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**Matters related to the implementation of the Convention:
legal, compliance and governance matters: Committee
Administering the Mechanism for Promoting
Implementation and Compliance**

**Committee Administering the Mechanism for Promoting
Implementation and Compliance: guide for the development of
national legal frameworks to implement the Basel Convention**

Note by the Secretariat

As referred to in the note by the Secretariat on the Committee Administering the Mechanism for Promoting Implementation and Compliance (UNEP/CHW.13/9), the annex to the present note sets out a draft guide for the development of national legal frameworks to implement the Basel Convention. The present note, including its annex, has not been formally edited.

* UNEP/CHW.13/1.

Annex

Guide for the development of national legal frameworks to implement the Basel Convention

(Draft of 27 January 2017)

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Foreword

The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention) was adopted in 1989 and entered into force on 5 May 1992. As of January 2017, 184 States and the European Union were Parties to the Convention. The Convention aims to protect human health and the environment against the adverse effects resulting from the management and disposal of hazardous wastes and other wastes, including by establishing a prior informed consent procedure to control transboundary movements of such wastes.

This guide has been prepared with a view to supporting Parties requiring assistance with transposing the provisions of the Basel Convention into their national legal framework. The guide is not legally binding and in no way supersedes or otherwise affects each Party's authority to interpret the Basel Convention and to implement it at the national level according to its own rules, modalities and national circumstances.

The preparation of the guide was initiated under the 2016-2017 work programme of the Committee Administering the Mechanisms for Promoting Implementation and Compliance (hereinafter the "Implementation and Compliance Committee"), whereby the Conference of the Parties requested the Committee, among other things, to improve implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention by considering what additional steps to support the implementation and compliance with these provisions. Paragraph 4 of Article 4 of the Convention provides that "[e]ach Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention. Paragraph 5 of Article 9 of the Convention reads: "Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view of achieving the objects of this Article."

At its twelfth meeting, the Implementation and Compliance Committee considered a report on additional steps to improve implementation and compliance with the abovementioned provisions, including draft examples of transposition of the Basel Convention provisions in national law. On the basis of this report, the Committee requested the Secretariat to initiate the development of a comprehensive *Guide for the development of national legal frameworks to implement the Basel Convention*, building on and integrating existing guidance and material, and to revise the draft examples of transposition, taking into account comments from the Committee, lessons learnt from the use of the draft by Parties concerned by a submission,¹ as well as from the Secretariat's technical assistance activities.

[The finalization of the guide was undertaken [...]. It was adopted by the [...] meeting of the Conference of the parties by decision BC-[...].

The development of this guide was made possible thanks to the financial support provided by the European Union.

¹ As at [...], the Committee has assisted [...] Parties towards the development of national legislation implementing the Basel Convention: Bhutan, Cabo Verde, Central African Republic, Eritrea, Guinea-Bissau, Liberia and Swaziland. See: <http://basel.int/Implementation/LegalMatters/Compliance/SpecificSubmissionsActivities/tabid/2310/Default.aspx>

Introduction

1. The present *Guide for the development of national legal frameworks to implement the Basel Convention* provides guidance to Parties on transposing the provisions of the Basel Convention into their national legal framework. The guide may serve as reference to any Party or future Party to the Basel Convention facing difficulties in drafting and/or revising legislation implementing the Convention, in particular Parties that have limited or no relevant legislation in place. It is primarily directed to legal drafters and other persons directly involved in the drafting process.
2. For the purposes of this guide, “Implementation” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives, that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement and its amendments if any.²
3. The guide builds on existing guidance developed under the Basel Convention and complements it, in that it focuses on the specific challenges related to drafting of Basel Convention implementing legislation. Related guidance materials include:
 - (a) The *Manual for the Implementation of the Basel Convention, including Checklist for the Legislator*³ adopted by the twelfth meeting of the Conference of the Parties. The manual was developed to assist Parties and others in understanding their obligations under the Basel Convention, and, as regards the checklist, to help Parties assess national waste legislation in terms of their conformity to the obligations set out in the Basel Convention;
 - (b) The *Guide to the Control System*⁴ adopted by the twelfth meeting of the Conference of the Parties. The guide provides practical guidance for use by any person involved in transboundary movements of hazardous wastes, including graphic illustrations of the prior informed consent procedure;
 - (c) The *Compilation of national laws*,⁵ submitted in accordance with the invitation to Parties to make available texts of national legislation and other regulatory measures adopted to implement and enforce the provisions of the Basel Convention;
 - (d) [The *Glossary of terms*⁶ adopted by adopted by the thirteenth meeting of the Conference of the Parties.]
4. It is important to note that a proper understanding of the Basel Convention provisions is a prerequisite for the drafting of implementing legislation. The abovementioned *Manual for the Implementation of the Basel Convention* and the *Guide to the Control System* include detailed explanations of the various Basel Convention provisions, including the Basel Convention control procedures for transboundary movements of hazardous and other wastes. The attention of the reader is therefore directed to these resources.
5. The present guide is designed to be flexible to fit the variety of existing legal approaches and traditions. The objective is not to provide an all purpose model of national waste management legislation, but rather to highlight core elements to be reflected in Basel Convention implementing legislation. Parties are strongly encouraged to tailor their implementing measures to national circumstances, traditions and priorities. The guide includes practical examples of how various Parties, in particular Parties that have been assisted by the Implementation and Compliance Committee (eg. Bhutan, Togo and Swaziland),⁷ have proceeded to develop implementing legislation. For the purposes of this guide, references to “legislation” or “legal frameworks” may encompass legislation, regulations

² This definition is taken from the UNEP Manual on compliance with and enforcement of Multilateral Environmental Agreements. See http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf, page 59

³ Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁴ Guide to the Control System (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁵ Compilation of national laws, available at <http://www.basel.int/Countries/NationalLegislation/tabid/1420/Default.aspx>.

⁶ The glossary of terms is available at: [XXX]. It may be noted that the glossary of terms defines terms of the Convention for which the Convention itself does not provide a definition. It also provides explanations to promote greater legal clarity of the Convention.

⁷ Note to the reader: these example would be added in the next iteration of the draft

or other types of instruments having a legally binding effect. References to “implementing measures” include both legally binding and other implementing measures.

6. The guide has three sections: preparing the drafting process; drafting implementing legislation; and ensuring effective implementation and enforcement.

1. Preparing the drafting process

7. The drafting process usually begins with the issuance of a drafting instruction. Before starting the actual drafting of the legal text, the drafting process should be adequately prepared. Thorough preparation will help ensure that Basel Convention implementing measures accurately transpose the treaty provisions into national law, including by effectively addressing possible gaps in current waste management legislation and ensuring that provisions that may contravene the Basel Convention are amended as needed. The present section provides guidance on how to prepare the drafting process. It suggests a four-step approach:

- (a) To identify a suitable combination of different implementing measures;
- (b) To identify the Basel Convention provisions that need to be incorporated and further specified in national law;
- (c) To embed implementing measures into the national waste management framework;
- (d) To make provision for the involvement of relevant actors.

1.1 Identifying suitable implementing measures

8. Legislation is one amongst several possible measures to implement the Basel Convention. Identifying the appropriate combination of different implementing measures for a given national context will help ensure that these measures are legally effective as well as politically and technically viable. This chapter highlights which Basel Convention provisions must or should be implemented by means of legislation and provides guidance on selecting appropriate implementing measures, where the Convention does not impose implementation by legislation. The above mentioned checklist for the legislator provides indications of whether a specific Basel Convention provision can or should be implemented through legislation or administratively.

1.1.1 Implementation by legislation

9. For some of its provisions, the Basel Convention explicitly requires or implies the need for the adoption of national legislation. The term 'legislation' should in this case be understood as covering both primary legislation (e.g. laws, acts, statutes, bills, etc.) and secondary legislation (e.g. regulations, decrees, statutory orders, etc.).

10. An explicit requirement to adopt legislation is set forth in Article 9 (5) of the Basel Convention. This article requires that 'each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic'.

11. Other Basel Convention provisions attach international legal effect to national legislation, for example, in that certain rights under the Convention are contingent on the enactment of domestic legislation. These provisions are the following:

- (a) Article 1 (1) (b) of the Basel Convention providing that the definition of 'hazardous wastes' under the Convention includes 'wastes [...] that are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit';
- (b) Article 2 (1) of the Basel Convention providing that the definition of 'wastes' under the Convention includes 'substances or objects which are [...] required to be disposed of by the provisions of national law';
- (c) Article 4 (2) (e) of the Basel Convention prohibiting the 'export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports'.

12. The Convention further includes a number of provisions that require Parties to 'punish' or 'prohibit' certain activities. Both words arguably require the adoption of national legislation to formally forbid the respective activities or to inflict a penalty or sanction for an offence against the law. One would thus expect that the act that is prohibited or subject to punishment be defined in national legislation. As regards provisions referring to the act of permitting or allowing activities, it can also be assumed that the act would need to be prohibited or otherwise prevented by law, if it has not been permitted or allowed. Finally, it is difficult to imagine how the prior informed consent regime could be achieved without the adoption of any legislative measures.⁸

⁸ Strategies to promote full legislative implementation of the Basel Convention amongst its Parties (2014), para 26, available in UN Doc UNEP/CHW/CC.11/9, Annex.

1.1.2 Implementation by secondary legislation

13. Different countries take different approaches in determining how much detail to include in their primary as opposed to their secondary legislation. As a general rule, primary legislation is used to establish basic legal authority and obligations, which include fundamental objectives, requirements, standards, enforcement provisions and institutional structures. Secondary legislation, also referred to as delegated or subordinate legislation, usually sets forth more specific methods or programs to administer and meet the requirements of primary legislation or regulates aspects that require frequent updates (e.g. hazardous waste lists; lists of waste categories subject to import/export bans, etc.). The legal authority to adopt secondary legislation will usually need to be enshrined in the primary legislation.

Example – Incorporating Annexes I, II, III, VIII and IX into national legislation

Wastes falling within the scope of the Basel Convention are defined in Articles 1 and 2, as further elaborated in Annexes I, II, III, VIII, and IX of the Basel Convention. Parties have multiple possibilities to reflect these annexes into their national legislation. Some of these options are easier to update than others. National legislation may for example, refer to the specific annexes of the Basel Convention, or reflect the content of the relevant annexes in an annex to the legislation, or make provision for the adoption of a regulatory text identifying the regulated wastes. In case of the first option, any amendment to the annexes of the Convention adopted by the Conference of the Parties would presumably become an integral part of the implementing law, without need to take action at the national level, unless the implementing Party did not accept the amendment. However, this option does not allow for the possibility to include a national definition of hazardous wastes according to Articles 1 (1) (b) and 3 of the Basel Convention. The second option has the advantage that the law is complete in its presentation, without having to refer to another legal text. The annex could include a national definition of hazardous wastes pursuant to Articles 1 (1) (b) and 3 BC. The third option refers to a subsidiary regulatory text that should reflect the content of Annexes I, II, III, VIII and IX of the Basel Convention and may also include a national definition of hazardous wastes pursuant to Articles 1 (1)(b) and 3 of the Basel Convention. Subsidiary regulatory texts are usually subject to less restrictive amendment procedures and can thus be updated more easily than primary legislation.

14. The following factors deserve special attention, when implementing Basel Convention obligations by means of secondary legislation:

- (a) Secondary legislation should be entirely consistent with the primary legislation that it is complementing;
- (b) The number of different legal instruments (both primary and secondary legislation) applying to a single regulatory community should not be too high, so as not to create unnecessary confusions among implementing authorities and the regulated community;
- (c) The development and adoption of secondary legislation that is necessary for the primary legislation to become fully effective should be prioritized, if possible in accordance with a fixed time schedule.

1.1.3 Implementation by non-legislative measures

15. Except when otherwise specified (See section 1.3.1), the Basel Convention leaves it to each Party to determine the exact nature of the measures taken to implement the Convention.⁹ Legislation should be recognized as being one tool, but not a silver bullet, for example, for establishing a comprehensive waste management framework at the national level.¹⁰ Other measures available to Parties include executive/administrative implementation such as waste management strategies, action plans, or other policy documents. These may include voluntary, information and educational programs that supplement binding legislative measures.

