines adopted in the context of the Basel Convention. > Art 4.8

⁶ The competent authority shall inform the notifier and the competent authorities of the States concerned in writing of its decision to consent to the import or deny permission for the import. If the competent authority consents to the import, it shall confirm with the notifier the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question. > Art 6.2
+ Art 6.3

⁷ The competent authority may subject its consent to the observance of certain conditions[, including the requirement that the transboundary movement shall be covered by insurance, bond or guarantee in accordance with the provisions of this law.] > Art 2
+ Art 6.11

⁸ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question.	> Art 6.9
⁹ The disposer shall inform both the exporter and the competent authority of the State of export of receipt of the wastes in question and, in due course, of the completion of disposal as specified in the notification.	> Art 6.9
¹⁰ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the importer or disposer shall ensure that:	> Art 6.5 (b) + Art 6.1
a. The proposed transboundary movement is notified to the competent authority; and	> Art 6.5 (b) + Art 6.1
b. The transboundary movement is notified to the competent authority of each State of transit where the wastes are legally defined as or considered to be hazardous wastes;	> Art 6.5 (b) + Art 6.1
¹¹ In the cases referred to in the previous paragraph, the competent authority may authorize the transboundary movement only if:	> Art 6.5 (b) + Art 6.3
a. Each State of transit concerned consented to the transboundary movement in writing; or	> Art 6.5 (b) + Art 6 (4)
b. In case of a State of transit concerned that does not require prior written consent, the State of transit did not impose conditions or object to the transit within 60 days of receipt of a given notification by the State of transit.	> Art 6.5 (b) + Art 6.4
Art [...] Duty to inform of impossibility to dispose of imported wastes	
When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, cannot be completed in accordance with the terms of the contract, the competent authority informs the States concerned and the Secretariat of the Basel Convention, in order that the State of export takes the necessary measures to take the wastes back into the State of export, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the competent authority informed the State of export.	> Art 8
Art [...] Export conditions for hazardous wastes and other wastes	
* Parties have the possibility to prohibit the export of hazardous wastes or other wastes pursuant to Article 13 (2) (d) of the Basel Convention either totally or partially. If the export prohibition is only partial (i.e. only applies to some regions or waste streams), those hazardous wastes and other wastes that are not covered by the prohibition would still need to be subjected to the prior informed consent procedure.	> Art 13.2 (d)
¹ The export of hazardous wastes and other wastes for disposal to Parties to the Basel Convention, which have prohibited their import and notified the prohibition to the Secretariat of the Basel Convention, is prohibited.	> Art 4.1 (b)
² The export of hazardous wastes and other wastes for disposal shall only be allowed to Parties to the Basel Convention, which have consented in writing to the specific import of wastes.	> Art 4.1 (c)
³ The export of hazardous wastes or other wastes to a non-Party to the Basel Convention is prohibited, unless a bilateral, multilateral, or regional agreement or arrangement regarding transboundary movements of hazardous wastes or other wastes has been concluded with the non-Party State, provided that such agreement or arrangement does not stipulate provisions which are not less environmentally sound than those provided for by the Basel Convention.	> Art 4.5 + Art 11
⁴ The export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement, is prohibited.	> Art 4.6
⁵ The export of hazardous wastes and other wastes shall only be allowed if:	> Art 4.9
a. [NAME OF COUNTRY] does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or	

- b. The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or
- c. The transboundary movement in question is in conformity with the objectives of the law and other criteria established by the Parties to the Basel Convention.

