

Steps to improve implementation and compliance with Article 9 of the Basel Convention: Questionnaire for organizations

Introduction

Background

By its decision BC-13/9, the Conference of the Parties to the Basel Convention, at its thirteenth meeting, adopted the work programme for the biennium 2018-2019 whereby the Committee for Administering the Mechanism for Promoting the Implementation and Compliance with the Basel Convention (ICC) was requested to consider what additional steps could be taken to improve implementation of and compliance with Article 9 of the Convention.

To assist with its work, the Committee is seeking information from BCRCs and other entities, such as the members of ENFORCE; involved in activities aimed at preventing and combating illegal traffic in hazardous and other wastes. A separate questionnaire has been sent to Parties.

You are invited to provide information by responding to this questionnaire which seeks information with a view to:

- Knowing the extent of the problem
- Identifying Parties' challenges/best practices with respect to the implementation of Article 9 of the Basel Convention; and learning about the experience of Parties and others entities in applying available guidance and tools with respect to the implementation of that provision
- Identifying views from Parties and others on the steps that could be taken to improve the implementation and compliance with Article 9 of the Basel Convention.

This questionnaire was developed thanks to a financial contribution received from the European Union.

Information collected will be used as a basis for the development of recommendations to the Conference of the Parties on additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention.

Article 9 of the Convention

Article 9 of the Convention reads as follows:

"1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

- (a) Without notification pursuant to the provisions of this Convention to all States concerned; or*
- (b) Without the consent pursuant to the provisions of this Convention of a State concerned; or*
- (c) With consent obtained from States concerned through falsification, misrepresentation or fraud ;
or*
- (d) That does not conform in a material way with the documents ; or*

(e) That 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,

Shall be deemed to be illegal traffic.

2. 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, the State of export shall ensure that the wastes in question are:

(a) Taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of the Convention,

Within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. 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, the State of import 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 the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall cooperate, as necessary in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.”

Instructions for completing and submitting the questionnaire

Questionnaires are to be submitted to the Secretariat no later than **30 June 2018**. Any substantive questions pertaining to this questionnaire may be addressed to Mrs Juliette Voinov Kohler (juliette.kohler@brsmeas.org).

The Implementation and Compliance Committee thanks you in advance for your kind cooperation.

I. Knowing the extent of the problem

1.1 Does your organization have a mandate to collect information about potential or confirmed cases of illegal traffic in hazardous and other wastes?

Yes

No

If yes, please specify:

From whom do you collect information:

- Customs
- Police
- Port authorities
- Environmental inspectors
- Prosecutors
- Judiciary
- Other (please specify)

Through which channel do you collect information:

- Self reporting by the entity to your organization
- Exchange of information among entities through a platform hosted/convened by your organization such as:
 - electronic information exchange system
 - operations
 - meetings
 - technical assistance activities
- Unofficial sources (eg. media or publications)
- Other (please specify)

1.2. On average, how many cases of potential or confirmed cases illegal traffic per year come to your knowledge?

- 0
- between 1 and 5
- between 6 and 10
- between 11 and 20
- more than 20

1.3. Is the information your organization collect about potential or confirmed cases of illegal traffic made publicly available?

- Yes No

If yes, please specify:

Information is shared with the Basel Convention Competent Authorities:

- Yes No

Information is shared with the Secretariat of the Basel Convention:

- Yes No

Information is shared with other entities (please specify):

In instances where the Centre is approached for advice on dealing with cases of illegal traffic, the Basel Secretariat may be written for confirmation of or feedback on the proposed approach.

Information is otherwise made publicly available)

- Yes No

If yes, please specify:

If no, please specify who has access to that information:

Information on cases on Illegal traffic resides with the Basel Convention Competent Authority and Focal Point.