16. Each country will have its own set of practices and approaches to determine the appropriate combination of legislation, regulations and other instruments to implement the Basel Convention. However, whatever instrument or instruments are used, it may be considered important that the core obligations of the Basel Convention, in particular those relating to transboundary movements of wastes, are reflected in an instrument having legally binding effect at the national level. Legally binding measures will usually be the most effective in ensuring that obligations are met.

⁹ Article 4 (4) of the Basel Convention reads as follows: 'Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.'

¹⁰ Guidelines for Framework Legislation for Integrated Waste Management (2016), page 15, available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

1.2 Incorporating the Basel Convention into national law

17. The first step in preparing the drafting process consists in identifying those Basel Convention provisions that need to be implemented through national legislation. To give full effect to the Convention at the national level, Parties with both monist and dualist legal systems will need to further specify at least some of its provisions at the national level. This chapter gives an overview of different modalities and techniques to incorporate treaty obligations in monist and dualist countries, provides guidance on selecting an appropriate implementing technique for the Basel Convention, and highlights which elements might require further specification at the national level.

1.2.1 Modalities for treaty incorporation

18. Under the Basel Convention, States and political and/or economic integration organizations may express their consent to be bound.¹¹ Upon expression of their consent to be bound and entry into force of the Convention, the Parties become responsible for giving effect to the Convention domestically.¹²

19. The extent to which the Basel Convention provisions need to be transposed into national law in order to gain full legal effect is contingent upon each country's own modalities to implement treaty obligations, the relevant rules often being constitutional in character. In some countries treaties must be submitted to the national legislative body for incorporation into the national legal order before they become legally effective under national law. These countries are generally referred to as having a *dualist* legal system. For example, Swaziland has a dualist legal system. For countries with a so-called *monist* legal system, treaties become part of national law upon their entry into force for that country, without any need for prior approval or transposition by the national legislative body. For example, both Togo and Bhutan have a monist legal system. Still other countries use a combination of monist and dualist systems.

20. Being acquainted with the national provisions and jurisprudence regarding the status of treaty provisions in national law is crucial for Parties to understand the legal effect of the Basel Convention in national law upon its entry into force for the country.

1.2.2 Implementing techniques

21. Treaties differ greatly in their level of specificity. Some treaty rights and obligations are very detailed, others are open-ended in their formulations thus leaving flexibility in the way they will be implemented at the national level. Some treaty provisions are self-executing in the sense that, once incorporated at the national level, they do not need to be complemented by other measures: they are sufficiently precise and clear in their formulation for authorities and courts to directly apply them. Other treaty provisions are not self-executing and need to be further specified through legislative or administrative measures at the national level to become fully effective and applicable at the national level. The specific criteria for deciding which treaty norms are self-executing vary between countries.

Example – Germany's approach to ascertaining self-executing norms

Germany, for example, follows the monist legal tradition and recognizes the distinction between self-executing and non self-executing treaty provisions. German courts consider a treaty provision to be non self-executing where the treaty explicitly excludes direct application, where it states the necessity of further implementation by state parties, or where the provision cannot be applied directly, as it does not designate the responsible administration, does not define a necessary administrative procedures or does not designate the jurisdiction of a specific court.¹³

22. In dualist countries, treaties can usually either be incorporated by reference or by transposition. Incorporation by reference means that the text of the Convention is annexed to a short statute, providing for the incorporation of the treaty without amending or completing the treaty text. Incorporation by transposition refers to the case where the treaty text is adjusted and completed to fit into the national context, which may involve amendments to various national laws. Treaties or treaty norms that are too vague to be directly applied at the national level would thus normally be implemented by transposition, to provide an opportunity to the legislator to flesh out the treaty provisions.

¹¹ Articles 22 (1) and 23 (1) of the Basel Convention. For guidance on how to express consent to be bound, see the United Nations Treaty Handbook available at: <https://treaties.un.org/doc/source/publications/THB/English.pdf>

¹² Please see chapter section C. on National Laws and Regulations of the UNEP Manual

¹³ J. Crawford, *Brownlie's Principles of Public International Law*, OUP 2012, 97.

Example – Italy’s ordinary and special methods for treaty incorporation

Italy, for example, follows a dualist tradition, in that treaties produce no direct effect unless they have been integrated via national legislation. In Italy, treaties may be implemented by means of the so-called ‘special method’, the ‘ordinary method’, or a combination of the two. The special method incorporates the treaty into national law via a short statute with the treaty annexed. It is used on a case-by-case basis where international norms have an inherent aptitude to be directly applied in the domestic order. The ordinary method reformulates and interprets the treaty before amending national legislation in order to achieve full implementation. It is utilized when the treaty is incapable of standing on its own feet as a national law and therefore requires legislative elaboration.¹⁴

23. The Basel Convention, like most other multilateral environmental agreements (MEAs), is typically a treaty that for many of its provisions requires further specification at the national level to gain full legal effect at the national level.¹⁵ Parties are therefore encouraged to choose an implementing technique that allows for further specification of the Basel Convention provisions at the national level, bearing in mind as well that some countries allow for different techniques to be applied to different parts or provisions of the same treaty.

Example – South Africa’s theoretical option of direct applicability

Some national legal systems cannot undoubtedly be classified as *monist* or *dualist*. In South Africa, for example, the Constitution provides for the possibility that so-called self-executing provisions of a treaty are directly applicable as part of national law, unless they are inconsistent with the Constitution or an Act of Parliament. However, no South African court has actually held a particular provision to be self-executing to date, with the result that South Africa has so far followed a strictly dualist approach to treaty implementation in practice.¹⁶

1.2.3 The case of the Basel Convention

24. The checklist for the legislator¹⁷ focuses on the Basel Convention provisions that require legislative implementation, unless otherwise noted. It is designed to:

- (a) Assist Parties to deliver full legislative implementation of the Basel Convention, by separating out and listing each obligation that must, or should, be implemented by legislation (laws or regulations); and
- (b) Ensure consistency in implementation, which is an important objective for a global treaty establishing a transboundary regime that depends on Parties’ legislation working together to create a coherent and functioning international system to control transboundary movement of hazardous wastes.

25. The checklist is in tabular form. Each line of the table will contain:

- (a) A reference to a provision in the Convention;
- (b) A checkbox;
- (c) A description of the obligation that is contained in the provision that must, or should, be implemented by legislation.

26. Identifying the Basel Convention provisions that are not self-executing and need concretization at the national level, requires a careful evaluation of each article. Table 1 may assist Parties in this evaluation, by highlighting aspects that seem to require further specification. The information contained in Table 1 is only indicative and should be checked against national rules and practices on treaty implementation.

¹⁴ J. Crawford, *Brownlie’s Principles of Public International Law*, OUP 2012, 98.

¹⁵ See in particular article 4 (4) of the Basel Convention: “Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.”

¹⁶ D. Sloss, ‘Treaty enforcement in Domestic Courts – A comparative Analysis’, in D. Sloss (ed.), *The Role of Domestic Courts in Treaty Enforcement*, CUP 2009, 1-60, 25-26.

¹⁷ Annex I to the Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>

Table 1: Provisions

Articles of the BC	Elements requiring action or clarification at the national level
Scope of application [Art 1; Art 2 (1); Art 3 (1); Art 3 (2); Art 3 (4)]	<p>Compulsory:</p> <ul style="list-style-type: none"> – Adopt measures to ensure that information on a national hazardous waste definition is transmitted to the Secretariat (incl. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure). <p>Optional:</p> <ul style="list-style-type: none"> – Adopt domestic legislation to complement list of hazardous wastes, or make provision for subsequent adoption by regulatory means (incl. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure for adoption and notification to Secretariat). – Adopt domestic legislation to require objects or substances to be disposed of to bring them under the scope of the Convention, or make provision for subsequent adoption by regulatory means (incl. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure for adoption and notification to Secretariat).
Institutional framework [Art 2 (6); Art 2 (7); Art 5]	<p>Compulsory:</p> <ul style="list-style-type: none"> – Designate or establish one or more competent authorities and one focal point, or make provision for subsequent designation by regulatory means (incl. assign legal authority to exercise responsibilities; define administrative procedure to notify the Secretariat).
Waste management principles [Art 4 (2) (a); Art 4 (2) (b); Art 4 (2) (c); Art 4 (2) (d); Art 4 (13)]	<p>Compulsory:</p> <ul style="list-style-type: none"> – Adopt appropriate measures to implement the principles, or make provision for subsequent adoption by regulatory means (incl. designate responsible agency; assign legal authority to exercise responsibilities; define adoption procedure). – Adopt measures to prohibit unauthorized transport and disposal of hazardous or other wastes (incl. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure for permit application and evaluation).
Transboundary movements [Art 4 (1) (a); Art 4 (1) (b); Art 4 (1) (c); Art 4 (2) (e); Art 4 (2) (f); Art 4 (2) (g); Art 4 (5); Art 4 (6); Art 4 (7) (b); Art 4 (7) (c); Art 4 (8); Art 4 (9); Art 4 (10); Art 6; Art 7; Art 8]	<p>Compulsory (unless all transboundary movements are prohibited):</p> <ul style="list-style-type: none"> – Adopt control procedure for transboundary movements of hazardous wastes and other wastes (incl. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure for submission and evaluation of requests for transboundary movements). – Include provision to oblige exporters to take-back waste if disposal cannot be completed and alternative arrangements cannot be made. <p>Optional:</p> <ul style="list-style-type: none"> – Adopt decision to prohibit the import of (certain) hazardous wastes or other wastes, or make provision for subsequent adoption by regulatory means (e.g. designate responsible agency; assign legal authority to exercise responsibilities; define administrative procedure for adoption and notification to Secretariat).
Illegal traffic [Art 4 (3); Art 9]	<p>Compulsory:</p> <ul style="list-style-type: none"> – Include provision to oblige actors involved in cases of illegal traffic to fulfill their obligations under Article 9. – Adopt appropriate national legislation to prevent and punish illegal traffic, including to consider it a crime (incl. define criminal behavior, sanctions and enforcement measures)
Enforcement [Art 4 (4)]	<p>Compulsory:</p> <ul style="list-style-type: none"> – Adopt appropriate measures to enforce the obligations under the Convention (incl. designate responsible agencies; assign legal authority to

<p>Information exchange and cooperation [Art 3; Art 4 (2) (h); Art 10; Art 11; Art 13]</p>	<p>exercise responsibilities; define enforcement procedures).</p> <p>Compulsory:</p> <ul style="list-style-type: none"> – Adopt measures to ensure transmission of information to the Secretariat (incl. designate responsible authority for collecting and transmitting information, bearing in mind that the focal point is responsible for communicating the information to the Secretariat; assign legal authority to collect and transmit the information). – Adopt appropriate measures to cooperate with other Parties for the purpose of implementing the Convention (incl. designate responsible agency; assign legal authority to exercise responsibilities). <p>Optional:</p> <ul style="list-style-type: none"> – Conclude bilateral, multilateral and regional agreements/arrangements under Article 11, or include provision for subsequent conclusion of such a agreements (incl. designate responsible agency; assign legal authority to conclude agreements).
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27. Parties are encouraged to reflect for each Basel Convention provisions, whether additional legal requirements or other measures will be necessary to not only achieve full compliance on paper, but also in practice. Only then will the treaty and the national legislation be effective in achieving its objectives.¹⁸

1.3 Relevant legal frameworks and policies

28. Measures to implement and further specify the Basel Convention at the national level are usually embedded into a broader national waste management policy and are linked to other national legal frameworks. To avoid the creation of legal loopholes and contradictions, the relationship between newly enacted legislation and the existing legal and policy framework should be examined and, if needed, clarified or adjusted. This chapter provides guidance on the identification of relevant national legislation and on the integration of new legislation into the existing national framework for waste management. It also discusses possibilities for implementing the Basel Convention in conjunction with related regional and international agreements.

