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Expert Working Group on the review of Annexes**First meeting**

Geneva, 20–23 March 2018

Item 3 of the provisional agenda*

**Review of Annex IV and related aspects of
Annex IX to the Basel Convention**

Review of Annex IV and related aspects of Annex IX to the Basel Convention¹

Note by the Secretariat

I. Introduction

1. By its decision BC-13/2 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention, the Conference of Parties, among other things, established an expert working group on the review of Annexes (EWG) with a mandate and terms of reference as set out in annex II to that decision.

2. In its decision, the Conference of Parties decided that the EWG will operate under the guidance of the Open-ended Working Group (OEWG) and the authority of the Conference of the Parties; it requested each regional group to nominate, through its Bureau representative and by 15 July 2017, 10 experts with relevant expertise to serve as members of the EWG; it invited Parties to serve as lead countries for the review of Annex IV and related aspects of Annex IX and/or Annexes I and III; it agreed that the EWG should give higher priority to work on Annex IV and related aspects of Annex IX during the next biennium; it invited Parties and observers involved in the expert working group to submit, taking into account the report from Canada on the review of Annexes I, III, IV and related aspects of Annex IX to the Convention,² comments on the review of Annexes I, III, IV and related aspects of Annex IX to the Convention to the Secretariat by 30 September 2017 for consideration by the EWG and requests the Secretariat to publish any such comments submitted on the Basel Convention website; and it requested the Secretariat to report on the implementation of the present decision to the Open-ended Working Group at its eleventh meeting and to the Conference of the Parties at its fourteenth meeting.

3. As set out in the terms of reference for the review of the Annexes, the overall objectives of the review are to improve legal clarity of the Basel Convention to protect human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and

* UNEP/CHW/RA_EWG.1/1.

¹ This document has not been formally edited.

² UNEP/CHW.13/INF/10, annex.

other wastes. The mandate for the review Annexes I, III and IV and related aspects of Annex IX to the Basel Convention is as follows:

- (a) For Annex IV and the related aspects in Annex IX: review, with a view to:
 - (i) Improve/update the description of disposal operations in Annex IV;
 - (ii) Improve environmental controls by including additional disposal operations that occur in practice or could occur in practice in Annex IV;
 - (iii) Clarify the descriptions in Annex IV and in Annex IX (B1110) to address conflicts or overlaps;
- (b) For Annex I and III: review, with a view to:
 - (i) Improve/update the description of categories of wastes in Annex I and the list of hazardous characteristics in Annex III;
 - (ii) Improve environmental controls by including any additional categories of wastes in Annex I and any additional hazardous characteristics in Annex III that occur in practice;
 - (iii) Clarify the descriptions in Annexes I and III to address conflicts or overlaps.

II. Implementation

4. As at 26 February 2018, 36 experts had been nominated by the regional groups to serve as members of the EWG and 22 representatives of Parties and observers had expressed interest in participating in the EWG.³ As at that same date, no Party had expressed interest to serve as lead country for the review of Annex IV and related aspects of Annex IX and/or Annexes I and III.

5. Pursuant to the invitation set out in decision BC-13/2 for Parties and observers involved in the expert working group to submit comments on the review of Annexes I, III, IV and related aspects of Annex IX to the Convention to the Secretariat by 30 September 2017, 8 submissions were received by the Secretariat from: Argentina, Canada, Colombia, the European Union and its member States, India, the State of Palestine, Switzerland and Tunisia. These submissions were made available on the website of the Convention.⁴

6. Working by electronic means, the EWG elected on Friday 13 October 2017 Ms. Jacinthe Seguin from Canada and Mr. Joost Meijer from Chile as co-chairs of the EWG, the former initially serving until the eleventh meeting of the OEWG. Both co-chairs expressed willingness to guide the intersessional process and to make substantive contributions, within available capacities.