1.4. Does your organization face challenges in accessing information on potential or confirmed cases of illegal traffic?

- Yes No

If yes, please indicate why:

- In general, lack of access by the entities you serve to information about potential or confirmed cases of illegal traffic. This may be due to:
- Lack of cooperation at the international level
 - Lack of communication and coordination between entities at the national level
 - Lack of adequate legal framework to prevent and punish the provisions of the Basel Convention
 - Lack of awareness of enforcement entities about the provisions of the Basel Convention
 - Lack of technical capacity to detect cases of illegal traffic
 - Other (please specify)

The major issues surrounding illegal traffic in the regions surrounds the lack of domestic legislation and regulations to support the enforcement

- Lack of transmission of information to your organization by the entities you serve. This may be due to:
- Entities not aware of the mandate of your organization to collect information on potential or confirmed cases of illegal traffic
 - Transmission of information to your organization would not necessarily achieve the objectives of the country
 - Lack of incentives for the entities to transmit to your organization information on potential or confirmed cases of illegal traffic
 - Other (please specify)

- Other (please specify)

If no, please indicate what elements in your view promote the transmission to your organization of information on potential or confirmed cases of illegal traffic:

II. Identifying Parties' challenges/best practices with respect to the implementation of Article 9 of the Basel Convention

2.1 In your view what are **best practices** with respect to the implementation and enforcement of Article 9 of the Basel Convention?

- Adequate domestic legal and institutional framework implementing Article 9 of the Basel Convention and complementing it as necessary to enable its enforcement (eg. penalties in case of illegal traffic)
- Awareness of stakeholders involved in transboundary movements (eg. generator, exporter, transporter, importer and disposer) of the relevant provisions of the Basel Convention pertaining to the control of such movements and illegal traffic;
- Training activities for enforcement entities, for instance integration of the Basel Convention in the national training or educational curricula of Customs, police, prosecutors, the judiciary and other enforcement entities;
- Establishment of environmental units within enforcement entities;
- Clear assignment of responsibilities between all the entities involved in the enforcement of Article 9 of the Basel Convention, and adequate communication or coordination mechanisms among them;
- Other best practices

Please elaborate on the nature of the “other best practices” and on any box you have ticked

2.2. Do you know of **difficulties** faced by Parties in implementing and enforcing the provision in Article 9 of the Basel Convention ?

No Yes

If yes, provide the nature of the difficulties encountered:

(i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement Article 9 of the Basel Convention;

Lack of clarity about what is deemed to be illegal traffic at the national level;

Lack of clarity with respect to the applicable rules;

Lack of understanding of the distinction between waste and non-waste at the national level;

Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements);

Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic

Lack of awareness among relevant entities within the country involved in preventing and combating illegal traffic about the requirements of Article 9 (e.g customs, port authorities, etc.);

Lack of coordination/cooperation at the national level among relevant entities involved in transboundary movements of hazardous and other wastes;

Other difficulties.

Please elaborate on the nature of the “other difficulties” and on any box you have ticked

(ii) International cooperation difficulties :

Lack of information on other Parties’ definition or understanding of what is deemed to be illegal traffic;

- Lack of harmonized definition or understanding of the meaning of ‘waste’, ‘hazardous waste’ and ‘other waste’;
- Lack of shared understanding among Parties of how to implement Article 9 of the Convention;
- Difficulties in communicating/cooperating with the relevant entities from the States concerned (State of transit, State of export);
- Difficulties in identifying or communicating with exporter or generator;
- Lack of shared understanding of how to operationalize paragraphs 2, 3 and 4 of Article 9;
- Other difficulties

Please elaborate on the nature of the “other difficulties” and on any box you have ticked

2.3 Are you aware of the guidance documents developed under the Basel Convention pertaining to preventing and combating illegal traffic (<http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx#>) and does your organization use or disseminate them?

(i) Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9):

Yes No

(ii) Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes

Yes No

(iii) Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Waste:

Yes No

If the guidance documents are used, please elaborate on how you disseminate them and how useful they have been for the entities you serve:

If your organization is not aware of, does not disseminate or does not use the guidance documents, please elaborate on why:

The lack of resources

2.4 Are you aware of the training tools developed by the Secretariat of the Basel Convention pertaining to preventing and combating illegal traffic and does your organization disseminate or use them?

- (i) Interactive Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions
(<http://www.basel.int/Implementation/Publications/TrainingManuals/tabid/2363/Default.aspx>)

Yes No

- (ii) Basel Convention Training Manual on Illegal Traffic for Customs and Enforcement Agencies
(<http://www.basel.int/Implementation/Publications/TrainingManuals/tabid/2363/Default.aspx>)

Yes No

- (iii) E-learning module for law enforcement officers on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm Conventions
(<http://synergies.pops.int/Implementation/TechnicalAssistance/ToolsandMethodologies/Elearningmoduleforlawenforcement/tabid/3534/language/en-US/Default.aspx>)

Yes No

If the tools are used, please elaborate on how you disseminate them and how useful they have been for the entities you serve:

If your organization is not aware of, does not disseminate or does not use the tools, please elaborate on why:

These items are included in the Centre's business plan for implementation before 2019. However, the effective roll out of this would depend on receipt of resources.

III. Identify views from on the steps that could be taken to improve the implementation and compliance with Article 9 of the Basel Convention

3.1. What steps would you suggest could be taken to improve implementation of Article 9 of the Basel Convention, whether at the national or global level?

Please number in order of priority, 1 being the highest:

- 3 Establishment of coordinating mechanisms between Competent Authorities and enforcement entities
- 1 Review and strengthening of legal and institutional frameworks implementing the Basel Convention, in particular whether it embodies the necessary provisions of the Convention pertaining to illegal traffic
- 2 Further prioritization of preventing and combating illegal traffic as a policy priority at the national level
- 9 Better understanding the drivers of illegal traffic and the scope of the problem
- 4 Strengthening technical assistance activities (please specify below the areas of assistance needed and the nature of the activities sought eg, country-specific, workshop, webinar)
- 6 Review of the ENFORCE terms of reference (annex to decision BC-11/8) with a view to strengthening this partnership
- 7 Development of further guidance documents at the global level (please specify below the scope of such guidance)
- 8 Broader dissemination of existing guidance and technical assistance tools
- 11 Greater access to information on the work of organizations with a mandate on preventing and combating illegal traffic
- 5 Strengthening of international cooperation among international organizations with a mandate in preventing and combating illegal traffic
- 12 Learning from possible lessons under other multilateral environmental agreements with trade control regimes (eg. CITES; Montreal Protocol, Cartagena Protocol)

- 10 Outreach and awareness raising activities
- Other (please specify below)

3.2. Among the steps identified above, which steps could your organization contribute to undertake?

Please number in order of priority, 1 being the highest:

- Establishment of coordinating mechanisms between Competent Authorities and enforcement entities
- Review and strengthening of legal and institutional framework implementing the Basel Convention, in particular whether it embodies the necessary provisions of the Convention pertaining to illegal traffic
- Further prioritization of preventing and combating illegal traffic as a policy priority at the national level
- Better understanding the drivers of illegal traffic and the scope of the problem
- 3. Strengthening technical assistance activities (please specify below the areas of assistance and the nature of the activities e.g. country-specific, workshop, webinar)
- Review of the ENFORCE terms of reference (annex to decision BC-11/8) with a view to strengthening this partnership
- 2. Development of further guidance documents at the global level (please specify below the scope of such guidance)
- 1. Broader dissemination of existing guidance and technical assistance tools developed under the Convention
- Greater access to information on the work of organizations with a mandate on preventing and combating illegal traffic
- Strengthening of international cooperation among international organizations with a mandate in preventing and combating illegal traffic
- Learning from possible lessons under other multilateral environmental agreements with trade control regimes (eg. CITES; Montreal Protocol, Cartagena Protocol)
- Other (please specify below)

IV. Other relevant information

Please add any additional information or comments pertaining to the implementation of Article 9 of the Basel Convention that is not included in answers to the above questions.

VI. Submitter information

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If you do not wish to submit the questionnaire at this time, you can click on the ["Save progress"] button and exit the questionnaire.

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Thank you for your participation. Your answers have been saved.

To enter again the questionnaire, click on the following link: **XXX**