

Implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention on illegal traffic

Questionnaire for Parties

Introduction

Background

By its Decision BC-12/7, the Conference of the Parties to the Basel Convention, at its twelfth meeting, adopted the work programme for the biennium 2016-2017, whereby the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (ICC) was requested to develop a guidance document on the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention and integrate this guidance in the draft guidance document on the take-back provision set forth in paragraph 2 of Article 9, for consideration and possible adoption by the Conference of the Parties at its thirteenth meeting.

To assist the Committee with its work, Parties are invited to provide information about their experiences in implementing paragraphs 3 and 4 of Article 9 of the Basel Convention by responding to this questionnaire, including the difficulties faced by Parties and possible ways to overcome them. Information collected from Parties will be used as a basis for the development of the guidance. This questionnaire follows the same approach as the questionnaire that was used by the Committee in June 2012 to collect information from Parties on their implementation of paragraph 2 of Article 9 (see: <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201213/IllegalTrafficTakeBackProvision/tabid/3195/Default.aspx>).

Paragraph 3 of Article 9 reads as follows:

“Article 9 (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 co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.”

Paragraph 4 of Article 9 reads as follows:

“Article 9 (4): In cases where 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.”

Instructions for completing and submitting the questionnaire

Questionnaires are to be submitted to the Secretariat no later than 10 September 2015. Any

substantive questions pertaining to this questionnaire may be addressed to Mrs. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT questions pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

The Implementation and Compliance Committee

Implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention on illegal traffic

Questionnaire for Parties

I. National or regional legal framework pertaining to the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention

1. a. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in **paragraph 3 of Article 9** of the Basel Convention?

No

Yes

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

Please also provide a copy of such relevant national provision implementing paragraph 3 of Article 9 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 3 of Article 9 of the Basel Convention

If possible
attach a copy

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If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 3 of Article 9 of the Basel Convention

1. b. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in **paragraph 4 of Article 9** of the Basel Convention?

No

Yes

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

Please also provide a copy of such national provision implementing paragraph 4 of Article 9 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 4 of Article 9 of the Basel Convention

If possible
attach a copy

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If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 4 of Article 9 of the Basel Convention



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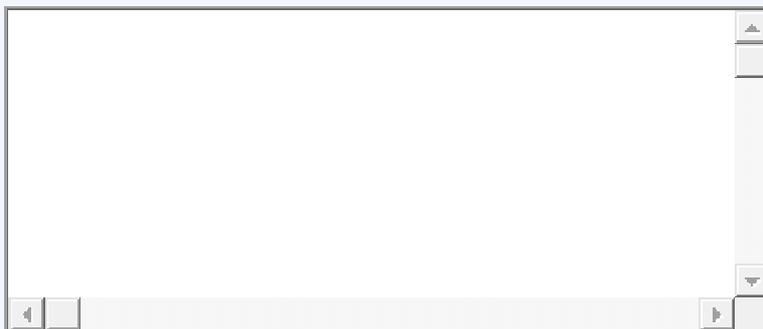
II. Experience in implementing paragraphs 3 and 4 of Article 9 of the Basel Convention

2. a. Does your country have experience dealing with cases where **paragraph 3 of Article 9** of the Basel Convention has been applied?

No

Yes

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.



2. b. Does your country have experience dealing with cases where **paragraph 4 of Article 9** of the Basel Convention has been applied?

No

Yes

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.



3. a. Has your country faced any difficulties in implementing the provision in **paragraph 3 of Article 9** of the Basel Convention?

- No
- Yes

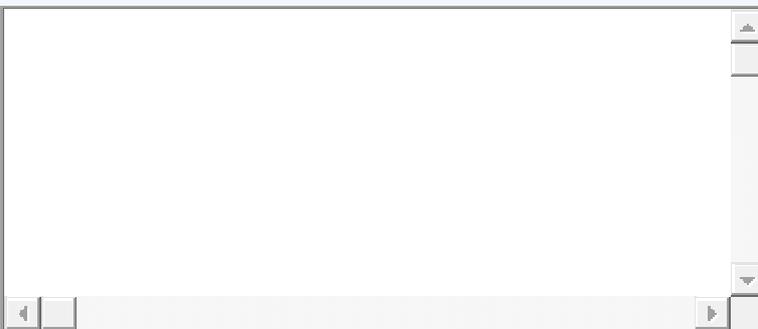
If yes, provide the nature of the difficulty encountered:

(i) Domestic difficulties:

- Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 3 of Article 9 of the Basel Convention;
- Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer;
- 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);
- Challenges in concluding that the illegal traffic is the result of the conduct on the part of the importer or disposer and/or identification of the relevant importer or disposer;
- Lack of awareness of relevant entities that should be involved in combating illegal traffic;
- Lack of awareness by importers or disposers about the requirements of the Basel Convention;
- Lack of cooperation by importers or disposers in complying with the requirements set out in paragraph 3 of Article 9 of the Basel Convention;
- Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic;
- Difficulty to dispose of the waste in an environmentally sound manner;
- Other difficulties (Please specify):



Please also elaborate on any box you have ticked



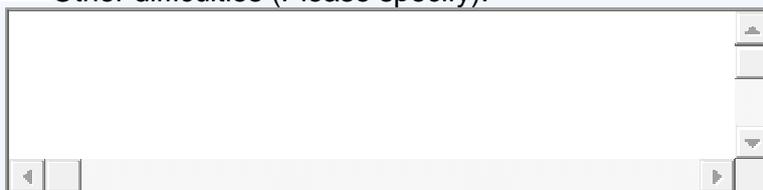
(ii) International cooperation difficulties:

- Difficulties in communicating and cooperating with other States concerned by the case of illegal traffic (State of transit, State of export);
- Lack of shared understanding among States concerned of how to operationalize

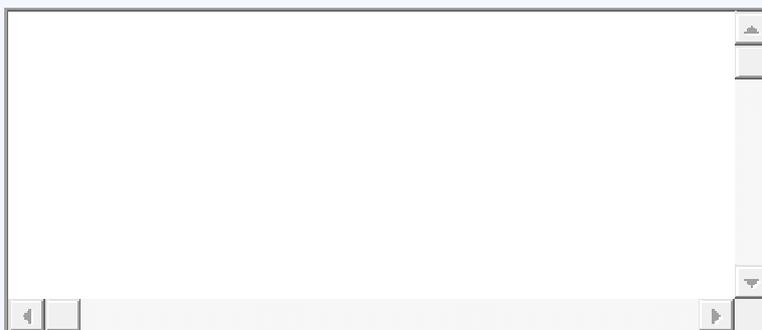
paragraph 3 of Article 9;

Lack of guidance on how to operationalize paragraph 3 of Article 9;

Other difficulties (Please specify):

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Please also elaborate on any box you have ticked

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3. b. Has your country faced any difficulties in implementing the provision in **paragraph 4 of Article 9** of the Basel Convention?

No

Yes

If yes, provide the nature of the difficulty encountered:

(i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 4 of Article 9 of the Basel Convention;

Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer;

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);

Challenges in concluding that the responsibility for illegal the traffic cannot be assigned either to the exporter or generator or to the importer or disposer;

Challenges in identifying the States concerned (State of transit, State of export);

Lack of awareness of relevant entities that should be involved in combating illegal traffic;

Lack of awareness/cooperation by importers or disposers;

Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic;

Difficulty to dispose of the waste in an environmentally sound manner;

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

(ii) International cooperation difficulties:

- 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 paragraph 4 of Article 9;
- Lack of guidance on how to operationalize paragraph 4 of Article 9;
- Differences in the level of “evidence” required that there might be a case of illegal traffic justifying the application of paragraph 4 of Article 9;
- Lack of an adequate mechanism to handle cooperation difficulties between Parties (NB: Existing mechanisms include the role of the Secretariat under Article 16 (1) (i), a submission to the Implementation and Compliance committee, the verification procedure under Article 19 and the settlement of disputes under Article 20);
- Other difficulties (Please specify):

Please also elaborate on any box you have ticked

4. Has your country been able to overcome difficulties stated under sections 3.a. and 3.b. above?

No



Yes

If yes, explain how

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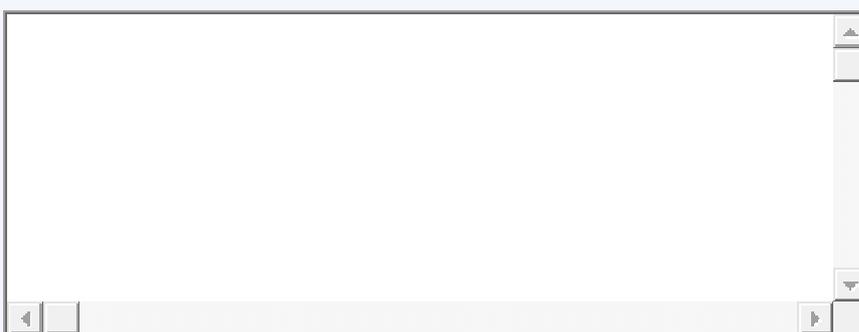
Questionnaire for Parties