Art [...] **Export procedure for hazardous and other wastes**

- ¹ The export of hazardous waste or other wastes is subject to the written consent of the competent authority. > Art 6.3
- ² The request for authorization shall be completed by the generator or exporter and contain the following elements:
- a. Notification document duly completed in a language acceptable to the State of import; > Art 6.1
 - b. Copy of the contract between the exporter and the disposer specifying environmentally sound management of the wastes in question; > Art 6.3 (b)
 - c. Copy of the insurance, bond or guarantee contract covering the transboundary movement of the wastes under consideration, as required by the State of import or any State of transit. > Art 6.11
- ³ The competent authority shall inform in writing the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes, or oblige the generator or exporter to do so. > Art 6.1
- ⁴ The competent authority may authorize the export if:
- a. The export meets the requirements of Article [12];
 - b. The submitted request for authorization is complete and meets the requirements of paragraph [2] of this article;
 - c. The disposal methods specified in the notification document meets the requirements of an environmentally sound disposal; and > Art 4.2 (e)
> Art 4.8
> Art 4.10
 - d. The competent authority received the written consent of the State of import and States of transit for the specific movement. > Art 4.1 (c)
> Art 6.1
> Art 6.4 (1st hypo)
- ⁵ The assessment of the disposal method specified in the notification document shall take account of the technical guidelines adopted in the context of the Basel Convention. > Art 4.2 (e)
> Art 4.10
- ⁶ In case of a State of transit that has decided not to require prior written consent to a proposed movement, the competent authority may allow the export to proceed through the State of transit if no response is received from the State of transit within 60 days of its acknowledgement of receipt of the notification unless the State of transit has imposed conditions or raised objections within these 60 days. > Art 6.4 (2nd hypo)
- ⁷ The competent authority shall notify its decision to the notifier in writing, consenting to the movement or denying permission for the movement, and send a copy of the decision to the competent authority of the States concerned.
- ⁸ If a State concerned subjects its consent to the movement to the observance of certain conditions, the competent authority shall require the exporter to comply with these conditions. [> Art 6.2
> Art 6 (4)]
- ⁹ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the exporter shall inform the competent authority of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. > Art 6.5 (a)
> Art 6.9
- ¹⁰ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question. > Art 6.9

Art [...] **Duty to re-import wastes that could not be disposed of**

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, cannot be completed in accordance with the terms of the contract, the competent authority shall ensure that the exporter takes back the waste into [NAME OF COUNTRY], if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the State concerned informed [NAME OF COUNTRY] and the Secretariat of the Basel Convention, or such other period of time as the States concerned agree. To this end, [NAME OF COUNTRY] and any State of transit, which is a Party to the Basel Convention, shall not oppose, hinder or prevent the return of these wastes to [NAME OF COUNTRY].	> Art 8
Art [...] Transit conditions and procedures for hazardous wastes and other wastes	
* Parties have the possibility to prohibit the transit of hazardous wastes or other wastes either totally or partially. If the transit prohibition is only partial (i.e. only applies to some regions or waste streams), those hazardous wastes and other wastes that are not covered by the prohibition would still need to be subjected to the prior informed consent procedure.	
¹ The transit of hazardous waste or other wastes is subject to the written consent of the competent authority.	> Art 6.4 (1 st hypo)
² The obligation to notify a proposed transit lies with the State of export or the exporter.	> Art 6.1
³ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the obligation to notify the transit lies with the State of import or the importer.	> Art 6.5 + Art 6.1
⁴ The competent authority shall promptly acknowledge to the notifier receipt of the notification of a proposed transboundary movement of hazardous wastes or other wastes.	> Art 6.4
⁵ If the information contained in the notification is incomplete, or if the competent authority wishes to receive additional information, it shall request the notifier to provide the information in written form.	> Art 6.4
⁶ The competent authority may respond to the notifier in writing, consenting to the movement, with or without conditions, or denying permission for the movement. The decision shall be transmitted to the notifier.	> Art 6.4
[Each transit of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee covering the following risks: a. [...] b. [...]	> Art 6.11
[NAME OF AGENCY] shall define a method to calculate the amount covered by insurance, bond or guarantee based on the risks inherent in each transboundary movement considered.]	
⁷ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question.	> Art 6.9

2.7 Illegal traffic

95. Full implementation of Article 9 in national laws and regulations implementing the Basel Convention provisions pertaining to illegal traffic can greatly facilitate the cooperation among Parties in prosecuting and punishing persons involved in illegal traffic, in order to deter actors from getting involved in the illegal trafficking of hazardous and other wastes.

