

Implementation of Paragraph 11 of Article 6 of the Basel Convention
on insurance, bond and guarantee
Questionnaire for Parties

Introduction

By its decision BC-11/8 the Conference of the Parties at its eleventh meeting adopted the work programme for the biennium 2014-2015 of the Committee, whereby the Committee was requested to compile information on how parties are implementing paragraph 11 of article 6 of the Convention, including through national legislation, and consider the development of guidance on how to implement this provision for consideration and possible adoption by the twelfth meeting of the Conference of the Parties.

To assist the Committee with its work, Parties are invited to provide information about their experiences in implementing paragraph 11 of Article 6 of the Convention by responding to this questionnaire, including any further information describing how Parties' own approach has been developed and implemented as well as challenges encountered and possible ways to overcome them.

Article 6 of the Convention pertains to transboundary movements of hazardous and other wastes among Parties to the Convention. This article sets out the conditions and procedures that must be complied with for such a movement to take place in accordance with the Convention. Paragraph 11 of Article 6 reads as follows:

“11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.”

Background

The Manual for the Implementation of the Basel Convention does not provide further guidance on paragraph 11 of Article 6¹. The Guide to the Control System provides that the guarantees referred to in paragraph 11 of Article 6 “are intended to provide for immediate funds for alternative management of the waste in cases where shipment and disposal cannot be carried out as originally intended. These guarantees may take the form of an insurance policy, bank letters, bonds or other promise of compensation for damage, depending on the countries concerned”² (emphasis added). The guide further provides that the exporter is to “arrange the necessary financial guarantees and insurances for the movement of waste required by the national legislation of the countries concerned. Some countries may require the financial guarantee to cover the cost of any necessary re-import and alternative disposal operations should the need arise, including cases referred to in Articles 8 and 9 of the Basel Convention. Additionally, they may require separate insurance against damage to third parties, held as appropriate by the exporter, carrier and the disposer”³ (emphasis added).

¹The Manual for the Implementation of the Basel Convention is available at:
<http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>

²Guide to the Control System (Instruction Manual), adopted by the fourth meeting of the Conference of the Parties, Kuching, Malaysia February 1998, Section 4.4, page 8. The Guide is available at:

<http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>

³ Id. page 12.

The notification document for transboundary movements/shipments of waste⁴ provides, in block 17, for the exporter - notifier / generator - producer to certify that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Similar language is set out in block 15 of the movement document.

This activity of the work programme of the Committee was considered by the Committee during its tenth meeting (5-6 December 2013) on the basis of document UNEP/CHW/CC.10/10⁵ at what time the Committee agreed to request the Secretariat, under the leadership of the Committee lead member and within available resources to, inter alia:

- develop a questionnaire with a view to collecting information on how parties are implementing paragraph 11 of Article 6, including challenges associated with this implementation and possible ways to overcome them;
- send the questionnaire to Parties, Basel Convention Regional Centres and other relevant stakeholders;
- publish on the website of the Convention the responses received to the questionnaire;
- compile the information received and prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting.

Instructions for completing and submitting the questionnaire

A **login and password** have been provided by the Secretariat to each Party's focal point. The login and password allow access to the online questionnaire and can be shared by the focal point with other entities contributing to completing the questionnaire. In addition, a **submission password** has been provided by the Secretariat to the focal point: the submission password will need to be used for the Party to submit the questionnaire to the Secretariat. The Committee encourages focal points to seek the cooperation of competent authorities and other relevant entities at the national level in completing this questionnaire.

Questionnaires are to be submitted to the Secretariat no later than **30 May 2014**. Any substantive question pertaining to this questionnaire may be addressed to Ms Juliette Voinov Kohler (Juliette.kohler@brsmeas.org). Any IT question pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

⁴ The form was adopted by decision VIII/18 in 2006

⁵ ICC-10 documents are available at :

<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>

I. Legal and institutional framework

1. Is legislation (any legal requirement: an act, regulation, ordinance, etc.) in place to implement paragraph 11 of Article 6 of the Convention?
 - a. **Yes** (please provide text)

Article 6 of REGULATION (EC) No 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 on shipments of waste

Financial guarantee

1. All shipments of waste for which notification is required shall be subject to the requirement of a financial guarantee or equivalent insurance covering:

(a) costs of transport;

(b) costs of recovery or disposal, including any necessary interim operation; and

(c) costs of storage for 90 days.

2. The financial guarantee or equivalent insurance is intended to cover costs arising in the context of:

(a) cases where a shipment or the recovery or disposal cannot be completed as intended, as referred to in Article 22; and

(b) cases where a shipment or the recovery or disposal is illegal as referred to in Article 24.

3. The financial guarantee or equivalent insurance shall be established by the notifier or by another natural or legal person on its behalf and shall be effective at the time of the notification or, if the competent authority which approves the financial guarantee or equivalent insurance so allows, at the latest when the shipment starts, and shall apply to the notified shipment at the latest when the shipment starts.

4. The competent authority of dispatch shall approve the financial guarantee or equivalent insurance, including the form, wording and amount of the cover.

