

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)

REGIONAL ENFORCEMENT NETWORK: Improved ability of frontline customs officers and representatives of broader enforcement personnel. Activity: Information and intelligence sharing. • 96 suspicious shipments were traced, and intelligence was shared between exporting and destination countries. This led to multiple seizures and repatriations of illegal waste shipments.

- Enforcement data was collected and analyzed from 20 participating countries
- 29 country case studies were shared during implementation

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)

REN: Survey completed per year from 2014-2017, results shared at annual workshop and in annual report. Total: 4 surveys, but unclear how many countries participated. ODS: OzonAction has developed customs training materials including a comprehensive training Manuel, training videos, factsheets etc. We have produced an online training programme with the World Customs Organization, hosted on their customs training platform; We cooperate with a number of organisations on the issue and have produced a number of joint publications and tools (WCO, INTERPOL, UNODC, various NGOs etc);Host a voluntary global prior informed consent system (iPIC) which allows cross-checking prior to export/import of ODS, which prevents thousands of tonnes of illegal (or 'unwanted') trade in ODS; Cooperated in several enforcement operations in cooperation with the WCO (and RILOs) on ODS specifically as well as on chemicals and waste; Preparation of articles and information on the issue (both journalistic and academic)A dedicated page on our website specifically for customs officers.

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):

REN:96 suspicious shipments traced from 2013-2017. Waste: 866,000 tonnes and 659 containers and 469 seizures; 92.6 tonnes and 2,231 cylinders and 23 seizures; Chemicals: 114 tonnes; ODS: Resulting from the differentiated phased out schedules we are thought to be entering a period of increased illegal trade at present, currently many cases of illegal trade in HCFCs and HFCs (restricted in the EU) are appearing and discrepancies in import and export data point to significant quantities of unlicensed and illegal trade in ODS.

Yes No

If yes, please specify:

REN website • Updated and active website Total: 12 website general updates each year (monthly); and 20 country updates. REN Newsflash. Number of REN Newsflashes (newsletters) produced and circulated Total: 12 issues a year (monthly). 1 enforcement handbook developed and translated into 3 languages 3 working papers. developed and translated into at least 3 languages and 25 country information sheets. WATCH-IT application for mobile devices developed and released (2017)

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

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)

A key challenge was that some national partners remained reluctant to respond to information requests. The reason for this reluctance to share information could be due to its sensitive nature and concerns around security. There is a culture of secrecy within most customs agencies, as well as a perceived lack of trust and understanding around why the information should be shared. On the other hand, several partners shared detailed information about their seizures. Initiatives to strengthen trust in the network is crucial in any next phase.

- 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:

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:

Green Customs Initiative developed, together with their partners including BRS Secretariats own tools such as the Green Customs guide on MEAs. Moreover, it also facilitates e-learning tools on the Klikc! Platform of the World Customs Organization.

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:

- Establishment of coordinating mechanisms between Competent Authorities and enforcement entities
- 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
- 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
- Strengthening technical assistance activities (please specify below the areas of assistance needed and the nature of the activities sought eg, country-specific, workshop, webinar)
- Review of the ENFORCE terms of reference (annex to decision BC-11/8) with a view to strengthening this partnership
- Development of further guidance documents at the global level (please specify below the scope of such guidance)
- Broader dissemination of existing guidance and technical assistance tools
- 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)
- Outreach and awareness raising activities
- Other (please specify below)

Waste crime continues to be seen as a low-risk, high-reward crime for organized criminal networks which exploit differences in legislation between countries and regions, as well as weak enforcement systems. Criminal groups involved in the illegal disposal of electronic waste have also been found to be involved in human, drug and firearms trafficking, fraud and money laundering.

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
- 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
- Development of further guidance documents at the global level (please specify below the scope of such guidance)
- 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)

Since the first emergence of illegal trade in ozone depleting substances in the 1990s, smugglers have continued to exploit the opportunities presented by this trade which presents high profits. In most countries, fairly weak penalties when smugglers are caught does not act as a powerful deterrent against this illegal activity. The Protocol has responded by requiring countries implement licensing and quota systems and the training and support provided to customs and enforcement officers provided by UN Environment and other agencies has greatly build their capacity resulting in many seizures and prevention of illegal trade in ODS. However illegal trade and illicit production still remains a significant threat which could potentially undermine, to some degree, the success of the Montreal Protocol.

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

Organization: *Green Customs Initiative, REGIONAL ENFORCEMENT NETWORK(REN) AND Ozone Action (Ozone Depleting Substances) LAW DIVISION / UN Environment*

Name of the person who completed the questionnaire: **Haddy Jallow Guisse**

Title: Programme Management Officer/ Chemical and Waste Focal Point

Address:

UN Avenue, P. O. Box 47074

NOF Block 1, Level 2

Nairobi 00100, Kenya

Telephone no: +254 762 5290

E-mail: haddy.guisse@un.org

Date of submission 28 June 28, 2018

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

[Submission password]

[Exit page]

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

To enter again the questionnaire, click on the following link: [XXX](#)