96. Article 9.1 of the Basel Convention defines the instances where a transboundary movement of hazardous or other wastes is deemed to be illegal traffic.

97. The Convention also specifies the obligations of States concerned and involved actors in instances of illegal traffic:

(a) Where traffic is illegal as a result of conduct on the part of the exporter or generator, the State of export must ensure that the wastes in question are taken back by the exporter or generator or, if necessary, by itself. If the take-back is impracticable, the State of export must ensure that the wastes are otherwise disposed of in accordance with the provisions of the Convention (Article 9.2 of the Basel Convention);

(b) Where the traffic is illegal as the result of conduct on the part of the importer or disposer, the State of import must ensure the wastes in question are disposed of in an environmentally sound

manner by the importer or disposer, or, if necessary, by the Party itself (Article 9.3 of the Basel Convention);

(c) Where the responsibility for the illegal traffic cannot be assigned, Parties must cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner (Article 9.4 of the Basel Convention).

98. As for the provisions on transboundary movements, the national legislation should account for each role the implementing Party may have with regard to a particular case of illegal traffic (State of import, State of export, State of transit, other Party), for example, by imposing an obligation on the to take-back or, if impracticable, ensure environmentally sound disposal of the wastes in a case falling under Article 9.2 of the Basel Convention, and on the importer or disposer to ensure environmentally sound disposal of the wastes in a case falling under Article 9.3 of the Basel Convention.

99. The implementing Party's duty to cooperate with other Parties, in particular to ensure environmentally sound disposal of the wastes in cases where the responsibility of the illegal traffic cannot be assigned (Article 9.4 of the Basel Convention, does not usually need to be enshrined in a legislative text.

100. Further guidance on the implementation of the different provisions pertaining to illegal traffic is available in the *Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic* adopted by the Conference of the Parties at its thirteenth meeting.⁵⁶

101. Parties must also consider illegal traffic to be criminal (Art 4.3 of the Basel Convention) and are obliged to introduce appropriate domestic legislation to prevent and punish illegal traffic (Article 9.5 of the Basel Convention). To make illegal traffic a criminal or regulatory offence, it must be drafted as such in the Basel Convention implementing legislation or another national law (e.g. specialized environmental legislation, penal code).

Example of transposition

Art [...]	Definition	BC provision:
¹	A transboundary movement of hazardous wastes or other wastes shall be deemed to constitute illegal traffic, if:	> Art 9.1
a.	It is carried out without notification to all States concerned, while such notification is required; or	> Art 9.1 (a)
b.	It is carried out without the consent of a State concerned, while such consent is required; or	> Art 9.1 (b)
c.	It is carried out with consent obtained from States concerned through falsification, misrepresentation or fraud ; or	> Art 9.1 (c)
d.	It does not conform in a material way with the documents ; or	> Art 9.1 (d)
e.	It results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law.	> Art 9.1 (e)
²	Illegal traffic in hazardous wastes or other wastes is a criminal offence.[Please elaborate to draft this provisions as a regulatory offence]	> Art 4.3
Art [...]	Illegal traffic as the result of conduct of the exporter or generator	
¹	In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, where [NAME OF COUNTRY] is the State of export, [NAME OF AGENCY] shall ensure that the wastes in question are:	> Art 9.2 (a) + Art 9.2 (b)
a.	taken back by the exporter or the generator or, if necessary, by [NAME OF AGENCY] itself into the State of export, or, if [impracticable],	
b.	are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time [NAME OF COUNTRY], as State of export, has been informed about the illegal traffic or such other period of time as States concerned	

⁵⁶ Guidance on the Implementation of the Basel Convention Provisions Dealing with Illegal Traffic (paragraphs 2, 3 and 4 of Article 9) (2017), available at [...]. Additional guidance on preventing and combating illegal traffic is available at: <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

may agree. To this end the Parties to the Basel Convention concerned shall not oppose, hinder or prevent the return of those wastes into [NAME OF COUNTRY].