1.3.1 Identification and review of relevant national legislation

29. Most countries have a basic legal and institutional framework for the management of waste that addresses to some extent the generation and management of wastes falling within the scope of the Basel Convention. For example, environmental framework legislation often covers all environmental concerns, including waste issues. Other categories of legislation that may include provisions of relevance to wastes issues include for instance legislation addressing pollution prevention and control, industrial activities, public health, or agriculture.

30. The implementation of the Basel Convention provides an opportunity to ascertain the existing national legal framework for waste generation and management. Any legislation that could be of relevance, including regulatory texts (e.g. decrees, statutory orders) adopted under those laws, should be part of this exercise. Once the existing laws and regulations governing the generation and management of hazardous and household wastes have been identified, the implementing Party will need to review whether and to what extent they cover all aspects of and do not contradict any mandatory aspects of the Basel Convention.

31. The checklist for legislators¹⁹ can be a useful tool to help structure the review process. It covers the main obligations of the Basel Convention and thereby provides a quick overview on the various aspects addressed in the Convention.

32. There are different possibilities for reflecting the various provisions of the Basel Convention into an existing national waste management framework. For example, countries that are in the process of or have developed environmental framework legislation may consider integrating the Basel Convention obligations into that code. Other countries may prefer developing a stand-alone legislation

¹⁸ On the issue of the effectiveness of multilateral environmental agreements, see D. Bodansky, *The art and the craft of international environmental law*, Harvard, England, 2010

¹⁹ Manual for the implementation of the Basel Convention (2015), Annex I, available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

implementing the Basel Convention. Still others will build on multiple existing pieces of legislation and amend them as needed, either by repealing provisions that are contradictory to the Basel Convention or supplementing them with provisions adding new sets of norms. Parties should weigh the advantages and disadvantages of each available option to identify the optimal solution for their country.

33. Other drafting tools to clarify the relationship between different legal instruments with overlapping scopes of application are exclusions or legal preponderance. Exclusions serve to establish separate scopes of application for different legal instruments and may, for example, be used for waste streams or types of waste that are covered by specialized legislation (e.g. the disposal of explosives). The specialized legislation should be at least as protective of human health and the environment as the general legislation, so as not to create legal loopholes. The concept of subsidiary applicability serves to assign preponderance to one legal instrument over another, without excluding continued applicability of the subsidiary legal instruments, as long as its provisions are not in contradictions with the provisions of the preponderant law.

34. A review of the existing national framework would ideally be complemented by an inventory of the wastes generated and managed at the national level²⁰ so as to ensure that Basel Convention implementing legislation is tailored to the particular circumstances and needs of the implementing State.

35. In addition, it may be useful to take into account experience - both successes and challenges, with the implementation of existing legal provisions of relevance to the generation and management of wastes as this can also provide lessons learned towards the development of effective and efficient legal frameworks implementing the Basel Convention. Examples of challenges may include lack of awareness of the regulated stakeholders (whether from the private or public sector), fragmented or lack of clarity of the legal framework, lack of political will, and lack of technical knowledge. Successes may stem from a strong political will, the availability of sufficient resources, and cooperation with partners.

1.3.2 Opportunities for synergies

36. The development or review of legislation implementing the Basel Convention may provide an opportunity to put in place legislation also reflecting the provisions of related multilateral environmental agreements (MEAs).

37. The relevant provisions of regional waste management treaties concluded pursuant to Article 11 of the Basel Convention, such as the Bamako Convention²¹ and the Waigani Convention,²² can, with limited additional effort, be integrated within national legislation implementing the Basel Convention.

38. Other international treaties that could be taken into account include, for example, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade²³ and the Stockholm Convention on Persistent Organic Pollutants.²⁴ The implementation of the three conventions can be promoted through the development of legislation based on life-cycle approach to chemicals management. This approach will substantially enlarge the scope of the legislative project though. Alternatively, Parties may look for opportunities to creating

²⁰ For guidance on the development of an inventory, see the Methodological Guide for the development of inventories of hazardous wastes and other wastes under the Basel Convention available at: <http://basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>

²¹ Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of hazardous Wastes within Africa (1991, 1998), available at <http://www.unep.org/delc/BamakoConvention/BamakoBackgroundDocuments/tabid/106424/Default.aspx>.

²² Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control Transboundary Movement of Hazardous Wastes within the South Pacific Region (1995, 2001), available at <http://www.sprep.org/legal/the-convention-waigani>.

²³ The text of the Rotterdam Convention is available at: <http://www.pic.int/TheConvention/Overview/TextoftheConvention/tabid/1048/language/en-US/Default.aspx>. Guidance towards the development of legislation is set out in the publication Guide on the Development of National Laws to Implement the Rotterdam Convention, available at: <http://www.pic.int/Implementation/ResourceKit/tabid/1064/language/en-US/Default.aspx>

²⁴ The text of the Stockholm Convention is available at: <http://chm.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx>. Guidance towards the development of legislation is set out in the publication Developing National Legal Frameworks to Implement the Stockholm Convention on Persistent Organic Pollutants – A Guide, available at: <http://chm.pops.int/Implementation/Publications/Guidelines/tabid/3071/Default.aspx>

more targeted synergies when implementing different multilateral environmental agreements, for example, at the institutional level.

Example – Synergies in the designation of focal points

The Basel, Rotterdam and Stockholm Conventions each provide for the designation of an entity responsible for communicating with the Secretariat of the conventions. The designation of this entity provides an opportunity for synergies at the institutional level. Gambia's National Environmental Agency (NEA), for example, is the focal point/official contact point for the Basel, Rotterdam and Stockholm Conventions.

Example – Synergies in the enforcement of transboundary environmental crimes

Customs authorities may consider taking a comprehensive and integrated approach to preventing and reacting to illegal imports and exports of chemicals and wastes covered by the conventions.²⁵

1.4 Involving interested actors into the drafting process

39. Meaningful involvement of interested government entities and stakeholder groups in the drafting process plays an important role in securing the quality of implementing measures, as well as broad support for their implementation. This chapter provides guidance on planning the drafting process, as well as the involvement of interested state agencies and stakeholder groups into the drafting process.

1.4.1 Process to draft legislation

40. A number of activities are likely to be undertaken when developing or reviewing legislation and regulations, including the following:

- (a) Establish or implement a mechanism for appropriate coordination among or consultation with relevant governmental authorities;
- (b) Establish or implement a mechanism for appropriate consultation with other interested stakeholders;
- (c) Ensure access to technical and legal expertise;
- (d) Provide accessible, understandable information about the law development process to the public and opportunities for public participation and input.

41. As a general rule, it is desirable that government officials entrusted with the drafting the Basel Convention implementing legislation actually lead and are substantially involved in this process. A recurrent challenge in developing countries however is the limited resources, both in time and in expertise, of public servants. To overcome this challenge, some States have hired private consultants for drafting implementing legislation, which has led to mixed successes.²⁶ It is recommended that in the event it is necessary to hire a consultant from a different country, this consultant be paired with a local consultant or institution that is familiar with the legal, policy, institutional and socio-economic context.²⁷

1.4.2 Inter-agency cooperation

42. Waste generation and management measures usually touch upon the competences of several ministries, including ministries of environment, ministries of public health, ministries of industry and commerce, ministries of agriculture and ministries of justice. Other potentially interested entities include sub-national authorities (e.g. provinces, states, municipalities). The involvement of sub-national authorities is particularly relevant to federal states and other states with decentralized waste management competences, to help ensure that the goals and strategies for waste management defined

²⁵ See the Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions available at: <http://synergies.pops.int/Implementation/TechnicalAssistance/ToolsandMethodologies/ManualforCustomsOfficers/tabid/4457/language/en-US/Default.aspx>

²⁶ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 330, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

²⁷ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 330, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

at the national level are realistic and will be reflected in sub-national policies.

43. The involvement of interested ministries and sub-national authorities in the drafting process can take many forms, from providing opportunities to comment on draft legislation to the constitution of inter-agency drafting groups. Whatever approach is preferred, it might be useful to designate a lead agency for the process, responsible for meeting the time schedule and coordinating the input from different entities.

Example – Involvement of government institutions in the drafting of South Africa’s hazardous wastes management legislation

In South Africa the draft language of the 2008 hazardous waste management law was developed by a group of lawyers and thereafter submitted to the Ministry of Environmental Affairs and Tourism, the provincial governments, and other governmental institutions (e.g. government institutions responsible for transport and agriculture) for their consultation and comments.²⁸

1.4.3 Stakeholder consultations

44. Consulting interested stakeholders on draft legislation can improve the quality of the legislation and increase their commitment to the objectives of the legislation, with positive effects on compliance rates.²⁹ Relevant stakeholder groups include representatives from the waste generation and management sectors, including the major waste generators, waste collectors, waste transporters, waste disposers, and the informal waste sector. A number of states also allow the public to participate in the development of legislation, for instance through non-governmental organizations.

45. Stakeholder consultations can be organized in a variety of ways. A common way of requesting input from interested groups and members of the public consist in publishing the draft legislation with a call for comments. Other means of stakeholder consultation could involve the publication of the draft legislation on the government website or in newspapers, or the organization of consultative meetings. In order to gain real support from interested stakeholder groups, consultations should be meaningful, in that received comments are taken into account as far as compatible with the objectives of the draft legislation.³⁰

Example – Stakeholder consultations by means of publication of draft legislation

The publication of draft legislation with a call for comment is the most common way of stakeholder involvement in the drafting process. Several EECCA countries, for example, publish draft environmental laws on their websites providing an entry point for comments and proposals.³¹ In the case of South Africa, the government published the draft hazardous waste legislation in the Gazette with a corresponding call for comments.³²

46. In addition, the drafting of legislation implementing the Basel Convention would ideally be complemented by the development of an inventory of the wastes generated and managed at the national level³³ so as to ensure that the legislation is tailored to the particular circumstances and needs of the implementing State.

²⁸ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 318, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

²⁹ Translating Environmental Law into Practice: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia (2007), page 25, available at <https://www.oecd.org/env/outreach/39236907.pdf>.

³⁰ Translating Environmental Law into Practice: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia (2007), page 29, available at <https://www.oecd.org/env/outreach/39236907.pdf>.

³¹ Translating Environmental Law into Practice: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia (2007), page 27, available at <https://www.oecd.org/env/outreach/39236907.pdf>.

³² Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 318, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

³³ For guidance on the development of an inventory, see the Methodological Guide for the development of inventories of hazardous wastes and other wastes under the Basel Convention available at: <http://basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>

2. Drafting implementing legislation

47. The process of drafting Basel Convention implementing legislation usually involves the consideration of multiple drafting options and development of numerous successive drafts until the desired final draft is achieved. The rights of and obligations on Parties set forth in the Basel Convention are the bedrock of that process. The present section provides guidance on how to transpose the Basel Convention provisions into the national legal framework. Implementing legislation should tackle the different provisions from the perspectives of a State of import, export and transit, to account for each situation in which the implementing Party might find itself. The section is organized under nine thematic headings:

- (a) Objective;
- (b) Scope;
- (c) Definitions;
- (d) Institutional framework;
- (e) Waste management principles;
- (f) Transboundary movements;
- (g) Illegal traffic;
- (h) Enforcement;
- (i) Information exchange.

48. The suggested categorization of the Basel Convention provisions and the drafting examples included at the end of each drafting element may serve as a starting point for the drafting process. They should be further developed to account for existing waste management legislation, the national status of waste management, institutional capacities, political realities, technological capacities and any other relevant information identified during the preparatory process. Draft texts should be checked against the background of the legal system to avoid inconsistencies with existing legal and constitutional norms.

2.1 Objective

2.1.1 Relevant Basel Convention provisions

49. The Basel Convention does not state an “objective” in its operative part. The preambular paragraphs of the Convention help clarify its object and purpose. The last paragraph of the preamble stating that the Parties to the Convention are ‘determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes’ may be seen as particularly relevant.

2.1.2 Transposition into national legislation

50. Knowing the purpose of a legal instrument and the principles upon which it was predicated may assist the regulated community, administrative authorities and courts in ascertaining the legislative intent when applying or interpreting the law. In some countries, it is therefore common drafting practice to explicitly state the objective of legal instruments in the operative part of the law.

