

Transit transboundary movements: improving the implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention

Questionnaire for Parties

Introduction

Background

By its Decision BC-14/15, the Conference of the Parties to the Basel Convention, at its fourteenth meeting, adopted the work programme for the biennium 2020-2021, whereby the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (ICC) was requested to improve the implementation of and compliance with Article 6 of the Convention by:

- (a) Reviewing the information provided by Parties in response to questions 3 (g) and 3 (h) of the reporting format, which deal with transit transboundary movements;
- (b) Finalizing guidance on the implementation of paragraph 4 of Article 6 of the Convention¹ by inviting and taking into account any additional comments from Parties and observers, including the World Customs Organization, through consultation with the Open-ended Working Group and through targeted exchanges with the United Nations Division for Ocean Affairs and the Law of the Sea, for consideration and possible adoption by the Conference of the Parties at its fifteenth meeting.

During the 29 June–3 July 2020 sessions of its fourteenth meeting, the ICC reviewed the information provided by Parties in response to questions 3 (g) and 3 (h) of the reporting format for the years 2016 and 2017. The ICC noted that, in the vast majority of cases: 1) Parties require their consent be obtained for any transit transboundary movements of hazardous or other wastes; and 2) Parties' definition of "State of transit" is the definition set out in paragraph 12 of Article 2 of the Convention or a similar one².

The ICC has also been working towards finalizing the guidance on the implementation of paragraph 4 of Article 6 of the Convention on transit transboundary movements. Taking into account the outcome of its review of information provided by Parties in response to questions 3 (g) and 3 (h) of the reporting format for the years 2016 and 2017 as well as the outcome of its consultations with the twelfth meeting of the Open-ended Working Group³, the ICC agreed that the finalization of the guidance should be deferred pending the availability of updated and more precise information.

In light of the agreement reached by the Bureau early 2021 on the organization of the fifteenth meeting of the Conference of the Parties, the ICC has agreed to seek such additional information at this time and invites Parties to complete a questionnaire. Responses received will guide the ICC towards the finalization of guidance on the implementation of paragraph 4 of Article 6 of the Convention on transit transboundary movements.

¹ UNEP/CHW.14/INF/26.

² See the report of the meeting, document UNEP/CHW/CC.14/8 paragraph 96

³ See the comments set out in document UNEP/CHW/CC.14/INF/14/Rev.1

Please note that the questionnaire builds on a questionnaire previously made available by the ICC in 2016⁴ and focuses on areas which will assist the Committee in finalizing the guidance.

The present questionnaire has four parts, as follows:

- Part I seeks information on Parties' definitions and practices in relation to the meaning of "transit" transboundary movements, taking into account the definition of "State of transit" set out in paragraph 12 of Article 2 of the Convention. This part of the questionnaire is largely similar to part II of the 2016 ICC questionnaire, Parties may therefore wish to either provide updated information, confirm that the information provided in 2016 is still up to date, or if they have not replied to the 2016 questionnaire, provide new information the ICC may rely on⁵;
- Part II seeks information on how Parties deal with instances where their definition of "transit" differs from that of other Parties concerned by a proposed transboundary movement and how such differences are or may be resolved in practice⁶;
- Part III seeks information on how Parties interpret paragraph 12 of Article 4 of the Convention which is about the interface between the Basel Convention, including its prior informed consent procedure, and other international instruments setting rights and obligations governing navigation in the territorial sea and the exclusive economic zone⁷;
- Part IV provides an opportunity for your country to provide additional information.

Paragraph 4 of Article 6 reads as follows:

"Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit."

Paragraph 12 of Article 2 reads as follows:

"State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place."

Paragraph 12 of Article 4 reads as follows:

⁴ You may find answers received to that earlier questionnaire at:

<http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201617/ControlssystemTransitissues/tabid/4781/Default.aspx>

⁵ See part I of the draft guidance set out in document UNEP/CHW/CC.14/INF/14/Rev.1

⁶ See paragraph 18 to 20 of the draft guidance set out in document UNEP/CHW/CC.14/INF/14/Rev.1

⁷ See part II.B.5 (b) of the draft guidance set out in document UNEP/CHW/CC.14/INF/14/Rev.1

“Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.”

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. The password will also need to be used for the Party to submit the questionnaire to the Secretariat. The ICC encourages Focal Points to seek the cooperation of Competent Authorities in completing this questionnaire.

Questionnaires are to be submitted to the Secretariat no later than **15 July 2021**. Any substantive questions pertaining to this questionnaire may be addressed to Mrs Juliette Voinov Kohler (Juliette.kohler@un.org). Any IT questions pertaining to this questionnaire may be addressed to Mrs Leslie Angeles (Leslie.angeles @un.org)

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

I. Definition of and practices in relation to “transit” at the national level

The Basel Convention defines “State of transit” as “any State, other than the State of export or import, *through which* a movement of hazardous or other wastes is planned or takes place” (*emphasis added*).

1. a. Link to the ICC 2016 questionnaire

- My country completed part I of the ICC 2016 questionnaire and there are no updates needed to the information provided then;
- My country completed part I of the ICC 2016 questionnaire and there are updates needed to the information provided then, as reflected in the answers provided below;
- My country did not complete part I of the ICC 2016 questionnaire.

1. b. Does your country have a definition of “transit” for the purposes of the Basel Convention?

(i) In its legislation?

- No Yes

(ii) Set out or established otherwise (e.g., in a guidance document)?

- No Yes

If you answered yes to (i) or (ii), please provide the basis for the definition as well as the text of the definition, including any elaboration of the meaning of the term “through which” in the definition of “State of transit” set out in Article 2.12 of the Convention.