Art [...] Illegal traffic as the result of conduct of the importer or disposer

In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, where [NAME OF COUNTRY] is the State of import, [NAME OF AGENCY] shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to its attention or such other period of times as the States concerned may agree. To this end, the Parties to the Basel Convention concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner. > Art 9.3

Art [...] Illegal traffic not attributable to either the exporter or generator or the importer or disposer

In cases where the responsibility of the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, [NAME OF AGENCY] shall co-operate with the competent authorities of the other States concerned to ensure that the hazardous wastes in question are disposed of as soon as possible in an environmentally sound manner. > Art 9.4

2.8 Enforcement

102. A key means to promote and achieve observance of national laws is to ensure that factors relating to enforceability are addressed in the design and development of laws. For the purposes of this guide, the term “enforcement” refers to the range of procedures and actions employed by a State, its competent authorities, and its agencies to ensure that organisations or persons can be brought or returned into compliance and/or punished through civil, administrative, or criminal action.⁵⁷

103. The national legal framework should, even if this is not specifically required by the treaty, include the necessary elements to administer, monitor and enforce the obligations set forth by the implementing legislation and specify the consequences of violations. In the case of the Basel Convention, certain provisions⁵⁸ explicitly require Parties to take the necessary measures to enforce the Convention at the national level. The Convention specifically provides that Parties shall take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention (Article 4.4 of the Basel Convention), including measures to prevent and punish illegal traffic (Article 9.5 of the Basel Convention).

104. The Basel Convention does not further define the type of measures to be adopted. Parties enjoy flexibility in designing those measures in accordance with their national enforcement practices and policies.

105. Examples of monitoring tools include:

- (a) Routine and unannounced inspections;
- (b) Conduct of investigations
- (c) Self-monitoring combined with environmental auditing;
- (d) Requirements of record-keeping and reporting;
- (e) Inter-agency co-operation and data exchange;
- (f) Responding to complaints;
- (g) Training and capacity building for entire enforcement chains to address wastes crimes;
- (h) Requiring that licenses be subject to periodic renewal;

⁵⁷ This definition is taken from the UNEP Manual on compliance with and enforcement of Multilateral Environmental Agreements. See http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf, page 33.

⁵⁸ Article 4 paragraph 4 reads: “Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention”.. Article 9 paragraph 5 reads: “Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic....”

- (i) Public participation and awareness.
106. Examples of tools to respond to non-compliance include:
- (a) Warnings and citations;
 - (b) Administrative penalties (e.g. fines, stop work orders, seizures, storage of illegal shipments, closures, license revocations, denial of funding, barring from government contracts);
 - (c) Civil penalties (e.g. fines, injunctive relief, public apologies, remedial costs, restitution, environmental and economic damages);
 - (d) Criminal penalties (e.g. fines, imprisonment, closure).
107. Non-coercive measure to deter non-compliance may also be complemented with compliance incentives, such as measure for assistance, awareness-raising and capacity-building.
108. As a general rule, legal requirements that are concise and realistic in terms of their technical, economic and social feasibility facilitate the enforcement efforts, and promote transparency and fairness in enforcement. The following questions may help clarify the scope and requirements of legal provisions:
- (a) What actions are required?;
 - (b) When has a violation occurred?;
 - (c) By whom?;
 - (d) What is the scope and nature of the liability?;
 - (e) What are the available remedies and penalties?;
 - (f) Who is responsible for enforcement?;
 - (g) What is the mechanism for review or appeal of enforcement actions?

Example — Enforcement legislation

The United Kingdom, for example, adopted the Transfrontier Shipment of Waste Regulation 2007 to specify, *inter alia*, measures and administrative procedures to address violations by importers, exporters, and transporters of hazardous and other wastes. The Regulation fully implements and enforces EU Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 (the EU implementing legislation of the Basel Convention). For example, with regard to the obligation of a disposer to inform both the exporter and the competent authority of the State of export of receipt of a waste shipment and, in due course, of the completion of (See Article 6.9 of the Basel Convention), section 37 of the Transfrontier Shipment of Waste Regulation provides that the operator of a facility receiving notifiable waste commits an offence if they fail to confirm that the wastes have been received by the facility or to provide certification that the disposal operation has been completed. The UK Regulation further sets out the penalties to which a person guilty of such an offence is liable.