51. The objective of a legal instrument may be expressed as a single-purpose or a multi-purpose statement at different levels of specificity. Some countries’ legislation also cites general principles of environmental law or waste management that informed the legislative project. These may include the following principles:

- (a) Sustainable development;
- (b) Precautionary principle;
- (c) Pollution prevention;
- (d) Polluter pays principle;
- (e) Life-cycle approach
- (f) Waste hierarchy;
- (g) Environmentally sound management;

(h) Public participation and right to know.

52. Ideally the operative provisions and requirements of the legal instrument should provide effective means to operationalize the defined objective.

Example – Identifying regulatory measures to achieve the defined objective

A way to translate the objective of preventing adverse impacts from hazardous wastes could, for example, include measures to incentivize the use of alternatives substances or to minimize the generation of hazardous wastes, mechanisms to provide information to the public, measures to improve the protection of workers in the informal sector, and so forth.

2.1.3 Example of transposition

Art [...]	Objective	BC provision:
	The aim of this law is to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes, in furtherance to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (hereinafter the “Basel Convention”).	> Preamble

2.2 Scope

2.2.1 Relevant Basel Convention provisions

53. Article 1 of the Basel Convention read in conjunction with Article 2 (1) sets forth the scope of the Convention by indicating the categories of wastes to which the Convention applies. The starting point is the definition of the term waste as ‘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’ (Article 2 (1) BC). By including wastes that are ‘required to be disposed of by national law’, the Basel Convention allows for the possibility that certain substances or objects are considered wastes in some countries, but not in others.

Example – National definitions of wastes

The Basel Convention definition of ‘wastes’ allows Parties to bring substances and objects under the scope of the Convention by the adoption of national law requiring their disposal.³⁴ If State A could prohibits the use of paint containing lead by the adoption of a new law requiring that all remaining stocks are subject to environmentally sound disposal, obsolete stocks of lead paint would fall within the definition of waste in State A and would be subject to the requirements of the Basel Convention in case of transboundary movement (See Annex I, Entry Y31). In State B, the use of paint containing lead may still be allowed and lead paint suitable for use would not qualify as waste. However, if State A exports its obsolete stocks to State B, the Basel Convention applies, even if State B does not consider the stocks to qualify as wastes. Another example, are production residues, which are considered wastes in some countries, but not in others.

54. The Basel Convention applies to any such wastes falling within the category of ‘hazardous wastes’ or ‘other wastes’. The definition of hazardous wastes was developed in two stages. When the Convention was adopted, Annexes I to III were included, listing those wastes that were to be controlled and their characteristics. A waste which falls under any of the categories of waste in Annex I (Y1-Y45) to the Convention is considered to be hazardous wastes and subject to the Basel Convention, unless it can be shown that the waste does not possess or exhibit any of the hazardous characteristics described in Annex III to the Convention. In 1998, the Conference of the Parties adopted two additional annexes (Annexes VIII and IX), which provide more details as to which wastes are covered or not by the Convention. Annex VIII (list A) lists wastes that presumably fall within a category of Annex I and are characterized as hazardous. As with Annex I, if Annex VIII wastes do not possess any of the characteristics described in Annex III (e.g. explosiveness, corrosivity and toxicity) they are not subject to the Convention controls. Annex IX (list B) contains wastes that are not hazardous unless they contain Annex I material to an extent that makes them exhibit an Annex III characteristic. In such cases, the wastes are covered by the Convention. Under Article 1 (1) (b) of the Basel Convention Parties have the possibility to adopt a national definition of hazardous wastes that extends the scope of application of the Basel Convention. In order to do so, the implementing Party must consider the additional wastes as hazardous in their implementing legislation and notify the Secretariat thereof (Article 3 BC).

55. So-called ‘other wastes’ include the categories of wastes listed in Annex II to the Convention (Article 1 (2) BC), namely wastes collected from households (Y46) and residues arising from the

³⁴ Glossary of terms (2017), Part II: Waste definition (a) (iii), available at [...].

incineration of household wastes (Y47). ‘Other wastes’ are treated identically to hazardous wastes in the operative part of the Convention.

56. Radioactive wastes that are subject to other international control systems (Article 1 (3) BC) and wastes deriving from the normal operation of ships, the discharge of which is covered by another international instrument (Article 1 (4) BC), are excluded from the scope of application of the Basel Convention.

57. The *Glossary of terms* adopted by the thirteenth meeting of the Conference of the Parties provides further guidance on the definition of the terms ‘hazardous wastes’ and ‘other wastes’, including on when a particular substance or object becomes waste and ceases to be waste.³⁵

2.2.2 Transposition into national legislation

58. A clear definition of the scope of the legal instrument is essential for the regulated community to understand its obligations. The Basel Convention implementing legislation should therefore specify its exact scope or provide for subsequent definition of the scope by means of secondary legislation.

59. Some countries may use the momentum of the implementation of the Basel Convention at the national level as an opportunity to design comprehensive waste management legislation, governing the management of all types of wastes. The scope of the draft instrument may then differ from the scope of the Basel Convention. It is however important to remember that other Parties to the Convention are only bound to respect the Basel Convention procedures vis-à-vis the implementing Party in respect of those categories of wastes that fall within the scope of the Basel Convention. This definition includes wastes that are defined as ‘hazardous’ by national legislation, if properly notified, but cannot be extended to non-hazardous waste beyond the categories listed in Annex II of the Basel Convention, for example.

60. Legal drafters should also bear in mind that Annexes VIII and IX of the Convention were adopted for the purposes of providing greater clarity to Annex I. Both Annexes may be amended from time to time. Six months after their adoptions, the amendments automatically become effective for Parties that have not notified the depositary that they are unable to accept them. Parties should provide for a mechanism to keep track of amendments to those annexes and transpose them into national legislation, for example, by making it possible to amend the hazardous waste list by means of secondary legislation (regulation, order, resolution, decree, etc.).

Example – Provide for easy update of hazardous waste lists

Parties have multiple possibilities to include Annexes I, II, III, VIII, and IX of the BC into their national legislation. Some of these options are easier to update than others. National legislation may for example, refer to the annexes to the Basel Convention, reflect the content of the relevant annexes in an annex to the legislation, or make provision for the adoption of a regulatory text identifying the regulated wastes. In case of the first option, any amendment to the annexes of the Convention adopted by the Conference of the Parties would become an integral part of the implementing law, without need to take action at the national level, unless the implementing Party did not accept the amendment. However, this option does not allow for the possibility to include a national definition of hazardous wastes according to Articles 1 (1) (b) and 3 of the Basel Convention. The second option has the advantage that the law is complete in its presentation, without having to refer to another legal text. The annex could include a national definition of hazardous wastes pursuant to Articles 1 (1) (b) and 3 BC. The third option refers to a subsidiary regulatory text that should reflect the content of Annexes I, II, III, VIII and IX of the Basel Convention and may also include a national definition of hazardous wastes pursuant to Articles 1 (1)(b) and 3 of the Basel Convention. Subsidiary regulatory texts are usually subject to less restrictive amendment procedures and can thus be updated more easily than primary legislation.

61. Finally, Parties are encouraged to clearly state the relationship of the draft legal instrument with existing laws, such as framework laws on the environment, more general laws on the generation and management of wastes, or regulatory texts adopted in related areas (e.g. health, labor protection, chemicals, industrial sectors, agriculture, urbanization, accident prevention, etc.). Such clarification may be included in the article defining the scope of application of the legal instrument.

2.2.3 Example of transposition

Art [...]	Scope	BC provision:
	¹ This law applies to hazardous wastes and other wastes.	> Art 1

³⁵ Glossary of terms (2017), Part II: Waste definition, available at [...].

² The law does not apply to:	
a. Radioactive wastes subject to other international control systems and international instruments applying specifically to radioactive materials;	> Art I (3)
b. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.	> Art I (4)
³ “Wastes” are substances or objects which are disposed of or are intended to be disposed of.	> Art 2 (1)
^{3 ALT} “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed according to the provisions of this law, namely:	
a. [...]	
b. [...]	
⁴ “Hazardous wastes” are wastes subject to transboundary movement that belong to any category contained in Annex I or VIII of the Basel Convention, unless they do not possess any of the characteristics contained in Annex III to the Basel Convention. The categories of waste contained in Annex IX of the Basel Convention are presumed non hazardous, unless they contain material of Annex I to Basel Convention to an extent causing them to exhibit a characteristic of Annex III to the Basel Convention.	> Art I (1) + Art 3
^{4 ALT} “Hazardous wastes” are wastes subject to transboundary movement that belong to any category contained in Annex I of this law to an extent causing them to exhibit a characteristic of Annex III to this law.	
^{4 ALT BIS} “Hazardous wastes” are wastes subject to transboundary movement, as identified by decree of [NAME OF AGENCY].	
⁵ “Other wastes” are wastes subject to transboundary movement that belong to any category contained in Annex II of the Basel Convention.	> Art I (2)
^{5 ALT} “Other wastes” are wastes subject to transboundary movement that belong to any category contained in Annex II of this law.	

2.3 Definitions

2.3.1 Relevant Basel Convention provisions

62. Article 2 of the Basel Convention defines the terminology used in the Convention. While these provisions do not directly establish obligations on Parties, they are key to understanding the obligations that follow in the operative part.

2.3.2 Transposition into national legislation

63. A cornerstone of legal drafting is to clearly define the words and ensure their consistent use throughout the legal instrument. Definitions of key terminology are usually included at the beginning of a legal instrument, either before or after the article on the scope of the legislation, for the reader to be able to easily refer to them.

64. Most definitions of Article 2 of the Basel Convention are directly relevant to understanding the scope of the Basel Convention. The glossary of terms³⁶ further clarifies these terms. Legal drafters should examine if there are inconsistencies as to how the terms are used under the Convention and under national laws respectively. If differences exist, legal drafters need to be particularly careful in ensuring consistency with the language from the Basel Convention.

Example – Accounting for different use of the terminology at the national level

The term ‘disposal’, for example, is used under the Basel Convention to refer to any operation listed in Annex IV to the Convention. Annex IV includes both final disposal operations (Annex IVA) and so-called recovery operations (Annex IVB). In some countries, ‘disposal’ and ‘recovery’ are distinct terms, with the term ‘disposal’ only covering final disposal operation (Annex IVA). If Parties decide to continue using their national terminology they must be careful not to limit the scope of the Basel Convention obligations when transposing them into national law. In the mentioned example, whenever the Basel Convention refers to ‘disposal’, the term would need to be replaced by a reference to ‘disposal and recovery’. Similar problems may, for example, arise with the definition of waste ‘management’.

65. Drafters are also encouraged to adapt Basel Convention definitions to national circumstances, if necessary, and to clarify grey areas, where appropriate.

³⁶ Glossary of terms (2017), available at [...].

Example – Adapting definitions to national circumstances

For example, Article 2 (9) of the Basel Convention defines ‘area under the national jurisdiction of a State’ as any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment’. The reference to ‘marine areas’ as part of the definition should not be maintained if the implementing Party does not control any marine areas (i.e. landlocked countries).

Example – Clarifying grey zones

Under the Basel Convention, the term ‘State of transit’ means any State, other than the State of export or import, through which a movement of hazardous wastes or other waste is planned to take place. At the national level, the term ‘transit’ can, for example, be defined in a way that clarifies whether it covers, for example, the exclusive economic zone, the territorial sea, free zones, entering a port, docking or the unloading of the wastes.

66. Unless the Convention provides otherwise (e.g. definition of ‘hazardous wastes’), extending the scope of definitions at the national level does not create new obligations on other Parties.

Example – Extending the scope of definitions by national legislation

Legislation implementing the Basel Convention may define additional offences to the ones specified in Article 9 (1) of the Basel Convention as constituting illegal acts. Examples of additional related offences in national law could include the following circumstances:

- The intended disposer does not exist;
- The intended disposer does not have a license to dispose of the wastes in an environmentally sound manner
- The intended disposer does not have the required capacity to treat the wastes in an environmentally sound manner;
- There is not contract between the exporter and the disposer specifying environmentally sound management of the wastes in question;
- There is an import ban in the State of import;
- There is an export ban in the State of export.

However, other Parties are only bound by the obligations set out in paragraphs 2, 3 and 4 of Article 9 in the event the shipment of hazardous wastes and other wastes is deemed to be illegal traffic pursuant to paragraph 1 of Article 9 of the Basel Convention.

67. Finally, legal drafters should complement the list of definitions of Article 2 of the Basel Convention, as necessary.

Example – Defining other terms of relevance to the implementing legislation

Other terms that may require clarification under national law include the terms ‘Basel Convention’, ‘movement document’, or ‘notification document’, among others. The term ‘notification document’ can, for example, be defined as ‘the document used to notify the competent authority of any proposed transboundary movement of hazardous or other wastes and that provides the declarations and information specified in Annex VA of the Basel Convention according to the format approved by the Conference of the Parties to the Basel Convention’ (Annex VA). The term ‘movement document’ could be defined as ‘the document that each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign either upon delivery or receipt of the wastes in question and that provides the declarations and information specified in Annex VB of the Basel Convention according to the format approved by the Conference of the Parties to the Basel Convention’ (Annex VB).

2.3.3 Example of transposition

Art [...]	Definitions	BC provision:
¹	“Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites.	> Art 2 (2)
²	“Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement.	> Art 2 (3)
³	“Disposal” means any operation specified in Annex IV to the Basel Convention.	> Art 2 (4)
^{3 ALT}	“Disposal” means any operation specified in Annex IV of this law.	
⁴	“Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority	> Art 2 (5)

of the State where the site or facility is located.	
⁵ “Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.	> Art 2 (8)
⁶ “Area under the national jurisdiction of a State” means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health of the environment.	> Art 2 (9)
⁷ “State of export” means a Party to the Basel Convention from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated.	> Art 2 (10)
⁸ “State of import” means a Party to Basel Convention to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State.	> Art 2 (11)
⁹ “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.	> Art 2 (12)
⁹ ALT “State of transit” means [...]	
¹⁰ “States concerned” means Parties to the Basel Convention which are States of export or import, or transit States, whether or not Parties to the Basel Convention.	> Art 2 (13)
¹¹ “Person” means any natural or legal person.	> Art 2 (14)
¹² “Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported.	> Art 2 (15)
¹³ “Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported.	> Art 2 (16)
¹⁴ “Carrier” means any person who carries out the transport of hazardous wastes or other wastes.	> Art 2 (17)
¹⁵ “Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes.	> Art 2 (18)
¹⁶ “Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes.	> Art 2 (19)
¹⁷ “Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article [...] of this law.	> Art 2 (21)

2.4 Institutional framework

2.4.1 Relevant Basel Convention provisions

68. The Basel Convention requires each Party to designate one or several competent authorities and one focal point (Article 5 BC). The competent authority receives and responds to notifications of transboundary movements of hazardous and other wastes, and any related information (Article 2 (6) BC). The focal point is responsible for receiving and submitting information to the Basel Convention Secretariat (Article 2 (7) BC). Only one focal point is to be designated. One or more competent authorities may be designated to respond to notifications for export and import, however, only one competent authority for transit notifications.

69. Parties are obliged to inform the Secretariat of their designations within three months of the date the Convention enters into force for them and of any subsequent changes in designations (Article 5 (2-3) BC). More information on the frequency and format of notifications of designations of contacts to the Secretariat, as well as a list of competent authorities and focal points may be found on the Convention website.³⁷

2.4.2 Transposition into national legislation

70. The control system under the Convention cannot function properly unless each Party has designated its competent authorities and focal point and notified them to other Parties through the Secretariat. Focal points and competent authorities do not necessarily need to be designated by legislation. However, national administrative authorities generally operate on the basis of legal mandates and legal authorities contained in relevant laws. Parties should therefore ensure that the focal point and competent authorities are vested with the necessary legal authority to carry out their

³⁷ See <http://basel.int/Procedures/CompetentAuthorities/tabid/1324/Default.aspx>, <http://basel.int/Procedures/FocalPoint/tabid/1325/Default.aspx> and <http://basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>

functions.

71. Parties are free to determine the structure to be given to such authorities, its staffing, the particular ministry under which to establish them, and so forth, depending on factors such as the legal context and existing institutional constraints, traditions and resources availability. The possibility to designate several competent authorities allows federal states and states with decentralized waste management systems to designate one competent authority for each region.³⁸

72. The implementation and enforcement of the Basel Convention usually also involves other entities than the competent authorities and focal point, such as administrative authorities with primary responsibility to implement related laws, specialized enforcement agencies, judicial bodies and subnational authorities. Parties should therefore define by regulation or other administrative means, how the competent authorities will coordinate with other governmental entities and the public in carrying out their specified functions. This involves establishing sufficiently clear divisions of responsibilities among national authorities, as well as developing mechanisms for cooperation (information sharing, databases, advisory bodies, inter-ministerial committees, procedures for communication, memoranda of understanding, guidelines for cooperation, joint work programs, etc.). It might be helpful to assign primary responsibility for hazardous waste management to one specific administrative body, for example, the competent authority.

73. As for competent authorities and focal points, it may be necessary to adjust the mandate of other involved institutions to provide them with the discretion needed to fulfill their respective responsibilities. Enforcement agencies, for example, usually need to base their actions on a clear legal mandate, such as for having access to the relevant facilities and imposing sanctions.

Example – Cooperation with subnational entities

An important aspect of the cooperation with subnational entities is to ensure the exchange of information between the subnational and the national authorities. In countries where regional authorities are responsible for authorizing transboundary movements, the national government may play a role in collecting, analyzing, and making the data available at the national level. The role of national authorities may also go beyond data collection and information exchange. Waste management plans adopted at the subnational level will, for example, usually be subject to national approval, to ensure national government oversight (e.g. United Kingdom).³⁹

74. Finally, legal drafters should include provision to secure the necessary financial resources for the designated authorities to execute and implemented their assigned responsibilities. Implementing the Basel Convention obligations will entail new financial burdens for the administration. Parties should carefully estimate these costs (equipment for offices; staff; administrative procedures; financial contributions to Secretariat; etc.). Even well-written legislation may have little practical effect in the absence of sufficient level of funding. A key means to achieve financial viability of the implementing legislation is to include provision for securing financial resources into the legislation itself. Implementing measures may for example provide for contributions from the regulated community to reduce the financial burden on the administration. The *Practical manual on financing* developed by the Basel Convention expert working group on environmentally sound management includes further guidance on the topic.⁴⁰

Example – Financial obligations on private actors

Parties may use different tools to ensure that private actors subject to financial and other obligations under the Convention will be in a position to take on these obligations. Under Article 6 (11) of the Basel Convention, for example, Parties have the possibility to require that any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee. These guarantees will provide for immediate funds for alternative management of the wastes in cases where shipment and disposal cannot be carried out as originally intended. Another possibility consists in providing for joint liability of several involved actors. With regard to the obligation on the exporter to take-back illegally trafficked wastes under article 9 (2) of the Convention, the legislation of the European Union, for example, entitles the competent authority is entitled to direct its investigations towards the original producer, the licensed new producer or the licensed collector, if the notifier of the transboundary movement cannot be identified. If the competent authority is in possession of a notification form and thus knows the name of the notifier, but the notifier fails to fulfill its obligation to dispose of the wastes in an environmentally sound

³⁸ This is the case for instance in Germany

³⁹ Guidelines for Framework Legislation for Integrated Waste Management (2016), parte 185, available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

⁴⁰ Practical manual on financing (...); available at [...].

manner, the subsidiary obligation falls on the person who authorized the notifier to act on its behalf (See Article 2 (15) (a) of Regulation (EC) No. 1013/2006).

2.4.3 Example of transposition

Art [...]	Authority	BC provision:
¹	[NAME OF AGENCY] is responsible for implementing this law. It shall adopt, as needed, related regulatory texts and take appropriate measures to prevent and punish any conduct in contravention to the provisions of this law, or, if appropriate, cooperate thereto with relevant authorities.	> Art 4 (4)
²	[NAME OF AGENCY] shall designate a focal point [within three month of the date of entry into force of the Basel Convention for [NAME OF COUNTRY] and inform the Secretariat of the Basel Convention of the designation made, as well as of any changes regarding the designation made, within one month of the date of decision.	> Art 5
³	[NAME OF AGENCY] shall designate or establish one or more competent authorities, one competent authorities being designated to receive the notification of a proposed transit of hazardous wastes or other wastes , [within three month of the date of entry into force of the Base Convention for [NAME OF COUNTRY]] and inform the Secretariat of the Basel Convention of the designations made, as well as of any changes regarding the designation made, within one month of the date of decision.	> Art 5
⁴	[NAME OF AGENCY] shall publicly make available the information and documents necessary to the implementation of this law, such as the notification and movement documents approved by the Conference of the Parties to the Basel Convention.	[> Art 4 (4)]

2.5 Waste management principles

2.5.1 Relevant Basel Convention provisions

75. The Basel Convention includes a number of general rules and principles for the management of hazardous and other wastes. Accordingly, Parties must take appropriate measures to:

- (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects (Article 4 (2) (a) BC);
- (b) Ensure the availability of adequate disposal facilities for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal (Article 4 (2) (b) BC);
- (c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment (Article 4 2 (c) BC);
- (d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement (Article 4 (2) (d) BC);
- (e) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operation (Article 4 (7) (a) BC);
- (f) Review periodically the possibilities for the reduction of the amount and/or pollution potential of hazardous wastes and other wastes which are exported to other States, in particular developing countries (Article 4 (13) BC).

2.5.2 Transposition into national legislation

76. The principles on waste generation and management set forth in the Basel Convention provide a framework for more specific domestic measures to ensure environmentally sound management of hazardous and other wastes. They should be reflected in the implementing legislation or other appropriate measures to implement the Convention (e.g. waste management strategies), preferably with a clear mandate for further elaboration to ensure their enforceability.

Example – National measures to specify waste management principles

The general obligations on wastes management set forth in the Basel Convention usually require further elaboration at the national level, to become fully effective and enforceable. Article 4 (2) (a) of the Basel Convention, for example, requires Parties to ensure that the generation of hazardous wastes and other waste within it is reduced to a minimum, taking into account social, technological and economic aspects. The implementing Party may wish to include provisions to clarify the requirements that will allow monitoring progress in minimization of hazardous and other wastes, bearing in mind the Cartagena Declaration on the prevention, minimization and recovery of hazardous wastes and other wastes adopted at the tenth meeting of the Conference of the Parties.⁴¹

77. Ideally, the adopted implementing measures should cover all aspects of the hazardous and other wastes management cycle, including generation, transport, treatment, storage, recovery and final disposal. Useful guidance materials on developing a comprehensive framework for environmentally sound management of wastes include the following:

- (a) Framework for the environmentally sound management of hazardous wastes and other wastes;⁴²
- (b) Basel Convention technical guidelines;⁴³
- (c) Guidelines for Framework Legislation for Integrated Waste Management (UNEP).⁴⁴

78. A key feature for ensuring environmentally sound management of hazardous and other wastes is the establishment of a permit system. Such a system may include other waste management activities than disposal and transport, as required under the Basel Convention (Article 4 (7) (a) BC). To ensure the feasibility and effectiveness of such a system, Parties should carefully reflect on which activities to submit to strict permit requirements, and include exceptions where appropriate.

Example – Regulating the smallest link in the chain of actors

The disposal of hazardous wastes and other wastes usually involves a chain of actors (generation, collection, storage, transport, recovery, final disposal). The number of actors involved in each step of that process may vary. If a regulated community is too large, it may be impossible to implement and enforce strict permit requirements on them. In such cases, Parties may achieve a similar result, by imposing equivalent requirements on other actors of the chain. For example, a province in the Netherlands passed a law requiring companies to apply for legal exemption, if they wanted to use a processing installation to dispose of their wastes. After having passed the law, the provincial government discovered that 100,000 companies would need to submit such an application. Inspections alone would have required hiring an additional 200 to 300 inspectors. Therefore, the provincial government subsequently amended the legislation, to the effect that companies are no longer required to apply for an exemption, but must simply keep a record of their wastes delivered and periodically report information on the most hazardous wastes. Enforcement efforts now focus on the waste processors (about 1,000) rather than the waste producers.⁴⁵

Example – Exemption certain facilities from strict permit requirements

In some instances, it may be appropriate to exempt specific facilities from certain permit requirements, subject to compliance with certain other requirements including registration. Simplified permitting, licensing or authorization processes could, for example, be considered for small and medium enterprises (SMEs) that cause negligible environmental impacts. Some countries also use a tiered approach based on the potential risks to the environment and human health of the proposed activities (e.g. United Kingdom).⁴⁶

⁴¹ The declaration is available at: <http://www.basel.int/COP10/CartagenaDeclaration/tabid/2433/Default.aspx>

⁴² Framework for the environmentally sound management of hazardous wastes and other wastes (2013), available at <http://www.basel.int/Implementation/CountryLedInitiative/EnvironmentallySoundManagement/ESMFramework/tabid/3616/Default.aspx>.

⁴³ Basel Convention technical guidelines, available at <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>.

⁴⁴ Guidelines for Framework Legislation for Integrated Waste Management (2016), available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

⁴⁵ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), page 344, available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

⁴⁶ Factsheet on Specific Waste Streams: General Information, Chapter on Permitting, Licensing or Authorising, available at [...].

2.5.3 Example of transposition

79. General principles pertaining to the regulation of transboundary movements are addressed in the examples of transposition of that chapter.

Art [...]	Principles of waste management	BC provision:
¹	[NAME OF AGENCY] shall take the appropriate measures to:	
a.	Ensure that the generation of hazardous wastes and other wastes within [NAME OF COUNTRY] is reduced to a minimum.	> Art 4 (2) (a) + Art 4 (4)
b.	Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located to the extent possible, within [NAME OF COUNTRY];	> Art 4 (2) (b)
c.	Ensure that persons involved in the management of hazardous wastes or other wastes within the country take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.	> Art 4 (2) (c)
²	All persons under the national jurisdiction of [NAME OF COUNTRY] are prohibited from transporting or disposing of hazardous wastes or other wastes unless such person has been authorized or allowed to perform such types of operations. [NAME OF AGENCY] shall establish the conditions for the issuance of transport or disposal authorizations for hazardous wastes and other wastes, and shall be competent to grant such authorizations.	> Art 4 (7) (a)
³	The persons involved in the disposal of hazardous wastes or other wastes have taken the necessary steps to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;	> Art 4 (2) (c)

2.6 Transboundary movements

2.6.1 Relevant Basel Convention provisions

80. The prior informed consent procedure regulating transboundary movements of hazardous and other wastes is central to the Basel Convention control regime. Under the Basel Convention transboundary movements of hazardous wastes or other wastes are prohibited in the following circumstances:

- (a) Export to or import from a non-Party to the Basel Convention with which no bilateral, multilateral or regional agreement or arrangement has been concluded (Article 4 (5) BC; Article 11 BC);
- (b) Export to or import from a Party to the Basel Convention that has prohibited it (Article 4 (1) BC; Article 13 (2) (c) BC);
- (c) Exports to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if the Party has reasons to believe that the wastes in question will not be managed in an environmentally sound manner (Article 4 (2) (e) BC);
- (d) Transboundary movements not meeting any of the following criteria: (a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; (b) the waste in question are required as a raw material for recycling or recovery industries in the State of import; or (c) the transboundary movement in question is in accordance with other criteria to be decided by the parties, provided those criteria do not differ from the objectives of the Convention. (Article 4 (9) BC);
- (e) Exports of hazardous wastes for disposal to the area of 60° South latitude (i.e. Antarctica), whether or not such wastes are subject to transboundary movement (Article 4 (6) BC).

81. In all other circumstances, transboundary movements are subject to the prior informed consent procedure set forth in Article 6 of the Convention. This procedure notably requires that the State of export shall not allow a transboundary movement to begin unless it has received the written consent from the State of import and, if applicable, any State of transit (Article 6 (3-4) BC). The State of export must further possess confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question (Article 6 (3) (b)

BC). An alleviated prior informed consent procedure is admissible under specific circumstances (Article 6 (4) in fine BC; Article 6 (6-8) BC). When the wastes are legally defined as or considered to be hazardous wastes only the State of export, the State of import, the States of import and transit, or the State of transit, the duties to notify the transboundary movement and confirm its completion are shifted to that State (Article 6 (5) BC). The *Manual for the Implementation of the Basel Convention*⁴⁷ and the *Guide to the Control System*⁴⁸ contain further guidance on the different requirements of the prior informed consent procedure, including on cases where the wastes are legally defined or considered to be hazardous in one or more, but not all of the States concerned.

82. The ultimate goal of the prior informed consent procedure is to ensure the environmentally sound disposal of hazardous and other wastes in case of transboundary movements. Parties are therefore obliged to re-import wastes, if their disposal cannot be completed in accordance with the terms of the contract, unless alternative arrangements for their environmentally sound disposal can be made within the stipulated deadline (Article 8 BC).

2.6.2 Transposition into national legislation

83. Before transposing the prior informed consent procedure into domestic law, Parties should decide on eventual import, export or transit prohibitions and restrictions. Parties also have the possibility to include provision for the adoption of such measures at a later stage. The Basel Convention requires Parties to notify import, export or transit prohibitions or restrictions to the Secretariat in order for them to gain legal effect vis-à-vis other Parties.

84. Harmonized requirements and procedures for transboundary movements at the national level are key to the effective implementation of the prior informed consent procedure. Implementing legislation needs to tackle the different obligations from the perspective of a State of import, export and transit, to account for each situation the implementing Party might find itself in. To facilitate the reading of the legal instrument, it may be appropriate to include separate chapters or provisions for the respective cases of export, import and transit of wastes.

Example – Introducing separate provisions to regulate export, import and transit

National implementing legislation should account for each role the implementing Party may have (State of export, State of import, State of transit; other Party) with regard to a particular transboundary movement of hazardous or other wastes. Parties should thus identify the exact meaning of each Basel Convention provision for the different scenarios. Article 8 of the Basel Convention, for example, provides that if a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export. To fully implement this provision, the legislation should address the situation where the Party is the State of export (duty to take-back the wastes, if alternative arrangements cannot be made within 90 days), the State of import (duty to notify the State of export and the Secretariat) and the State of transit (duty not to oppose, hinder or prevent returns under Article 8 BC). For each situation, Parties should consider imposing specific obligations on the involved actors to ensure the enforceability of the obligations in the national context.

85. Some aspects of the prior informed consent procedure may require further specification at the national level.

Example – Specific requirements for contracts concluded between exporters and importers

For each aspect of the prior informed consent procedure, Parties should consider whether further clarifications in national laws or regulations are necessary to ensure their full effectiveness. Article 6 (3) of the Basel Convention, for example, provides that the State of export shall not allow the generator or exporter to commence the transboundary movement until it has received confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question. Some Parties have specified in their implementing legislation, which elements this contract must

⁴⁷ Manual for the implementation of the Basel Convention (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁴⁸ Guide to the Control System (2015), available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

include. Further guidance on this topic, including a list of basic elements to be included in the contract is available in the *Guide to the Control System*.⁴⁹

2.6.3 Example of transposition

Art [...]	General provisions	BC provision:
¹	[NAME OF AGENCY] shall take the appropriate measures to:	
a.	Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;	> Art 4 (2) (d)
b.	Prohibit the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties to the Basel Convention, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;	> Art 4 (2) (e)
c.	Review periodically the possibilities for the reduction of the amount and/or pollution potential of hazardous wastes and other wastes which are exported to other States, in particular developing countries;	> Art 4 (13)
d.	Require that information about the proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A of the Basel Convention, to state clearly the effects of the proposed movement on human health and the environment.	> Art 4 (2) (f)
e.	Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;	> Art 4 (2) (g)
f.	Co-operate in activities with other Parties to the Basel Convention and interested organizations, directly and through the Secretariat of the Basel Convention, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.	> Art 4 (2) (h)
²	Hazardous wastes and other wastes that are to be subject to a transboundary movement shall be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and due account shall be taken of relevant internationally recognized practices	> Art 4 (7) (b)
³	Hazardous wastes and other wastes shall be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.	> Art 4 (7) (c)
⁴	Hazardous wastes and other wastes, to be exported, shall be managed in an environmentally sound manner in the State of import or elsewhere.	> Art 4 (8)
⁵	Transboundary movements of hazardous wastes and other wastes shall only be allowed if:	> Art 4 (9)
a.	The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or	
b.	The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or	
c.	The transboundary movement in question is in conformity with the objectives of the law and other criteria established by the Parties to the Basel Convention.	
Art [...]	Import conditions for hazardous wastes and other wastes	
¹	The import of hazardous wastes and other wastes for disposal is prohibited.	> Art 4 (1)
²	The focal point shall inform the Secretariat of the Basel Convention of the import prohibition and any modification thereto [pursuant to Article [21] of this law].	+ Art 13 (2) (c)
² ALT	[The focal point shall inform the Secretariat of the Basel Convention of the import	

⁴⁹ Guide to the Control System (2015), Chapter 4.7 and Appendix 4, available at <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

prohibition and any modification thereto [pursuant to Article [21] of this law].	
¹ ALT The import of the following categories of wastes for [final disposal] [recycling] is prohibited:	> Art 4 (1) + Art 13 (2) (c)
a. [...]	
b. [...]	
² ALT [The focal point shall inform the Secretariat of the Basel Convention of the import prohibition and any modification thereto [pursuant to Article [21] of this law].	
¹ The import of hazardous wastes or other wastes from a non-Party to the Basel Convention is prohibited, unless a bilateral, multilateral, or regional agreement or arrangement regarding transboundary movements of hazardous wastes or other wastes has been concluded with the non-Party State, and provided that such agreement or arrangement does not stipulate provisions which are not less environmentally sound than those provided for by the Basel Convention.	> Art 4 (5) + Art 11
² The import of hazardous wastes and other wastes shall only be allowed if:	> Art 4 (9)
a. The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or	
b. The wastes in question are required as a raw material for recycling or recovery industries in the [NAME OF COUNTRY];	
c. The transboundary movement in question is in conformity with the objectives of the law and other criteria established by the Parties to the Basel Convention.	
³ Each import of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee covering the following risks:	> Art 6 (11)
a. [...]	
b. [...]	
[NAME OF AGENCY] shall define a method to calculate the amount to be covered by insurance, bond or guarantee based on the risks inherent in each transboundary movement considered.]	
Art [...] Import procedure for hazardous wastes and other wastes	
¹ The import of hazardous waste or other wastes is subject to the written consent of the competent authority.	> Art 6 (2) + Art 4 (1) (c)
² The competent authority shall acknowledge receipt of the notification to the notifier of a proposed transboundary movement of hazardous wastes or other wastes.	> Art 6 (2)
³ If the notification document is not written in a language acceptable to [NAME OF COUNTRY], if it is incomplete or if the competent authority wishes to receive additional information, it shall request the notifier to provide the information in written form or, if applicable, to submit the notification in an acceptable language.	> Art 6 (1) + Art 6 (2)
⁴ The competent authority may consent to an import of hazardous wastes or other wastes if:	
a. The import under consideration meets the requirements of Article [9];	
b. The submitted notification document is complete and meets the requirements of Article [4 paragraph 24];	
c. The disposal method specified in the notification document complies with the requirements of an environmentally sound disposal.	
d. The importer, carrier and disposer are in possession of a valid authorization covering the type of hazardous wastes or other wastes subject to the transboundary movement; and	> Art 4 (7) (a)
e. The exporter and the disposer concluded a contract specifying environmentally sound management of the wastes in question.	[Art 6 (3) (b)]
⁵ The assessment of the disposal method specified in the notification document shall take account of the technical guidelines adopted in the context of the Basel Convention.	> Art 4 (8)

<p>⁶ The competent authority shall inform the notifier and the competent authorities of the States concerned in writing of its decision to consent to the import or deny permission for the import. If the competent authority consents to the import, it shall confirm with the notifier the existence of a contact between the exporter and the disposer specifying environmentally sound management of the wastes in question.</p>	<p>> Art 6 (2) + Art 6 (3)</p>
<p>⁷ The competent authority may subject its consent to the observance of certain conditions[, including the requirement that the transboundary movement shall be covered by insurance, bond or guarantee in accordance with the provisions of this law.]</p>	<p>> Art 2 + Art 6 (11)</p>
<p>⁸ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question.</p>	<p>> Art 6 (9)</p>
<p>⁹ The disposer shall inform both the exporter and the competent authority of the State of export of receipt of the wastes in question and, in due course, of the completion of disposal as specified in the notification.</p>	<p>> Art 6 (9)</p>
<p>¹⁰ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the importer or disposer shall ensure that:</p>	<p>> Art 6 (5) (b) + Art 6 (1)</p>
<p>a. The proposed transboundary movement is notified to the competent authority; and</p>	<p>> Art 6 (5) (b) + Art 6 (1)</p>
<p>b. The transboundary movement is notified to the competent authority of each State of transit where the wastes are legally defined as or considered to be hazardous wastes;</p>	<p>> Art 6 (5) (b) + Art 6 (1)</p>
<p>¹¹ In the cases referred to in the previous paragraph, the competent authority may authorize the transboundary movement only if:</p>	<p>> Art 6 (5) (b) + Art 6 (3)</p>
<p>a. Each State of transit concerned consented to the transboundary movement in writing; or</p>	<p>> Art 6 (5) (b) + Art 6 (4)</p>
<p>b. In case of a State of transit concerned that does not require prior written consent, the State of transit did not impose conditions or object to the transit within 60 days of receipt of a given notification by the State of transit.</p>	<p>> Art 6 (5) (b) + Art 6 (4)</p>
<p>Art [...] Duty to inform of impossibility to dispose of imported wastes</p>	
<p>When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, cannot be completed in accordance with the terms of the contract, the competent authority informs the States concerned and the Secretariat of the Basel Convention, in order that the State of export takes the necessary measures to take the wastes back into the State of export, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the competent authority informed the State of export.</p>	<p>> Art 8</p>
<p>Art [...] Export conditions for hazardous wastes and other wastes</p>	
<p>[¹ The export of hazardous wastes or other wastes for disposal is prohibited.</p>	<p>> Art 13 (2) (d)</p>
<p>[² The focal point shall inform the Secretariat of the Basel Convention of the prohibition and any modification thereto [pursuant to Article [21] of this law].]</p>	
<p>[¹ALT The export of hazardous wastes or other wastes for disposal is subject to the following conditions: a. [...] b. [...]</p>	<p>> Art 13 (2) (d)</p>
<p>[²ALT The focal point shall inform the Secretariat of the Basel Convention of the prohibition and any modification thereto [pursuant to Article [21] of this law].]</p>	
<p>² The export of hazardous wastes and other wastes for disposal to Parties to the Basel Convention, which have prohibited their import and notified the prohibition to the Secretariat of the Basel Convention, is prohibited.</p>	<p>> Art 4 (1) (b)</p>
<p>³ The export of hazardous wastes and other wastes for disposal shall only be allowed to Parties to the Basel Convention, which have consented in writing to the specific import of wastes.</p>	<p>> Art 4 (1) (c)</p>
<p>⁴ The export of hazardous wastes or other wastes to a non-Party to the Basel Convention is prohibited, unless a bilateral, multilateral, or regional agreement or arrangement regarding transboundary movements of hazardous wastes or other wastes has been concluded with the</p>	<p>> Art 4 (5) + Art 11</p>

non-Party State, provided that such agreement or arrangement does not stipulate provisions which are not less environmentally sound than those provided for by the Basel Convention.	
⁵ The export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement, is prohibited.	> Art 4 (6)
⁶ The export of hazardous wastes and other wastes shall only be allowed if:	> Art 4 (9)
a. [NAME OF COUNTRY] does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or	
b. The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or	
c. The transboundary movement in question is in conformity with the objectives of the law and other criteria established by the Parties to the Basel Convention.	
Art [...] Export procedure for hazardous and other wastes	
¹ The export of hazardous waste or other wastes is subject to the written consent of the competent authority.	> Art 6 (3)
² The request for authorization shall be completed by the generator or exporter and contain the following elements:	
a. Notification document duly completed in a language acceptable to the State of import;	> Art 6 (1)
b. Copy of the contract between the exporter and the disposer specifying environmentally sound management of the wastes in question;	> Art 6 (3) (b)
c. Copy of the insurance, bond or guarantee contract covering the transboundary movement of the wastes under consideration, as required by the State of import or any State of transit.	> Art 6 (11)
³ The competent authority shall inform in writing the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes, or oblige the generator or exporter to do so.	> Art 6 (1)
⁴ The competent authority may authorize the export if:	
a. The export meets the requirements of Article [12];	
b. The submitted request for authorization is complete and meets the requirements of paragraph [2] of this article;	
c. The disposal methods specified in the notification document meets the requirements of an environmentally sound disposal; and	> Art 4 (2) (e) + Art 4 (8) + Art 4 (10)
d. The competent authority received the written consent of the State of import and States of transit for the specific movement.	> Art 4 (1) (c) + Art 6 (1) + Art 6 (4) (1 st hypo)
⁵ The assessment of the disposal method specified in the notification document shall take account of the technical guidelines adopted in the context of the Basel Convention.	> Art 4 (2) (e) + Art 4 (10)
⁶ In case of a State of transit that has decided not to require prior written consent to a proposed movement, the competent authority may allow the export to proceed through the State of transit if no response is received from the State of transit within 60 days of its acknowledgement of receipt of the notification unless the State of transit has imposed conditions or raised objections within these 60 days.	> Art 6 (4) (2 nd hypo)
⁷ The competent authority shall notify its decision to the notifier in writing, consenting to the movement or denying permission for the movement, and send a copy of the decision to the competent authority of the States concerned.	
⁸ If a State concerned subjects its consent to the movement to the observance of certain	[> Art 6 (2) + Art 6 (4)]

conditions, the competent authority shall require the exporter to comply with these conditions.	
⁹ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the exporter shall inform the competent authority of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification.	> Art 6 (5) (a) + Art 6 (9)
¹⁰ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question.	> Art 6 (9)
Art [...] Duty to re-import wastes that could not be disposed of	
When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, cannot be completed in accordance with the terms of the contract, the competent authority shall ensure that the exporter takes back the waste into [NAME OF COUNTRY], if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the State concerned informed [NAME OF COUNTRY] and the Secretariat of the Basel Convention, or such other period of time as the States concerned agree. To this end, [NAME OF COUNTRY] and any State of transit, which is a Party to the Basel Convention, shall not oppose, hinder or prevent the return of these wastes to [NAME OF COUNTRY].	> Art 8
Art [...] Transit conditions and procedures for hazardous wastes and other wastes	
¹ The transit of hazardous wastes or other wastes is prohibited.	
² The focal point shall inform the Secretariat of the Basel Convention of the prohibition and any modification thereto [pursuant to Article [21] of this law].	
¹ ALT The transit of hazardous wastes or other wastes is subject to the following conditions: a. [...] b. [...]	
² ALT The focal point shall inform the Secretariat of the Basel Convention of the transit prohibition any modification thereto [pursuant to Article [21] of this law].	
¹ The transit of hazardous waste or other wastes is subject to the written consent of the competent authority.	> Art 6 (4) (1 st hypo)
² The obligation to notify a proposed transit lies with the State of export or the exporter.	> Art 6 (1)
³ In case the wastes are legally defined as or considered to be hazardous wastes only by [NAME OF COUNTRY], the obligation to notify the transit lies with the State of import or the importer.	> Art 6 (5) + Art 6 (1)
⁴ The competent authority shall promptly acknowledge to the notifier receipt of the notification of a proposed transboundary movement of hazardous wastes or other wastes.	> Art 6 (4)
⁵ If the information contained in the notification is incomplete, or if the competent authority wishes to receive additional information, it shall request the notifier to provide the information in written form.	> Art 6 (4)
⁶ The competent authority may respond to the notifier in writing, consenting to the movement, with or without conditions, or denying permission for the movement. The decision shall be transmitted to the notifier.	> Art 6 (4)
[Each transit of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee covering the following risks: a. [...] b. [...]	> Art 6 (11)
[NAME OF AGENCY] shall define a method to calculate the amount covered by insurance, bond or guarantee based on the risks inherent in each transboundary movement considered.]	
⁷ Each person who takes charge of a transboundary movement of hazardous wastes or other wastes shall sign the movement document either upon delivery or receipt of the wastes in question.	> Art 6 (9)

2.7 Illegal traffic

2.7.1 Relevant Basel Convention provisions

86. Article 9 (1) of the Basel Convention defines the instances where a transboundary movement of hazardous or other wastes is deemed to be illegal traffic. The Convention also specifies the obligations of States concerned and involved actors in instances of illegal traffic:

(a) Where traffic is illegal as a result of conduct on the part of the exporter or generator, the State of export must ensure that the wastes in question are taken back by the exporter or generator or, if necessary, by itself. If the take-back is impracticable, the State of export must ensure that the wastes are otherwise disposed of in accordance with the provisions of the Convention (Article 9 (2) BC);

(b) Where the traffic is illegal as the result of conduct on the part of the importer or disposer, the State of import must ensure the wastes in question are disposed of in an environmentally sound manner by the importer or disposer, or, if necessary, by the Party itself (Article 9 (3) BC);

(c) Where the responsibility for the illegal traffic cannot be assigned, Parties must cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner (Article 9 (4) BC).

87. Parties must further consider illegal traffic to be criminal (Art 4 (3) BC) and are obliged to introduce appropriate domestic legislation to prevent and punish illegal traffic (Article 9 (5) BC). Further guidance on a harmonized implementation of the different provisions pertaining to illegal traffic is available in the *Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic*.⁵⁰

2.7.2 Transposition into national legislation

88. Consistency in national laws and regulations implementing the Basel Convention provisions pertaining to illegal traffic greatly facilitate the cooperation among Parties in prosecuting and punishing persons involved in illegal traffic. Full implementation of those provisions into the national legal framework is therefore crucial to deter actors from getting involved in the illegal trafficking of hazardous and other wastes.

89. Full implementation of the Basel Convention provisions may require changes to several national legal instruments, including the penal code. As for the provisions on transboundary movements, the national legislation should account for each role the implementing Party may have with regard to a particular case of illegal traffic (State of import, State of export, State of transit, other Party).