7. Also working by electronic means, including by holding online consultations on 2 November 2017, the EWG agreed on a workplan until the eleventh meeting of the OEWG focusing on the review of Annex IV and related aspects of Annex IX (B1110) to the Convention and providing for a face-to-face meeting to be held subject to the availability of funding. The EWG also agreed on the approach it would take for the afore mentioned review, including through the collection of information from the members of and observers to the EWG using three working documents prepared by the co-chairs: one on the Annex IV A operations, one on the Annex IV B operations, and one on Annex IX (B1110).

8. On 24 November 2018, the Secretariat communicated to the members of and observers to the EWG an invitation to submit comments on the review of Annex IV and related aspects of Annex IX (B1110) to the Convention by completing, by Tuesday 30 January 2018, the three working documents prepared by the co-chairs. That deadline was subsequently extended to 6 February 2018 at the request of several members of the EWG. To support the completion of the three working documents, the Secretariat made available three pre-filled working documents prepared by the co-chairs to reflect in a compiled manner the

³ For the full list of members and observers, see <http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexIX/ExpertWorkingGroup/tabid/6105/Default.aspx>.

⁴ See the first table at: <http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexIX/Activities20182019/tabid/6125/Default.aspx>.

information on the review of Annex IV and related aspects of Annex IX (B1110) submitted prior to the thirteenth meeting of the Conference of the Parties, which are to be taken into account by the EWG, and the comments submitted subsequently to that meeting, which are to be considered by the EWG.

9. The 17 submissions received on the three co-chairs working documents, including one submission on behalf of the European Union and its member States and three submissions by observers, are available on the website of the Convention.⁵

10. During the EWG 20 February 2018 online consultations, the participants exchanged views and agreed on the proposed tentative schedule for the first meeting of the EWG (UNEP/CHW/RA_EWG.1/INF/1) and on its proposed provisional agenda (UNEP/CHW/RA_EWG.1/1). Among the matters discussed, they noted that, with respect to the review of annexes I and III, the focus of the discussions during the meeting would be on the process ahead, and that comments from Parties and others would be made available in an information document.

11. The annex to the present note sets out a note by the co-chairs of the EWG presenting the objectives of the meeting as well overarching and cross-cutting issues identified from the comments submitted by Parties and others in their comments on the three co-chairs' working documents.

12. The annexes to document UNEP/CHW/RA_EWG.1/3 include a set of slides, one per Annex IV operation and on Annex IX (B1110), prepared by the co-chairs of the EWG on the basis of the comments received on their three working documents.

13. The compilation of comments received on the working document for Annex IVA prepared by the co-chairs of the EWG is set out in the annex to document UNEP/CHW/RA_EWG.1/INF/2. The compilation of comments received on the working document for Annex IVB prepared by the co-chairs of the EWG is set out in the annex to document UNEP/CHW/RA_EWG.1/INF/3. The compilation of comments received on the working document for Annex IX (B1110) prepared by the co-chairs of the EWG is set out in the annex to document UNEP/CHW/RA_EWG.1/INF/4.

14. The compilation of comments on the review of Annexes I and III to the Basel Convention submitted by Parties and others in response to decision BC-12/1⁶ and decision OEWG-10/8, as reflected in the report by Canada on the review of Annexes I, III and IV to the Convention and related aspects of Annex IX to the Convention,⁷ and in furtherance to decision BC-13/2,⁸ is set out in the annex to document UNEP/CHW/RA_EWG.1/INF/5.

15. The government of Japan provided generous financial support to enable the holding of the first meeting of the EWG.

III. Proposed action

16. The EWG may wish to consider the information set out in the present note as well as in documents UNEP/CHW/RA_EWG.1/3, UNEP/CHW/RA_EWG.1/INF/2, UNEP/CHW/RA_EWG.1/INF/3, UNEP/CHW/RA_EWG.1/INF/4 and UNEP/CHW/RA_EWG.1/INF/5.

⁵ See the second table at:

<http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexIX/Activities20182019/tabid/6125/Default.aspx>.

⁶ UNEP/CHW/OEWG.10/INF/11, annex.

⁷ UNEP/CHW.13/INF/10, annex.

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<http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexIX/Activities20162017/tabid/4753/Default.aspx>.

Annex

Supporting document by the Co-Chairs for the first meeting of the Expert Working Group on the review of Annex IV and related aspects of Annex IX to the Convention

I. Introduction

1. The first meeting of the Expert Working Group for the review of the Annexes to the Convention will consider an important amount of detailed information submitted by Parties and others on the text of Annex IV and related aspects of Annex IX (B1110). Detailed submission of comments and ideas by Parties and others will form the basis of the discussions for this first meeting.

2. In all, 17 submissions were received. The information ranges from detailed accounts of implementation problems, to definition issues, to questioning the role of the Annexes. The diversity of views and proposals submitted emphasize the complexity of the Convention and the importance of building a shared understanding of the issues as this work begins.

II. Purpose of the supporting documents

3. To tackle the wide range of comments and issues, the Co-Chairs, with the assistance of the Secretariat, prepared a series of documents to present the information collected and support the discussions of the Expert Group. The documents complement one another in order to hold a structured discussion at this first meeting. Each document presents a different level of analysis, starting with this document which outlines the Co-Chairs objectives for the meeting and describes overarching and cross-cutting issues identified from the comments submitted by Parties and others.

4. The purpose of this document is to draw attention to concepts and ideas that require reflection and consideration before the Expert Group discusses specific proposals to the various sections of the Annexes. Despite a wide range of proposals, the analysis of comments shows a significant amount of cohesion on many issues. The document highlights the points of commonality and is intended to be used by the Co-Chairs as a starting point for discussions.

III. Objectives of the meeting

5. The Co-Chairs have set the following objectives for this first meeting of the Expert Group:

- (a) Create a shared understanding of the wide range of issues related to the Annexes IV and IX (B1110) experienced by countries in the implementation of the Convention;
- (b) Discuss overarching and cross-cutting issues and propose approaches or solutions to the OEWG;
- (c) Discuss the list of specific Annex issues and solutions and develop a path forward for presenting information and resolving issues;
- (d) Propose an outline for the report to the OEWG and path forward.

IV. Overarching and cross-cutting issues

A. General remarks

6. Generally speaking, the issues identified by members in their submissions reflect three main points:

- (a) A need to clarify the roles of Annex IV.A and IV.B, the different operations within each part of the Annex, and how they serve the Convention;
- (b) The importance of harmonizing terminology across Annexes and of taking into consideration other relevant and recent work of the Convention;

(c) In discussions of solutions to issues, all aspects of the Annexes and their presentation should be considered (e.g. the name of the Annexes and their order, caption text, introductory text, and footnotes, etc.).

7. There are different approaches being proposed to achieve clarity in the Annexes. Some favor simplicity (e.g. more general descriptions, one Annex) and others propose more precise and detailed language or new Annexes. The implications of the various options will require thoughtful consideration that may take some time to reflect upon. It will be important not to rush the decision-making process but rather focus on narrowing the set of options for future Expert Group or OEWG discussions, as appropriate.

8. The review of the Annexes also presents an opportunity to correct translation issues in any of the UN languages.

B. Environmentally sound versus non environmentally sound operations

9. Some members mentioned that Annex IV should only include environmentally sound disposal operations on the basis that having unsound operations in Annex IV causes confusion in the applicability of the Convention for these operations.

10. Other members stated that all operations should be kept in Annex IV, including unsound disposal operations, to ensure the applicability of the Convention to hazardous wastes and other wastes subject to these operations, as the term "disposal" is linked to the definition of waste in Article 2(1).

11. Because the definition of waste in Article 2(1) is triggered by the listed operations under Annex IV, a smaller list of disposal operations that would include only environmentally sound operations would mean that the Convention would not apply to unsound disposal operations.

12. It is important that in attempting to address misunderstandings about the listed operations under Annex IVA and B, proposed solutions do not inadvertently introduce loopholes in the applicability of the Convention.

13. Different proposals were made to address this issue:

- (a) Only include operations which are considered environmentally sound;
- (b) Include all operations and provide necessary clarifications in a new introductory text;
- (c) Indicate which operations are not considered environmentally sound within Annex IV;
- (d) Adjust the notification and movement documents to reflect the applicability of transboundary movements only to operations that are ESM.

C. Interim operations

14. There are several types of operations that cannot be categorized as final disposal or recycling/recovery operations. These are well known as "interim operations". Some of these operations are listed in the Annexes while others are not. There is an uneven application of the Convention concerning this category of operations.

15. The implementation challenges relating to interim operations were identified by many members and there is a common desire for greater clarity in the Annexes concerning interim operations. It would be beneficial to discuss the issues related to interim operations, including a few proposed solutions that were advanced:

- (a) Interim operations that do not involve intrinsic transformation of wastes such as handling and treatment operations (e.g. storage, dismantling, sorting, blending, mixing) could be placed in a new section (e.g. Annex IV.C);
- (b) Interim operations could be identified as such within Annexes IV.A and IV.B.

D. Structure and naming of the Annexes

16. There are views on the naming and order of the two parts of Annex IV that should be reflected upon. These ideas are valuable to keep in mind and their merit could be better assessed once discussions on the Annexes are more advanced. For example:

- (a) The reversal of Annex IV.A and B, so that recovery operations (what would become A operations) come before disposal operations (B operations);
- (b) Not distinguish between A and B lists as they are treated the same under the Convention.

E. Concepts of waste, non-waste, and reference to direct re-use

17. The need to review the use of the term direct re-use in the Annexes was expressed. Many members indicated that direct re-use is not a waste management operation and should be deleted from caption texts. Some members proposed the same approach for the reference to alternative uses. The elimination of ambiguities on the application of the Convention to any type of recovery/recycling/repair/refurbishment operation is paramount in this exercise. Some terms and references may need to be removed while others may need to be introduced to clarify when and where the Convention applies. Some members proposed the inclusion of terms or a new list for operations leading to reuse, including repair and refurbishment.

18. Many members cited the glossary of terms with definitions as follow:

- (a) Reuse: The using again of a product, object or substance that is not waste for the same purpose for which it was conceived, possibly after repair or refurbishment.
- (b) Direct reuse: The using again of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of repair or refurbishment.”

F. Specificity in definitions and operations linked to specific waste streams

19. Some members indicated that Annex IV A operations do not include references to specific waste streams while some operations in Annex IV B do. There are reasons behind the original construction of these lists but the Expert Group should reflect on whether these are still valid today.

20. Specific wastes listed under Annex IV.B operations do not coincide with the wastes listed in Annex I or waste or group of waste of Annex VIII.

21. Suggested changes include:

- (a) A long list of specific operations in connection with specific wastes, including consideration of clearly linking the operations to wastes listed in Annexes I and VIII;
- (b) A short list of operations without links to waste streams.

G. Catch-all definitions

22. The definitions of disposal operations are inconsistent. Some include examples of technologies in the definition and use “etc.” to suggest a non-exhaustive list while others do not. The different definition styles cause confusion in interpreting the scope of what may be captured by the Convention and defined as a waste. The Expert Group should consider how to balance the need to have language that will be comprehensive but also can stand the test of time (ie minimize needs for future amendments). The proposals are to provide definitions that will be exhaustive:

- (a) Annex IV should include all operations which occur in practice, as well as those which might be developed in the future;
- (b) The term “etc.” should not be used so that lists of examples in the operation descriptions become closed and exhaustive.

H. Proposals for new operations

23. Many proposals for new operations were submitted by members. To facilitate their consideration, they have been organized in four categories and similar ones have been grouped and merged together. In total, 52 new operations would have to be analyzed:

- (a) 20 new disposal (D) operations;
- (b) 27 new recovery/recycling (R) operations;
- (c) 5 WEEE operations.

24. However, not all of them have sufficient information to make an informed decision. Research and analysis is required to assemble necessary background information and rationale for the Expert Group to

make decisions on adding new operations in a way that will avoid duplication and new ambiguities. Support from a consultancy would be beneficial to advance this part of the agenda.