109. Parties seeking further guidance on enforcement and how to transpose the Basel Convention provisions related to enforcement are directed to the following manuals:
- (a) Guidance elements for detection, prevention and control of illegal traffic in hazardous waste;⁵⁹
 - (b) Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes;⁶⁰
 - (c) Guidelines for Framework Legislation for Integrated Waste Management (UNEP);⁶¹
 - (d) Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP).⁶²

⁵⁹ Guidance elements for detection, prevention and control of illegal traffic in hazardous waste (2002), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶⁰ Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes (2012), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶¹ Guidelines for Framework Legislation for Integrated Waste Management (2016), available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

⁶² Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

2.9 Information exchange

2.9.1 Information-exchange with the Secretariat

110. Under the Basel Convention, each Party is required to inform the Secretariat of the following:

- (a) Designation of competent authorities and/or focal points and changes thereto (Article 5.2 5.3) and Article 13.1 of the Basel Convention);
- (b) National definitions of hazardous wastes and changes thereto (Article 3.1 3.2 and Article 13.2 of the Basel Convention);
- (c) Wastes defined as hazardous by national law (Article 1.1 (b) and Article 3.1 3.2 of the Basel Convention);
- (d) Bilateral, multilateral and regional agreements or arrangements with Parties and non-Parties (Article 11 of the Basel Convention);
- (e) Decisions made not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction (Article 4 (1) (a) and Article 13.2 (c) of the Basel Convention);
- (f) Decisions taken to limit or ban the export of hazardous wastes or other wastes (Article 13.2 (d) of the Basel Convention);
- (g) Copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, when another Party considers that its environment may be affected by that transboundary movement and has requested that submission of those documents (Article 13 (4) of the Basel Convention).

111. The transmission of this information is an obligation under the Convention and the efficiency of the Convention's control regime depends on the exchange of information between Parties.

Example — Transmission of national definitions of hazardous wastes

Parties that wish to use their national legislation to bring additional hazardous wastes within the scope of the Basel Convention under Article 1.1 (b) must, for example, inform the Secretariat of the Basel Convention of such wastes, and any transboundary movement procedure applicable to them. The Secretariat will then communicate the information to Parties, upon which the national definition acquires legal effect vis-à-vis all other Parties, pursuant to Article 3.

112. Each Party should take appropriate measures to ensure the transmission of the above information to the Secretariat, as required under the Convention. This obligation will not necessarily be implemented by domestic legislation, as the submission of information to the Secretariat is an administrative act.

2.9.2 National reporting

113. In order to enable monitoring of the implementation of the Basel Convention by its Parties, Article 13.3 of the Convention establishes that Parties shall transmit, through the Secretariat, before the end of each calendar year, to the Conference of the Parties, a report on the previous calendar year and lists the information to be included in that report.

114. The obligation to submit national reports through the focal point on an annual basis does not need to be specified in legislation. It can be implemented administratively. There are a number of tools available to help Parties implement the different reporting obligations. Information on the procedure for transmitting national reports is available on the Convention website.⁶³

115. Basel Convention implementing legislation should, however, provide the focal point and other involved authorities with the legal authority to collect the data for national reporting, and stakeholders with the obligation to provide it. Waste generators, transporters, exporters, importers and disposers or the competent authorities could, for example, be obliged to report on final disposal and recovery options at the national level (Article 13.3 (g) of the Basel Convention), the amount and nature of wastes generated at the national level (Article 13.3 (h) of the Basel Convention), the amount and nature of wastes exported and imported (Article 13.3 (b) (i) and (ii) of the Basel Convention), disposals which did not proceed as intended, (Article 13.3 (b) (iii) of the Basel Convention) and accidents occurring during transboundary movements and disposal of hazardous wastes and other wastes (Article 13.3 (f) of the Basel Convention) respectively.

⁶³ See <http://www.basel.int/Countries/NationalReporting/OverviewandMandate/tabid/2314/Default.aspx>.

2.9.3 International cooperation

116. The Basel Convention also provides for extensive duties of cooperation. These include a general obligation of cooperation to harmonize technical standards and practices, monitor the effects of waste management on human health and the environment, develop low-waste technologies and environmentally sound waste management systems, transfer technology, and develop technical guidelines and codes of practice (Article 10 of the Basel Convention).

117. Furthermore, Parties must, whenever it comes to their knowledge that an accident occurred during the transboundary movement of hazardous or other wastes or their disposal, which is likely to present risks to human health and the environment in other States, ensure that those States are immediately informed (Article 13.1 of the Basel Convention).

118. State obligations pertaining to international cooperation do not usually require implementation by means of legislation, as they are part of the prerogatives of the executive branch of the government.

Example of transposition

<p>Art [...] Mutual information exchange</p> <p>¹ [NAME OF AGENCY] shall take the appropriate measures, including regulatory measures, to ensure that [NAME OF COUNTRY] communicates to the Secretariat of the Basel Convention [through the focal point designated pursuant to Article [2] of this law] all information required under the Basel Convention.</p>	<p>BC provision:</p> <p>> Art 13</p>
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3. Ensuring effective implementation and enforcement

119. The adoption of comprehensive Basel Convention implementing legislation marks a milestone in the process towards ensuring environmentally sound management of hazardous and other wastes at the national level. A further and equally important step is ensuring effective implementation and enforcement of the enacted legislation on the ground. A detailed review of practices to implement and enforce Basel Convention implementing legislation is beyond the scope of this guide. Rather, this section provides a summary outlook on the implementation process, by highlighting some key elements of that process and including a list of reference materials with further guidance on the topic.

120. While the provisions of the Basel Convention implementing legislation will set the basic objectives, obligations and requirements, the designated authorities will likely be called upon to chart the means for implementation. Typical responsibilities related to the implementation and enforcement of newly enacted legislation include:

- (a) Establishment of new institutional bodies or adjustment of existing bodies (e.g. staff capacity; office equipment; etc.) to take over newly assigned tasks;
- (b) Further development and implementation of regulatory schemes and related requirements (e.g. permit systems for waste management activities; prior informed consent procedure; waste management strategies; etc.);
- (c) Participation in international and regional activities relating to the implementation of the Basel Convention;
- (d) Actions to promote and ensure observance of national legislation on waste management, including those giving effect to the Basel Convention (e.g. through reporting requirements, inspections and other means);
- (e) Coordination amongst administrative authorities to promote efficiencies in the implementation and enforcement process;
- (f) Regular review of the overall adequacy of the national framework in achieving its objectives, including full compliance with the Basel Convention obligations, and adoption of measures to address identified problems.

121. Prioritization is key for administrative authorities to ensure effective operation under limitations of resources and capacities. Authorities involved in the implementation and enforcement of waste management legislation should therefore identify those actions of most importance.

122. Further guidance on compliance and enforcement can be found in the following manuals:

- (a) Guidance elements for detection, prevention and control of illegal traffic in hazardous waste;⁶⁴
 - (b) Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes;⁶⁵
 - (c) Basel Convention training manual on illegal traffic for customs and enforcement agencies;⁶⁶
 - (d) Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP);⁶⁷
 - (e) Judicial Handbook on Environmental Law (UNEP);⁶⁸
 - (f) Manual on Waste Crime and Waste Risks (UNEP).⁶⁹
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⁶⁴ Guidance elements for detection, prevention and control of illegal traffic in hazardous waste (2002), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶⁵ Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes (2012), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶⁶ Basel Convention training manual on illegal traffic for customs and enforcement agencies, available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶⁷ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

⁶⁸ Judicial Handbook on Environmental Law (2005), available at <http://www.unep.org/delc/Portals/119/publications/Judicial-Handbook-Environmental-Law.pdf>.

⁶⁹ Waste Crime – Waste Risks: Gaps in Meeting the Global Waste Challenge (2015), available at <http://www.unep.org/delc/Portals/119/publications/rra-wastecrime.pdf>.