III. Consequences of difficulties in implementing the provisions of paragraphs 3 and 4 of Article 9 of the Basel Convention

5. a. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of **paragraph 3 of Article 9** of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

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5. b. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of **paragraph 4 of Article 9** of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

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Implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention on illegal traffic

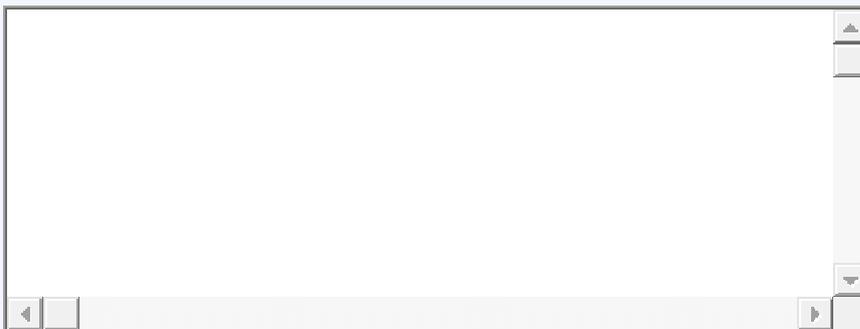
Questionnaire for Parties

IV. Best practices in implementing paragraphs 3 and 4 of Article 9 of the Basel Convention

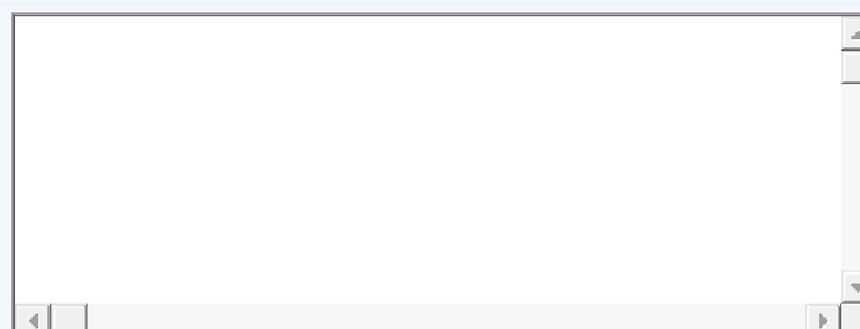
6. Please share examples of best practices your country or countries in your region have developed and used to implement and comply with the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention (eg. existing mechanisms or arrangements in place).

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7. Please share lessons learned (both negative and positive) that the Committee may wish to take into account in the development of guidance on the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention.

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8. Please list and, if possible, share guidance documents or training materials developed at the national, regional or global level that you may be aware of that is aimed at assisting Parties implement these provisions.

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9. Does your country transmit to the Secretariat the “Form for confirmed cases of illegal traffic” (available at <http://archive.basel.int/legalmatters/illegtraff/ilegtraffform.pdf>)?

No

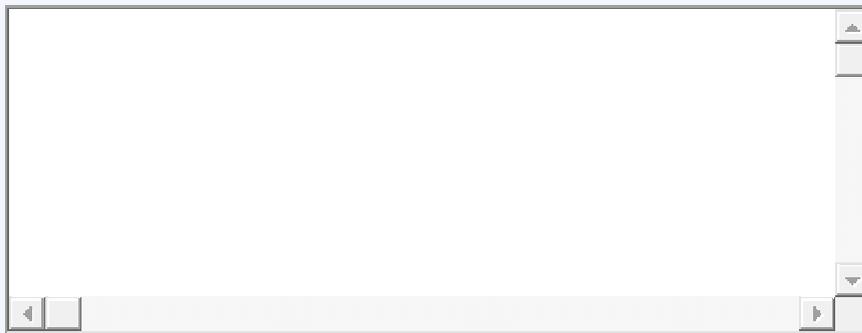
Yes

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V. Other relevant information

Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention that is not included in answers to the above questions.

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Questionnaire for Parties

Submitting Party:

Submitting Party:

Contact details of the person who completed the questionnaire:

Name:

Title:

Address:

Telephone:

Fax:

E-mail: