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

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

**Matters related to the work programme of the
Open-ended Working Group for 2014–2015:
legal, governance and enforcement matters:
providing further legal clarity**

**Draft glossary of terms and recommendations from the small
intersessional working group on legal clarity**

Note by the Secretariat

As referred to in document UNEP/CHW/OEWG.9/11 on providing further legal clarity, annexes I and III to the present note set out the draft glossary of terms prepared by the small intersessional working group on legal clarity, dated 15 June 2014, and the recommendations from the group on options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options, respectively. In addition, annex II to the present note sets out a note by the Secretariat entitled “Comparison between definitions used in previously adopted guidelines and guidance documents and those used in the glossary of terms”. The present note, including its annexes, has not been formally edited.

* UNEP/CHW/OEWG.9/1.

Annex I

Glossary of terms

(Draft of 15 June 2014)

Note to the reader:

This glossary of terms was prepared by the Small Intersessional Working Group (SIWG) on legal clarity established by the Conference of the Parties in Section III “Providing further legal clarity” of decision BC-11/1, and in furtherance to paragraph 22 of that decision that requests the SIWG to “prepare a revised draft of the revised glossary and related explanations, taking into account comments received by Parties and others, to be made available on the Basel Convention website by 15 June 2014”. This draft is to be considered by the Open-ended Working Group at its ninth meeting.

*The use of the symbol * at the end of a term defined in section III of the glossary signals that a parallel definition currently exists in previously adopted technical guidelines and guidance documents or in guidelines currently under negotiation. In this regard, the attention of the reader is directed to the note by the Secretariat entitled “Comparison between definitions used in previously adopted guidelines and guidance documents and those used in the glossary of terms” set out in annex II to document UNEP/CHW/OEWG.9/INF/20. Some existing definitions might need to be amended if the definitions proposed in the glossary are retained. Paragraph 13 of the document entitled “Options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options”, prepared by the Small Intersessional Working Group and set out in annex III to document UNEP/CHW/OEWG.9/INF/20, include some recommendations in this regard.*

I. INTRODUCTION

1. This glossary was prepared in furtherance of decision BC-11/1 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention. Its purpose is the clarification of certain terms in order to improve the implementation of the Convention and the application of technical guidelines and guidance documents developed under the Convention. This may also help Parties identify further opportunities to improve implementation, including through the issuance of technical guidance.
2. The Basel Convention applies to the transboundary movement of hazardous wastes¹ and other wastes.² Thus, the term “wastes” is of fundamental importance in determining the scope of the Convention.
3. The primary aim of this glossary is to help clarify the terms relating to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to used goods destined for re-use.
4. This glossary includes definitions of terms and further explanations, including in order to explain how certain terms relate to each other.

II. EXPLANATIONS³

5. “**Wastes**” are defined by the Convention as “Substances or objects that are disposed of, are intended to be disposed of or are required to be disposed of by the provisions of national law.” When

¹ Hazardous wastes are defined in Article 1 paragraph 1 of the Basel Convention, are elaborated in Annexes VIII and IX of the Convention, and addressed in guidance developed under the Convention (<http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>). Most hazardous wastes result from production processes.

² This glossary does not address “other wastes” as defined in Article 2 paragraph 1 and Annex II of the Convention.

³ Terms highlighted in bold are defined in section III entitled “Definitions”.

assessing whether a substance or object⁴ is **waste** or **non-waste**, all the circumstances must be taken into account. The origin of the substance or object may also be relevant.

6. The Convention defines “**disposal**” as “any operation specified in Annex IV to the Convention.” Annex IV includes two categories of disposal operations: (1) **final disposal** operations; and (2) **recovery** operations.

7. **Recovery** operations make better use of resources and can reduce the negative impact of wastes. **Wastes** destined for these operations might have economic value and are capable, as such, of forming the subject of commercial transactions. In such circumstances, a **waste** would meet the definition of a **good**⁵, while it is still a **waste**. Economic value by itself is not a suitable criterion to distinguish **waste** from **non-waste**.

8. **Waste** may cease to be **waste** if:

- (a) It has been **prepared for reuse**;
- (b) It has gained **end-of-waste status** as a result of a **recovery** operation and it meets defined criteria set out in national legislation; or
- (c) It has undergone a **recycling** operation, when that operation is completed.

9. **Reuse** of **used goods** is to be encouraged because it promotes resource efficiency, especially of non-renewable resources. Encouraging **reuse** will sometimes help prevent a **used good** from becoming **waste**, or in some cases bring **waste** back into **use**.

10. Where a **used good** is exported for **reuse**, there needs to be sufficient certainty that it will actually be **reused**, because if it is not, its **disposal** may pose a threat to human health and the environment.

11. In this context, it is necessary to consider factors such as functionality and the need for processing prior to **reuse**. A **fully functional used good** that is destined for **direct reuse** is not considered to be a **waste**, unless so-classified by national law. The term **direct reuse** is used to distinguish from cases where **reuse** is possible only after pre-processing⁶.

12. National legislation may recognize that where **repair** or **refurbishment** are necessary to prepare a **waste** for **reuse**, they should be regarded as **recovery** operations. **Repair** or **refurbishment** are operations that apply to both **waste** and **non-waste**. Therefore by itself, the need for **repair** or **refurbishment** is not a suitable criterion for distinguishing between **waste** and **non-waste**.

13. **Reuse** refers to the point at which the **good** is being used for the purpose for it was conceived and not any operations to enable that to occur. Once a **used good** is being **reused**, it is not **waste**.

14. In addition, factors such as obsolescence⁷ and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.⁸ Rather, these factors may suggest instead an **intent to dispose of the used good**, which would make it a **waste**. **Intent to dispose** may be inferred from an act that could reasonably be expected to result in **disposal**.

15. A product is a thing intentionally produced by or resulting from a process that meets defined characteristics. A production process may be intended to produce several different products. Each will be a product as long as it is sought by the producer – i.e. it is intentionally produced as a result of a technical choice. A product may become a **waste** if the **waste** definition applies. A product may still be a product after becoming a **waste**.

16. Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria laid down in national legislation they will be referred to as a **by-product** and thus be **non-waste**.

⁴ “Materials” is used as a synonym for “substances or objects”.

⁵ The term “end-of-life good” is not considered to be useful in the context of this glossary.

⁶ Pre-processing may include checking, cleaning, repair, refurbishment or upgrading.

⁷ Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

⁸ There are difficult distinctions which are amenable to being addressed through technical guidance.

III. DEFINITIONS

By-product: A production residue that results from a production process, the primary aim of which is not the production of that item and that meets the following conditions:

- (a) Further use of the production residue is certain;
- (b) Production residue can be used directly without any further processing other than normal industrial practice;
- (c) Production residue is produced as an integral part of a production process; and
- (d) Further use is lawful, i.e. the production residue fulfils all relevant process, product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts;

and thus a non-waste.

Charitable donation*: Transfer of a good that is destined for direct reuse, for purposes of charity and without any monetary rewards or benefits, or for barter.

Component*: An element with functionality connected together with other elements, to perform a particular function.

Direct reuse*: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived without the necessity of pre-processing.

Disposal: Any operation specified in Annex IV to the Basel Convention (see Article 2 paragraph 4 of the Basel Convention).

End-of-waste status: In accordance with applicable national law, waste can cease to be waste when it has undergone a recovery, including recycling, operation, and the resulting material meets a predefined set of criteria, such as the following:

- (a) It is commonly used for specific purposes;
- (b) A market or demand exists for it;
- (c) It fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products;
- (d) Its use will not lead to overall adverse environmental or human health impact; and
- (e) Limit values for pollutants are specified, where necessary.

Essential function*: An originally intended function of a good that will satisfactorily enable it to be used.

Final disposal*: Disposal operations specified in Annex IV A to the Basel Convention, i.e., operations which do not lead to the possibility of resource recovery (including energy recovery), recycling, reclamation, or alternative uses.

Fully functional*: A good is fully functional if it was tested and demonstrated to be capable of performing the essential functions that it was designed to perform.

Good: A substance or object, such as a product or a component, including a waste, that has economic value and which is capable, as such, of forming the subject of commercial transactions.

Hazardous wastes:

- (a) Wastes that belong to any category contained in Annex I to the Convention, unless they do not possess any of the characteristics contained in Annex III; and
- (b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit (see Article 1 paragraph 1 of the Basel Convention).

Intent to dispose of: Determination inferred from an act that could reasonably be expected to result in disposal.

Non-hazardous waste: A waste that does not meet the definition of “hazardous waste”.

Non-waste: A substance or object that does not meet the definition of “waste”.

Preparing waste for reuse: Checking, cleaning or repairing recovery operations, by which goods that have become waste are prepared so that they can be re-used without any other pre-processing.

Recovery*: Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Some recovery operations are identified in Annex IVB to the Basel Convention. The term does not include reuse or direct reuse of goods or components.

Recycling*: Any recovery operation that involves the reprocessing or transformation of waste into products, materials or substances for any purposes other than energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations. Some recycling operations are identified in section B of Annex IV to the Convention. The term does not include reuse or direct reuse.

Refurbishment*: Modification of a used good to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements.

Repair*: Fixing a specified fault or series of faults in a good or component and/or replacing defective components, with the result of making the good or component fully functional for its intended purpose. Both a waste and non-waste may be repaired.

Reuse*: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived.

Second-hand good: A used good that is or has been used by a second or subsequent owner.

Upgrading*: Modification of a fully functional good to increase its performance and/or functionality.

Use: Utilization of a good, whether by its first or a subsequent owner. The term “use” includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

Used good*: A good that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law.

Wastes: Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (see Article 1 paragraph 2 of the Basel Convention).

Annex II

Comparison between definitions used in previously adopted guidelines and guidance documents¹ and those used in the glossary of terms (Note prepared by the Secretariat, 15 June 2014)

Charitable Donation:

PACE glossary: Transfer of computing equipment or its components that are not waste for their intended direct reuse for purposes of charity without any monetary rewards or benefits, or for barter.

15 June 2014 draft glossary: Transfer of a good that is destined for direct reuse, for purposes of charity and without any monetary rewards or benefits, or for barter.

Component:

PACE glossary: Element with electrical or electronic functionality connected, together with other components and usually by soldering, to a printed circuit board to create an electric or electronic circuit with a particular function (for example an amplifier, radio receiver, or oscillator).

Draft e-waste guidelines: Element with electrical or electronic functionality connected together with other components, including by soldering to a printed circuit board, to create an electric or electronic circuit with a particular function (for example an amplifier, radio receiver, monitor, hard-drive, motherboard, battery).

15 June 2014 draft glossary: An element with functionality connected together with other elements, to perform a particular function.

Direct reuse:

Draft e-waste guidelines: [Using again equipment that is not waste for the same purpose for which it was conceived by another person, without the necessity of repair or refurbishment]

[Continued use of electrical and electronic equipment by another person without the necessity of repair, refurbishment, or (hardware) upgrading, provided that such continued use is for the intended purpose of the equipment].

PACE glossary: The using again, by a person other than its previous owner, of computing equipment and components that are not waste for the same purpose for which they were conceived without the necessity of repair, refurbishment or hardware upgrading.

15 June 2014 draft glossary: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived without the necessity of pre-processing.

Essential function:

Draft e-waste guidelines: Essential key function: The originally intended function(s) of a unit of equipment that will satisfactorily enable the equipment to be reused.

PACE glossary: The originally intended function(s) of a unit of equipment or component that will satisfactorily enable the equipment or component to be reused.

¹These include: the Revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres (hereinafter “Tyres guidelines”), the Technical guidelines for the environmentally sound management of the full and partial dismantling of ships (hereinafter “Ships guidelines”), the Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004), the Revised guidance document on the environmentally sound management of used and end-of-life computing equipment (hereinafter “PACE glossary”), and the Technical guidelines on transboundary movements of electronic and electrical waste (e-waste), in particular regarding the distinction between waste and non-waste (hereinafter “Draft e-waste guidelines”). These guidelines are available on the website of the Convention at: <http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

15 June 2014 draft glossary: An originally intended function of a good that will satisfactorily enable it to be used.

Final disposal

PACE glossary: Final disposal: Disposal operations specified in Annex IV A to the Basel Convention.

15 June 2014 draft glossary: Disposal operations specified in Annex IV A of the Basel Convention, i.e., operations which do not lead to the possibility of resource recovery (including energy recovery), recycling, reclamation, or alternative uses.

Fully functional

Draft e-waste guidelines: Equipment is fully functional when it has been tested and demonstrated to be capable of performing at least the essential key functions it was designed to perform.

PACE glossary: Computing equipment or components are fully functional when they have been tested and demonstrated to be capable of performing the essential key functions that they were designed to perform.

15 June 2014 draft glossary: A good is fully functional if it was tested and demonstrated to be capable of performing the essential functions that it was designed to perform.

Recovery:

Draft e-waste guidelines: Relevant operations specified in Annex IV B of the Basel Convention; recycling operations are part of this annex.

Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): Recovery: Taking metallic or metal-containing items and metallic pieces before they reach the waste stream or taking them out of the waste stream.

--Recovery operation: A process by which materials, which are no longer fit for their originally intended purpose, are transformed into a usable state or by which materials are extracted in usable form.

15 June 2014 draft glossary: Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Some recovery operations are identified in Annex IVB to the Basel Convention. The term does not include reuse or direct reuse of goods or components.

Recycling:

PACE glossary: Relevant operations specified in Annex IV B to the Basel Convention.

Tyre Guidelines: Any process by which waste tyres are reprocessed into products, materials or substances for any purpose. It does not include energy recovery or reprocessing into materials for use as fuels or in backfilling operations.

Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): (a) The preparation of recovered items and pieces so that they may be used directly (e.g., in direct remelt) or sent for reclamation; (b) The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products, other than fuel for producing heat or power by combustion.

15 June 2014 draft glossary: Any recovery operation that involves the reprocessing or transformation of waste into products, materials or substances for any purposes other than energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations. Some recycling operations are identified in section B of Annex IV to the Convention. The term does not include reuse or direct reuse.

Refurbishment:

PACE glossary: Modification of used computing equipment to increase its performance and functionality or to meet applicable technical standards or regulatory requirements, including through such activities as cleaning, data sanitization and software upgrading.

Draft e-waste guidelines: [Creating refurbished or reconditioned equipment, including such activities as cleaning, data sanitization and (software) upgrading.]

[Modification of fully functional equipment to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, including through such activities as cleaning, data sanitization and upgrading.]

15 June 2014 draft glossary: Modification of a used good to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements.

Repair:

Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].

PACE glossary: Fixing specified faults in computing equipment and/or replacing defective components of computing equipment to bring the computing equipment into a fully functional condition.

15 June 2014 draft glossary: Fixing a specified fault or series of faults in a good or component and/or replacing defective components, with the result of making the good or component fully functional for its intended purpose. Both a waste and non-waste may be repaired.

Reuse:

Draft e-waste guidelines: Using again equipment that is not waste, for the same purpose for which it was conceived by another person, possibly after repair or refurbishment.

PACE glossary: The using again, by a person other than its previous owner, of used computing equipment or a functional component from used computing equipment that is not waste for the same purpose for which it was conceived, possibly after refurbishment, repair or hardware upgrading.

Ship recycling: When a product is used again following normal use. Implies recovery and refurbishment before the product can be reused.

15 June 2014 draft glossary: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived.

Upgrading:

Draft e-waste guidelines: Modification of fully functional equipment by the addition of new software or hardware.

PACE glossary: Modification of fully functional computing equipment by the addition of software or hardware to increase its performance and/or functionality.

15 June 2014 draft glossary: Modification of a fully functional good to increase its performance and/or functionality.

Used good:

PACE glossary: Computing equipment that is or has been used, either by its first owner or otherwise. Used computing equipment may or may not be a waste, depending upon the waste definition and its characteristics, intended destination and fate.

Tyres guidelines: A tyre that has been subjected to any type of use and/or wear.

15 June 2014 draft glossary: A good that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law.

Annex III

Options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options

I. Introduction

1. As a threshold matter, whether the transboundary movement of a substance or object is subject to the Basel Convention depends upon whether it is a “waste”, which in turn depends upon whether it is disposed of, intended to be disposed of, or required to be disposed of under national law. Thus, the definition of “disposed of” and the meaning of “intended” in the phrase “intended to be disposed of” are key to determining whether a substance or object is a waste, and thus potentially a hazardous or other waste.¹ This has been a particular problem in relation to used goods destined for reuse. Where a used good is exported for reuse, there needs to be sufficient certainty that it will actually be reused, because if it is not, its disposal may pose a threat to human health and the environment.
2. The Basel Convention defines “disposal” as any operation specified in Annex IV. Annex IV A encompasses disposal operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct reuse or alternative uses. Annex IV B encompasses “operations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses,” “with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section [IV]A.” Despite the caption of section B of annex IV, direct reuse is not specified as an operation under Annex IV B; however, reuse of used oil is contained in operation R9. Nor is repair or refurbishment listed under Annex IV B. In practice, the national law of some countries recognizes disposal operations not listed in Annex IV or defined differently than in Annex IV.
3. If the approach in the draft glossary dated 15 June 2014 is followed, reuse and direct reuse should not to be considered operations under Annex IV B.
4. In the draft glossary no further guidance is given on the distinction between hazardous and non-hazardous wastes. In practice, the national law of some countries recognizes hazardous characteristics not defined in Annex III or hazardous characteristics defined differently than in Annex III.
5. Against this background, the following legally binding and voluntary options may be considered, bearing in mind that the options include as appropriate recommendations on where further guidance would be useful, as referred to in paragraph 16 (c) of decision BC-11/1.

II. Legally binding options

A. Waste / non-waste

6. It may be considered to review Annex IV as a whole in order to update the description of certain disposal operations and to include recovery operations as they occur in practice, and to possibly define relevant terms in this Annex.
7. It may also be considered to amend the captions of Annex IV A and Annex IV B to exclude “direct reuse” and to amend operation R9 in Annex IV B to exclude the term “reuse”. In addition, the references to “direct reuse” and “reuse” in Annex IX entry B1110, including footnotes 20 and 21, may be reviewed.

B. Hazardous / non-hazardous waste

8. It may be considered to review Annex III as a whole in order to update the description of certain hazardous characteristics and to include hazardous characteristics as they occur in practice.

¹ Any relevant definitions of national law that bear on whether an object or substance is required to be disposed of are also important.

C. Amendment to annexes to the Convention

9. An amendment to an annex to the Convention is to be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The amendment becomes effective for all Parties to the Convention which have not submitted, within six months from the date of the communication of the adoption by the Depositary, a written notification that it is unable to accept the amendment².

III. Voluntary options

10. The glossary of terms is a first step towards the development of guidance on the interpretation of terminology. It addresses terms relevant to all waste streams and is intended to complement technical guidelines and guidance documents.

A. Waste / non-waste

11. The Conference of the Parties could develop guidance on Annex IV as a whole to clarify the description of certain disposal operations and to include recovery operations as they occur in practice, and to possibly define relevant terms. This could serve as a first step towards amending Annex IV of the Convention.

12. The Conference of the Parties could also develop technical guidelines for specific materials based on the glossary, further elaborating on the distinction between waste and non-waste, as is under way in the context of the development of the technical guidelines on transboundary movements of electronic and electrical waste (e-waste), in particular regarding the distinction between waste and non-waste.

13. The Small Intersessional Working Group could not complete its work in relation to paragraph 16 (a) (v) of decision BC-11/1, therefore the Open-ended Working Group at its ninth meeting could request the Small Intersessional Working Group to recommend to the Conference of the Parties at its twelfth meeting whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result.

B. Hazardous / non-hazardous waste

14. The Conference of the Parties could develop as appropriate further guidance on hazardous characteristics.

C. Other issues

15. The Open-ended Working Group at its ninth meeting could consider whether other terms not mainly related to the distinction between waste/non-waste or hazardous/non-hazardous waste would benefit from further guidance.

²Article 18 paragraph 3 of the Basel Convention.