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**Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Eleventh meeting**

Geneva, 3–6 September 2018

Item 3 (c) (ii) of the provisional agenda*

**Matters related to the work programme of the
Open-ended Working Group for 2018–2019:
legal, governance and enforcement matters:
providing further legal clarity**

**Note by the co-chairs of the expert working group on the review of the
annexes to the Basel Convention: status of the work and
recommendations on the way forward**

Note by the Secretariat

As referred to in the note by the Secretariat on providing further legal clarity (UNEP/CHW/OEWG.11/10), the annex to the present note sets out a note by the co-chairs of the expert working group on the review of the annexes to the Convention on the way forward for the review of Annexes I, III and IV and related aspects of Annex IX to the Basel Convention, for the consideration of the Open-ended Working Group. The present note, including its annex, has not been formally edited.

* UNEP/CHW/OEWG.11/1/Rev.1.

Annex

Note by the co-chairs of the expert working group on the review of the annexes to the Basel Convention: status of the work and recommendations on the way forward

I. Background

1. The Co-Chairs of the expert working group (EWG) on the review of Annexes I, III and IV to the Basel Convention and related aspects of Annex IX (entry B1110) to the Convention, Ms. Julie Croteau (Canada)¹ and Mr. Joost Meijer (Chile), submit this report for the consideration of the Open-Ended Working Group at its eleventh meeting (OEWG-11). It was prepared with the assistance of the Secretariat of the Basel Convention and in consultation with the EWG.
2. Following the thirteenth meeting of the Conference of the Parties, the EWG agreed on a workplan until the eleventh meeting of the OEWG focusing on the review of Annex IV and related aspects of Annex IX (B1110) to the Convention. The EWG agreed to collect additional information from EWG members and observers using three working documents prepared by the Co-Chairs. The working documents included information already submitted from previous consultations and requested new information on proposed changes to the introductory text, captions and individual entries in Annex IV and entry B1110 in Annex IX.
3. In all, 17 submissions were received.² The information ranged from detailed accounts of implementation problems, to definition issues and to questioning the role of the annexes. The diversity of views and proposals submitted emphasized the complexity of the issues and the importance of building a shared understanding of the issues across all Parties as work advances.
4. The first face-to-face meeting of the EWG was held from 20 to 23 March 2018 and the EWG met the following set of objectives:
 - (a) Create a shared understanding of the wide range of issues related to Annexes IV and IX (B1110) experienced by countries in the implementation of the Convention;
 - (b) Discuss overarching and cross-cutting issues and propose approaches or solutions to the OEWG;
 - (c) Discuss the list of specific annex issues and solutions and develop a path forward for presenting information and resolving issues;
 - (d) Propose an outline for the report to the OEWG and the path forward.
5. To support its discussions, the EWG considered documents prepared by the Co-Chairs that summarized the information collected and covered, among other things, overarching issues such as environmentally sound disposal operations versus unsound operations, the structure and naming of the annexes, interim operations, the concepts of waste and non-waste, reference to direct re-use and catch-all operations.
6. The EWG also discussed detailed proposals for each operation listed in Annex IV, for new operations in Annex IV and for Annex IX (B1110). The EWG identified that information on statistics pertaining to D and R operations, based on the national reports transmitted by Parties, would be useful to advance the work, and agreed to request the Secretariat to retain a consultant to provide this information. The EWG concluded that, apart from that, the core expertise from the members was sufficient to carry out its work on the review of Annex IV and related aspects of Annex IX.

¹ Ms. Jacinthe Seguin served as Co-Chair until 9 June 2018 at which time, due to her inability to complete her term of office, she was replaced by Ms. Julie Croteau from Canada until OEWG-11.

² See the second table at:

<http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexIX/Activities20182019/tabid/6125/Default.aspx>.

7. The scope of the mandate of the EWG was discussed regarding the review of Annex IX (B1110). Prior to their first meeting, some members had understood that the mandate of the EWG was to be focused on the review of the terms “reuse” and “direct reuse” and their associated footnotes, while others had understood that the review pertained to the entire entry B1110. The EWG agreed that it would be useful to review the entire entry B1110 and to also review the mirror entry A1180 in Annex VIII, and that this should be discussed at OEWG-11.

8. The EWG had a general discussion on the review of Annexes I and III. It was agreed that the review should take place in parallel with that of Annex IV and related aspects of Annex IX, and that experts on hazardous characteristics should be present when the matters are considered.

9. Parties and others are invited to consult the documents and the report of the first meeting of the EWG that are available on the website of the Convention.³

II. Considerations and recommendations by the Co-Chairs

10. The review of the annexes is an ambitious undertaking with many stages of work; some of which are taking place concurrently. As work progresses and discussions deepen, careful planning of the milestones with clear objectives and timelines for each of them is critical. A way forward leading up to the fourteenth meeting of the Conference of the Parties is presented in appendix I to this report, for the consideration of OEWG-11.

11. While the EWG has begun work on Annex IV and Annex IX (B1110), the gradual integration of the review of Annexes I and III and the linkages between these annexes will need to be taken into consideration as the EWG discusses possible proposals to amend these annexes. A possible way forward leading up to the fifteenth (2021) and sixteenth (2023) meetings of the Conference of the Parties, is presented in appendix II of this report, for the consideration of OEWG-11.

12. The possible way forward takes into account the fact that the text of any amendment proposed by a Party to an annex to the Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption (Article 17, paragraph 2 and Article 18, paragraph 1 of the Convention). In practice, Parties are invited to transmit to the Secretariat any amendment proposal one month in advance of the deadline set in the Convention to ensure that its communication to all Parties is made in accordance with the Convention. The possible way forward also takes into account decision VIII/15 on the revisions to the procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX and the status of decision VII/21, that, among other things, provides that the application form for placement or removal of wastes from those annexes must be submitted to the Secretariat of the Basel Convention at least three months prior to an OEWG meeting.

13. The active engagement of Parties is essential for this work to result in amendments that are suitable to all. The pace of the work is expected to increase and will require significant commitment by the Co-Chairs and the EWG, as well as intersessional participation from Parties and observers in reviewing and commenting on recommendations prepared by the EWG. In this respect, it is brought to the attention of the OEWG that the EWG will elect a new Co-Chair subsequent to OEWG-11 to replace Ms. Croteau.

14. Based on the above considerations, the recommendation on the way forward is for the Open-ended Working group to:

(a) Request the expert working group on the review of annexes:

- (i) To continue its work in accordance with the proposed way forward in appendix I;
- (ii) To prepare recommendations for revisions to Annex IV and Annex IX (B1110) for consideration by the Conference of the Parties at its fourteenth meeting;

(b) Invite Parties and observers to submit to the Secretariat comments on the possible way forward leading up to the fifteenth and sixteenth meetings of the Conference of the Parties as presented in appendix II by 19 October 2018;

³ First meeting of the expert working group on the review of annexes of the Basel Convention: <http://www.basel.int/Implementation/LegalMatters/LegalClarity/Meetings/1stRAEWGmtg/tabid/6237/Default.aspx>.

- (c) Request the Secretariat to make available to Parties and observers by 8 January 2019 the recommendations referred to in paragraph (a)(ii) above for revisions to Annex IV and Annex IX (B1110);
- (d) Invite Parties and observers to submit to the Secretariat, by 19 February 2019, comments on these recommendations;
- (e) Request the Secretariat to publish the comments received pursuant to paragraphs (b) and (d) above on the Convention website and to prepare a compilation of all comments for consideration by the Conference of the Parties at its fourteenth meeting;
- (f) Discuss the way forward regarding the review of the entire entry B1110 and the review of the mirror entry A1180 in Annex VIII.

Appendix I

Way forward to COP14

| OEWG-11 | WORK OF THE EWG | 2 ND MEETING OF EWG | COMMENTS FROM PARTIES AND OBSERVERS | COP14 |
|---|---|--|---|--|
| September 3-6, 2018 | August to September 2018 | December 10-13, 2018 | January to February 2019 | April/May 2019 |
| <p>Objective Present to Parties progress made by the EWG on the review of the annexes</p> <ul style="list-style-type: none"> - Plenary: Co-Chairs to present progress report - Contact Group: Prepare decision (way forward) - Side event: Information sharing with the OEWG | <p>Objective Solicit views from EWG members and observers to support discussions at face to face meeting</p> <ul style="list-style-type: none"> - Comments on overarching and cross-cutting issues of Annex IV: August 3 2018 - Consultations of the EWG in the margins of OEWG-11 to discuss comments on overarching and cross-cutting issues of Annex IV: evening of September 6 2018 - Comments on Annex I and III: September 28 2018 - Technical additions and proposals to reduce the number of proposals in documents UNEP/CHW.RA_EWG/1/3/Rev.1 and UNEP/CHW.RA_EWG/1/4//Rev.1: September 28 2018 <p><i>NB: 31.10.2018 deadline for input to COP-14 working document</i></p> | <p>Objective Develop recommendations for revised Annex IV and Annex IX (B1110) and initiate discussions on Annexes I & III</p> <ul style="list-style-type: none"> - Narrow down proposed changes to Annex IV & Annex IX (B1110) - Prepare recommendations for a revised Annex IV and Annex IX (B1110) in order to seek comments from Parties and observers - First substantive discussion on Annexes I and III <p>Secretariat, with support from consultant, to prepare documents for 2nd meeting and circulate documents to the EWG 3 weeks before: November 12, 2018.</p> <p>Meeting of <u>4 days</u> duration</p> | <p>Objective Solicit views from Parties and observers on recommendations for a revised Annex IV and Annex IX (B1110) to inform discussions at COP14</p> <ul style="list-style-type: none"> - Send recommendations to Parties and observers: January 8 2019 - Webinars by Co-Chairs (tbc) - Reception of comments on: February 19 2019 - Compilation of comments (INF document for COP14) February 28 2019 | <p>Objectives Present progress made by the EWG on the review of the Annexes, discuss recommendations for revisions to Annex IV and Annex IX (B1110) and consider EWG mandate until COP15</p> <ul style="list-style-type: none"> - Plenary: Co-Chairs to present progress report - Contact Group: <ol style="list-style-type: none"> 1. Discuss recommendations for a revised Annex IV, and Annex IX (B1110) 2. General discussion on Annexes I and III 3. Prepare decision (agree on way forward, mandate of EWG) |

Appendix II

Possible way forward to COP15 and COP16

COP15

| OEWG-12 | COP15 |
|--|--|
| 2020 | 2021 |
| Annex IV: Amendment proposals are presented and discussed | Annex IV: Amendment proposals are negotiated and possibly adopted |
| Annex VIII (A1180): Amendment proposals are presented and discussed | Annex VIII (A1180): Amendment proposals are negotiated and possibly adopted |
| Annex IX (B1110): Amendment proposals are presented and discussed | Annex IX (B1110): Amendment proposals are negotiated and possibly adopted |

COP16

| OEWG-13 | COP16 |
|---|---|
| 2022 | 2023 |
| Annex I: Amendment proposals are presented and discussed | Annex I: Amendment proposals are negotiated and possibly adopted |
| Annex III: Amendment proposals are presented and discussed | Annex III: Amendment proposals are negotiated and possibly adopted |