1. c. In your country, which of the following instances would fall within the meaning of “transit”?

- A ship transporting wastes covered by the Basel Convention enters the **Exclusive Economic Zone (EEZ)**⁸;
- A ship transporting wastes covered by the Basel Convention enters **territorial waters** (territorial sea or internal waters);
- A ship transporting wastes covered by the Basel Convention enters the **free zone**;
- A ship transporting wastes covered by the Basel Convention calls at a port, **without offloading the wastes**, and leaves for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on the same ship**, and leaves the port for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on a different ship** destined for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on a different transporter** (eg. truck, train) destined for a different country;
- A transporter other than a ship (eg. truck, train) transporting wastes covered by the Basel Convention enters and leaves an area under national jurisdiction **without offloading the wastes**;
- A transporter other than a ship (eg. truck, train) transporting wastes covered by the Basel Convention enters an area under national jurisdiction, **offloads and reloads the wastes** and leaves the area under national jurisdiction;
- A transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters an area under national jurisdiction, **offloads and reloads the wastes on a different transporter** that then leaves the territory;
- Other instances.

Please describe any such other instances in which a “transit” is deemed to take place (e.g. activities such as storage or repackaging of the wastes)

⁸ Without prejudice to Parties’ national legislation and views, definitions of “Exclusive Economic Zone”, “territorial sea” and “free zone” may be found in the United Nations Convention on the Law of the Sea, respectively in Articles 55, 2 and 3, and 128. See: http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

1.d. Would any answer above be different in the event a ship or transporter acted due to force majeure (e.g. extreme weather conditions which result in a ship having to change course)?

No Yes

If yes, please explain what would amount to “force majeure” (e.g. extreme weather conditions which result in a ship having to change course) in your country and how it would impact the meaning of “transit” and the implementation of paragraph 4 of Article 6. Please provide texts and any details of any applicable legal basis.

1.e. Is your country’s definition of “transit” linked to other elements of paragraph 4 of Article 6 of the Convention (e.g. the fact that there is no obligation and no deadline for a State of transit to reply to the notification of a proposed transit movement)?

No Yes

If yes, please elaborate:

1.f. Would any answer to question 1.c. be different in the event a ship or transporter acted due to factors other than force majeure but still outside the control of the notifier?

No Yes

If yes, please elaborate on you country’s approach in the event a ship or transporter changes course subsequently to the notifier having received the consent of all transit States and your country becomes, while the ship or transporter is en route, a transit State:

My country applies flexibility in such instances (e.g. an expedited procedure with a specific deadline to respond to the notifier) in order to minimize disruptions to the course of the ship or transporter;

Other, please specify:

1.g. Does the definition of “transit” include temporal elements, e.g. is the amount of time needed to go “through” your country relevant?

No Yes

If yes, please elaborate.

1.h. Do Customs have a responsibility in determining at the national level whether a “transit”, as relates to the Basel Convention, has occurred or may occur?

No Yes Other entity has this responsibility (Please specify which)

If yes, please explain the responsibility of Customs and how they interact with the Basel Convention Competent Authority (e.g. consultations take place)

II. Differences in definitions and practices in relation to the meaning of “State of transit”

2.a. How does your country determine, or require operators (generators, exporters, importers or disposers) to determine, whether a Party is a State of transit?

My country uses the definition of “State of transit” as set out in the Basel Convention;

- My country applies its own definition of “State of transit” to determine whether another State is a “State of transit”;
- The information provided by Parties that are potential States of transit to question 3(h) of the reporting format is used to determine whether those Parties are a “State of transit”;
- My country relies on a definition of transit set out in guidance or practice defined by the Competent authority
- My country relies on the wider definition of “State of transit” that exists within the States concerned by a proposed transit transboundary movement;
- Operators are required to communicate with all potential “States of transit” before making a determination as to whether they are “States of transit”;
- My country relies on the determination made by the operators;
- Other (please specify)

2.b. Has your country faced instances where a Party disagreed with your country’s determination as to whether the Party was a State of “transit”?

- No Yes

If yes, please elaborate how your country and the States concerned resolved such instances:

2.c. Would your country be supportive of efforts to set a more precise and common understanding of what is a “State of transit” for the purposes of transboundary movements of wastes (e.g. in a decision by the Conference of the Parties)?

- No Yes

Please elaborate on the reasons for your answer:

2.d. If your country is supportive of efforts to set a more precise and common understanding of what is a “State of transit” for the purposes of transboundary movements of wastes (e.g. in a decision by the Conference of the Parties), what would it be?

III. How does your country interpret paragraph 12 of Article 4 of the Convention?

- My country understands that the reference to “navigational rights and freedoms” in paragraph 12 of Article 4 of the Basel Convention exempts a Party from the duty to notify and obtain consent for transports of hazardous wastes and other wastes if it exercises the right to passage through the territorial sea or freedom of navigation in an EEZ of another Party;
- My country understands that the reference to “navigational rights and freedoms” does not exempt a Party from the duty to notify and obtain consent for transports of hazardous wastes and other wastes through the territorial sea or an EEZ of another Party;
- I would like to add more information or set up my own understanding of paragraph 12 of Article 4 of the Convention:

IV. Other relevant information

Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraph 12 of Article 2, paragraph 12 of Article 4 and paragraph 4 of Article 6 of the Basel Convention that is not included in answers to the above questions.

V. Submitter information

Party:

Name of the person who completed the questionnaire:

Title:

Address:

Telephone no:

Fax no:

E-mail:

Date of submission

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](#)