However, in cases of import into the Community, the competent authority of destination in the Community shall review the amount of cover and, if necessary, approve an additional financial guarantee or equivalent insurance.

5. The financial guarantee or equivalent insurance shall be valid for and cover a notified shipment and completion of recovery or disposal of the notified waste.

The financial guarantee or equivalent insurance shall be released when the competent authority concerned has received the certificate referred to in Article 16(e) or, where appropriate, in Article 15(e) as regards interim recovery or disposal operations.

6. By way of derogation from paragraph 5, if the waste shipped is destined for interim recovery or disposal operations and a further recovery or disposal operation takes place in the country of destination, the financial guarantee or equivalent insurance may be released when the waste leaves the interim facility and the competent authority concerned has received the certificate referred to in Article 15(d). In this case, any further shipment to a recovery or disposal facility shall be covered by a new financial guarantee or equivalent insurance unless the competent authority of destination is satisfied that such a financial guarantee or equivalent insurance is not required. In these circumstances, the competent authority of destination shall be responsible for obligations arising in the case of an illegal shipment or for take-back where the shipment or the further recovery or disposal operation cannot be completed as intended.

7. The competent authority within the Community which has approved the financial guarantee or equivalent insurance shall have access thereto and shall make use of the funding, including for the purpose of payments to other authorities concerned, in order to meet the obligations arising in accordance with Articles 23 and 25.

8. In the case of a general notification pursuant to Article 13, a financial guarantee or equivalent insurance covering parts of the general notification may be established, instead of one covering the entire general notification. In such cases, the financial guarantee or equivalent insurance shall apply to the shipment at the latest when the notified shipment it covers starts.

The financial guarantee or equivalent insurance shall be released when the competent authority concerned has received the certificate referred to in Article 16(e) or, where appropriate, in Article 15(e) as regards interim recovery or disposal operations for the relevant waste. Paragraph 6 shall apply *mutatis mutandis*.

In addition, for Wallonia: Decree of the Walloon Parliament of 27 June 1996 (art. 23, § 1, 4°) and Order of the Walloon Government of 19 July 2007 (art. 6).

In addition, for the Flanders Region: Decree of the Flemish Parliament of 23 December 2011 (art. 14) and the Order of the Flemish Government of 17 February 2012 (art. 6.2.5)

- b. No
2. If answer to 1 above is “no”, is any legislation (any legal requirement: an act, regulation, ordinance, etc.) planned to implement paragraph 11 of Article 6 of the Convention?
 - a. Yes (please provide draft text)
 - b. No
 3. Are any other mechanisms employed to implement paragraph 11 of Article 6 of the Convention?
 - a. Yes (please provide description)
 - b. No

If answers to questions 1 to 3 are “no”, you may stop here and submit your questionnaire.

4. Please identify to what types of transboundary movements the requirement of coverage by a financial mechanism applies:
 - a. Import, in case no guarantee (or insufficient or inadequate) is foreseen in the exporting country
 - b. Export
 - c. Transit, in case no guarantee (or insufficient or inadequate) is foreseen in the exporting country
5. Which entity is required to cover the transboundary movement with a financial mechanism:
 - a. The generator
 - b. The exporter
 - c. The importer, in case no guarantee (or insufficient or inadequate) is foreseen in the exporting country
 - d. The disposer
 - e. The transporter
 - f. Other (please specify)
6. Which entity is the beneficiary of the financial mechanism covering the transboundary movement:
 - a. The generator
 - b. The exporter
 - c. The importer
 - d. The disposer
 - e. The transporter
 - f. The State export, import or transit
 - g. Other (please specify)
7. What type of financial mechanism is required to fulfil the requirements of paragraph 11 of Article 6 of the Convention?
 - a. Insurance
 - b. Bond
 - c. Guarantee

- d. Other (please specify) + Wallonia : for few cases, deposit in hands of Caisse des Dépôts et Consignation (branch of Belgian Treasury)

8. What is the scope of coverage of the financial mechanism:

- a. Costs of storage
- b. Costs of testing for identification, re-packaging and re-loading the wastes
- c. Costs of transport
- d. Costs of disposal in an environmentally sound manner (ESM)
- e. Loss of life or personal injury
- f. Loss of or damage to property
- g. Environmental damage e.g. costs of reinstatement or compensation
- h. Loss of income
- i. Other (please specify)

9. What period of time must be covered by the financial mechanism:

- a. From the export to the completion of disposal in an environmentally sound manner (ESM)
- b. From the export to the import
- c. During the transit
- d. Other (please specify)

10. In what context does the financial mechanism operate:

- a. Cases where the transboundary movement cannot be completed as intended
- b. Cases where the disposal in an environmentally sound manner (ESM) cannot be completed as intended
- c. Cases of illegal traffic (specifically if illegal traffic is related to an entity with an available guarantee)
- d. Other (please specify)

11. How is the financial mechanism activated and what requirements apply:

- a. Request by the entity required to cover the transboundary movement with a financial mechanism
- b. Request by the beneficiary of the financial mechanism
- c. Insolvency of the entity required to cover the transboundary movement with a financial mechanism
- d. Other (please specify)

12. How is the total amount of the coverage calculated?

- a. As specified in the legislation

b. By a specific formula employed by the Competent Authority/ies of export/transit/import (please specify): Flanders Region: total requested tonnage multiplied by 2 euro (minimum 1200 euro); base amount multiplied by 4 in case of hazardous waste; base amount doubled in case of export to non-EU or EVA-countries.

For Wallonia: guarantee = $[A + B + C] \times D \times [(E / F) + 1] \times 1.2$

Or $[A + B + C] \times D \times 1.2$ (for single shipment)

with:

A: cost of treatment (replacement or if no alternative real cost);

B: cost of transport;

C: cost of storage (according following tariff: dangerous wastes indoor 140 €/t, dangerous wastes outdoor 70 €/t, non-dangerous wastes indoor 70 €/t, non-dangerous wastes outdoor 35 €/t);

D: maximal quantities per transport;

E: maximal duration of treatment (from departure to certification);

F: minimal duration between two shipments

- .c. By a specific formula employed by the exporter/generator(importer/dispenser/transporter(please specify)
- d. By a specific formula employed by the company providing the financial mechanism
- e. No formulae applied
- f. Other method of calculation (please specify)

13. What mechanisms are in place to monitor the implementation of and compliance with paragraph 11 of Article 6?

- a. Inspection by relevant authority
- b. Reporting by company providing financial mechanism
- c. Reporting by generator/exporter/transporter/importer/dispenser (please specify)
- d. Monitoring of notification/Movement document completion
- e. Other (please specify)

II. Experience with implementation of paragraph 11 of Article 6 of the Convention

14. Have any proposed movements been not authorized or consented to due to non-compliance with paragraph 11 of Article 6 of the Convention?

- a. No
- b. Yes
- c. If yes what were the specific reasons:
 - i. Failure to complete box on notification/movement document
 - ii. Lack of or insufficient insurance etc. cover provided
 - iii. Unacceptable level of cover
 - iv. Other (please specify)

15. What data are collected on application and use of the insurance, bond etc.?

- a. All movements
- b. All incidents requiring insurance etc. to be effected
- c. None

16. In what contexts has the financial mechanism been activated:

- a. Cases where the transboundary movement could not be completed as intended (please specify: import, transit or export)
- b. Cases where the disposal in an environmentally sound manner (ESM) could not be completed as intended
- c. Cases of illegal traffic
Other (please specify): **no recent cases**

17. What entity has activated the financial mechanism:

- a. The generator
- b. The exporter

Formatted: French (Switzerland)

- c. The importer
- d. The disposer
- e. The transporter
- f. The State of export, import or transit (Wallonia)
- g. Other (please specify): case never occurred in other Regions

18. For what purpose has the financial mechanism been activated:

- a. Costs of storage
- b. Costs of testing for identification, re-packaging and re-loading the wastes
- c. Costs of transport
- d. Costs of disposal in an environmentally sound manner (ESM)
- e. Loss of life or personal injury
- f. Loss of or damage to property
- g. Environmental damage e.g. costs of reinstatement or compensation
- h. Loss of income
- i. Other (please specify)

19. Have any actions for compliance and enforcement under paragraph 11 of Article 6 been taken by:

- a. Administrative warnings in context of PIC procedure
- b. Administrative sanctions
- c. Prosecution
- d. Other (please specify)

III. Improving the implementation of and compliance with paragraph 11 of article 6 of the Convention

20. Is any guidance made available within your country on compliance with paragraph 11 of Article 6 of the Convention? (if possible attach a copy)

21. What challenges have been encountered in implementing paragraph 11 of Article 6?

- a. Differing system/calculation methods used by states of export/transit
- b. Lack of or differing legal requirements
- c. Lack of clarity in legal requirements
- d. Lack of common method
- e. Lack of mechanism by which the selected method(s) is implemented
- f. Failure by relevant entity to initiate action (testing, storing transport etc.)
- g. Failure by relevant entity to activate the financial mechanism
- h. Other (please specify)
Diversity of legal requirements about Guarantee is a direct consequence of law system diversity (banking law, insurance law, civil law, judicial practice...). Some costs are very sensitive according to location factors (labour cost...)

22. What steps could be taken to improve implementation and compliance with paragraph 11 of Article 6?

- a. Development of legislation

- b. Development of guidance
- c. Information exchange between Parties on their respective legal requirements as they pertain to insurance, bond or guarantee
- d. Access to information on availability of relevant providers of financial mechanisms
- e. Analysis of the value for a Party to require that any transboundary movement be covered by insurance, bond or guarantee
- f. Measures to facilitate cooperation between:
 - i. competent authorities, or
 - ii. between entities, or
 - iii. between competent authorities and entities
- g. Other (please specify)

IV Additional Comments

Please add here any further commentary on Implementation of Paragraph 11 of Article 6 of the Basel Convention that is not included in answers to the above questions.