2.7.3 Example of transposition

Art [...]	Definition	BC provision:
¹	A transboundary movement of hazardous wastes or other wastes shall be deemed to constitute illegal traffic, if:	> Art 9 (1)
a.	It is carried out without notification to all States concerned, while such notification is required; or	> Art 9 (1) (a)
b.	It is carried out without the consent of a State concerned, while such consent is required; or	> Art 9 (1) (b)
c.	It is carried out with consent obtained from States concerned through falsification, misrepresentation or fraud ; or	> Art 9 (1) (c)
d.	It does not conform in a material way with the documents ; or	> Art 9 (1) (d)
e.	It 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.	> Art 9 (1) (e)
²	Illegal traffic in hazardous wastes or other wastes is a criminal offence.	> Art 4 (3)
Art [...]	General duty to co-operate	
¹	[NAME OF AGENCY] shall, notably through co-operation with the competent authorities of the States concerned and in collaboration with or in support of the relevant authorities in	> Art 4 (2) (h) + Art 4 (4)

⁵⁰ Guidance on the Implementation of the Basel Convention Provisions Dealing with Illegal Traffic (paragraphs 2, 3 and 4 of Article 9) (2017), available at [...]. Additional guidance on preventing and combating illegal traffic is available at: <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>:

[NAME OF COUNTRY]:	+ Art 9 (5)
<ul style="list-style-type: none"> a. Establish whether an act of illegal traffic has been committed; b. Identify the entities responsible for the act of illegal traffic; c. Ensure that the obligations resulting from an act of illegal traffic, such as the duty to take back the wastes or manage it in an environmentally sound manner, are implemented; d. Take appropriate measures to prevent and punish illegal traffic. 	
Art [...]	Illegal traffic as the result of conduct of the exporter or generator
¹ 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, where [NAME OF COUNTRY] is the State of export, [NAME OF AGENCY] shall ensure that the wastes in question are:	> Art 9 (2) (a) > Art 9 (2) (b)
<ul style="list-style-type: none"> a. taken back by the exporter or the generator or, if necessary, by [NAME OF AGENCY] itself into the State of export, or, if impracticable, b. are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time [NAME OF COUNTRY], as 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 to the Basel Convention concerned shall not oppose, hinder or prevent the return of those wastes into [NAME OF COUNTRY]. 	
Art [...]	Illegal traffic as the result of conduct of the importer or disposer
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, where [NAME OF COUNTRY] is the State of import, [NAME OF AGENCY] 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 its attention or such other period of times as the States concerned may agree. To this end, the Parties to the Basel Convention concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.	> Art 9 (3)
Art [...]	Illegal traffic not attributable to either the exporter or generator or the importer or disposer
In cases where the responsibility of the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, [NAME OF AGENCY] shall co-operate with the competent authorities of the other States concerned to ensure that the hazardous wastes in question are disposed of as soon as possible in an environmentally sound manner.	> Art 9 (4)

2.8 Enforcement

2.8.1 Relevant Basel Convention provisions

90. The Basel Convention requires that Parties take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention (Article 4 (4) BC), including measures to prevent and punish illegal traffic (Article 9 (5) BC). Parties enjoy flexibility in designing those measures in accordance with their national enforcement practices and policies.

2.8.2 Transposition into national legislation

91. A key means to promote and achieve observance of national laws is to ensure that factors relating to enforceability are addressed in the design and development of laws. For the purposes of this guide, the term “enforcement” refers to the range of procedures and actions employed by a State, its competent authorities, and its agencies to ensure that organisations or persons can be brought or returned into compliance and/or punished through civil, administrative, or criminal action.⁵¹ The national legal framework should, even if this is not specifically required by the treaty, include the

⁵¹ This definition is taken from the UNEP Manual on compliance with and enforcement of Multilateral Environmental Agreements. See http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf, page 33

necessary elements to administer, monitor and enforce the obligations set forth by the implementing legislation and specify the consequences of violations. As mentioned above, in the case of the Basel Convention however, specific provisions⁵² explicitly require Parties to take the necessary measures to enforce the Convention at the national level.

92. Examples of monitoring tools include:

- (a) Routine and unannounced inspections;
- (b) Self-monitoring combined with environmental auditing;
- (c) Requirements of record-keeping and reporting;
- (d) Inter-agency co-operation and data exchange;
- (e) Responding to complaints;
- (f) Training and capacity building for entire enforcement chains to address wastes crimes;
- (g) Requiring that licenses be subject to periodic renewal;
- (h) Public participation and awareness.

93. Examples of tools to respond to non-compliance include:

- (a) Warnings and citations;
- (b) Administrative penalties (e.g. fines, stop work orders, seizures, storage of illegal shipments, closures, license revocations, denial of funding, barring from government contracts);
- (c) Civil penalties (e.g. fines, injunctive relief, public apologies, remedial costs, restitution, environmental and economic damages);
- (d) Criminal penalties (e.g. fines, imprisonment, closure).

94. Coercive measure to deter non-compliance may also be complemented with compliance incentives, such as measure for assistance, awareness-raising and capacity-building.

95. As a general rule, legal requirements that are concise and realistic in terms of their technical, economic and social feasibility facilitate the enforcement efforts, and promote transparency and fairness in enforcement. The following questions may help clarify the scope and requirements of legal provisions:

- (a) What actions are required?;
- (b) When has a violation occurred?;
- (c) By whom?;
- (d) What is the scope and nature of the liability?;
- (e) What are the available remedies and penalties?;
- (f) Who is responsible for enforcement?;
- (g) What is the mechanism for review or appeal of enforcement actions?

Example – Facilitate enforcement through enactment of legal requirements and procedures

Effective enforcement actions against individual actors may require that national legislation further specifies the obligations of the Basel Convention and sets forth clear administrative procedures to address violations. Article 9 (3) of the Basel Convention, for example, provides that 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. Some states have adopted detailed legal requirements and procedures to make it possible for a national authority to effectively enforce actions against such importers and disposers. National frameworks can go as far as to qualify failures to comply with a notice issued under Article 9 (3) of the Convention as an offence in itself.⁵³

⁵² Article 4 paragraph 4 reads: “Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention”. Article 9 paragraph 5 reads: “Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic...”

⁵³ Guidance on the Implementation of the Basel Convention Provisions Dealing with Illegal Traffic (paragraphs 2, 3 and 4 of Article 9) (2017), para 105, available at [...].

2.8.3 Example of transposition

96. While the Basel Convention requires Parties to adopt appropriate measures to enforce its provisions, it does not further define the type of measures to be adopted. In addition, approaches to enforcement will vary greatly among States. Parties seeking further guidance on enforcement and how to transpose the Basel Convention provisions related to enforcement are therefore directed to the following manuals:

- (a) Guidance elements for detection, prevention and control of illegal traffic in hazardous waste;⁵⁴
- (b) Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes;⁵⁵
- (c) Guidelines for Framework Legislation for Integrated Waste Management (UNEP);⁵⁶
- (d) Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP).⁵⁷

2.9 Information exchange

2.9.1 Relevant Basel Convention provisions

97. Under the Basel Convention, each Party is required to submit an annual report containing the information listed in Article 13 (3). Parties should also inform the Secretariat of the following:

- (a) Designation of competent authorities and/or focal points and changes thereto (Article 5 (2-3); Article 13 (1));
- (b) National definitions of hazardous wastes and changes thereto (Article 3 (1-2) BC; Article 13 (2));
- (c) Wastes defined as hazardous by national law (Art 1 (1) (b) BC; Art 3 (1-2) BC);
- (d) Bilateral, multilateral and regional agreements or arrangements with Parties and non-Parties (Article 11 BC);
- (e) Decisions made not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction (Article 13 (2) (c) BC);
- (f) Decisions taken to limit or ban the export of hazardous wastes or other wastes (Article 13 (2) (d) BC);
- (g) Copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, when another Party considers that its environment may be affected by that transboundary movement and has requested that submission of those documents (Article 13 (4) BC).

98. In some circumstances, the transmission of information or the failure to transmit such information may have legal effect.

Example – Duty to notify national definitions of hazardous wastes

Parties that wish to use their national legislation to bring additional wastes within the scope of the Basel Convention under Article 1 (1) (b) must inform the Secretariat of the Basel Convention of such wastes, and any transboundary movement procedure applicable to them. The Secretariat will then communicate the information to Parties, upon which the national definition acquires legal effect vis-à-vis all other Parties, pursuant to Article 6 (5).

99. The Basel Convention also provides for extensive duties of cooperation. These include cooperation to harmonize technical standards and practices, monitor the effects of waste management on human health and the environment, develop low-waste technologies and environmentally sound

⁵⁴ Guidance elements for detection, prevention and control of illegal traffic in hazardous waste (2002), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁵⁵ Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes (2012), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁵⁶ Guidelines for Framework Legislation for Integrated Waste Management (2016), available in UN Doc UNEP/Env.Law/MTV4/Pollution/2016/1.

⁵⁷ Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

waste management systems, transfer technology, and develop technical guidelines and codes of practice (Article 10).

2.9.2 Transposition into national legislation

100. The efficiency of the Convention's control regime depends on cooperation between Parties, in particular the exchange of information. Each Party should therefore take appropriate measures to ensure the transmission of information to the Secretariat, as required under the Convention.

101. This obligation will not necessarily be implemented by domestic legislation, as the submission of information is an administrative act. As a general rule, it is important to ensure that national legislation contains sufficient provisions for authorizing the focal point and other involved authorities to transmit the required information and enter into cooperation agreements at the international level.

102. Implementing legislation may also need to provide national authorities with the legal authority to collect the data, and stakeholders with the obligation to provide it. There are a number of tools available to help Parties implement the different reporting obligations. Information on the procedure for transmitting national reports is available on the Convention website.⁵⁸

Example – Reporting obligations on actors involved in waste management

In order to being able to report information under Article 13 of the Basel Convention, Parties need to ensure the generation of that information, such as by obliging actors involved in waste management to report certain information to the competent authority. To fully implement article 13 (3) (f) of the Basel Convention, requiring Parties to submit, as part of their annual report, information on accidents occurring during transboundary movement and disposal of hazardous wastes and other wastes, national legislation could thus impose a duty on transporters and disposers to inform about the occurrence of such accidents.

2.9.3 Example of transposition

Art [...]	Mutual information exchange	BC provision:
¹	[NAME OF AGENCY] shall take the appropriate measures, including regulatory measures, to ensure that [NAME OF COUNTRY] communicates to the Secretariat of the Basel Convention [through the focal point designated pursuant to Article [2] of this law] all information required under the Basel Convention, in particular:	> Art 13
a.	Before the end of each calendar year, by using the form adopted thereto by the Conference of the Parties to the Basel Convention, a report on the previous calendar year containing the information required under Article 13 (3) of the Basel Convention, in particular:	> Art 13 (3)
i.	Competent authorities;	> Art 13 (3) (a)
ii.	Focal point;	> Art 13 (3) (a)
iii.	The following information regarding transboundary movements of hazardous wastes or other wastes: the amount of hazardous wastes or other wastes, the waste category, the waste characteristics, the destination or origin and any transit country, and the disposal methods;	> Art 13 (3) (b)
iv.	Information on disposals which did not proceed as intended;	> Art 13 (3) (b) (iii)
v.	Information on the efforts undertaken to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;	> Art 13 (3) (b) (iv)
vi.	Information on the measures adopted by them in implementation of this Convention;	> Art 13 (3) (c)
vii.	Information on available qualified statistics which have been compiled by them on the effect on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;	> Art 13 (3) (d)
viii.	Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of the Basel Convention;	> Art 13 (3) (e)
ix.	Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures	> Art 13 (3) (f)

⁵⁸ See <http://www.basel.int/Countries/NationalReporting/OverviewandMandate/tabid/2314/Default.aspx>

	undertaken to deal with them;	
x.	Information on disposal options operated within [NAME OF COUNTRY];	> Art 13 (3) (g)
xi.	Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and	> Art 13 (3) (h)
xii.	Such other matters as the Conference of the Parties to the Basel Convention shall deem relevant.	> Art 13 (3) (i)
b.	Designation of a focal point and any changes regarding the designation made within one month of the date of decision;	> Art 13 (2)
c.	Designation of one or several competent authorities and any changes regarding the designations made within one month of the date of decision;	> Art 13 (2)
d.	Changes in the national definition of hazardous wastes;	> Art 13 (2)
e.	Decisions taken not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under national jurisdiction;	> Art 13 (2)
f.	Decisions taken to limit or ban the export of hazardous wastes or other wastes.	> Art 13 (2)
Art 22 Information exchange in case of accidents		
	[NAME OF AGENCY] shall, whenever it comes to its knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.	> Art 13 (1)

3. Ensuring effective implementation and enforcement

103. The adoption of comprehensive Basel Convention implementing legislation marks a milestone in the process towards ensuring environmentally sound management of hazardous and other wastes at the national level. A further and equally important step is ensuring effective implementation and enforcement of the enacted legislation on the ground. A detailed review of practices to implement and enforce Basel Convention implementing legislation is beyond the scope of this guide. Rather, this section provides a summary outlook on the implementation process, by highlighting some key elements of that process and including a list of reference materials with further guidance on the topic.

104. While the provisions of the Basel Convention implementing legislation will set the basic objectives, obligations and requirements, the designated authorities will likely be called upon to chart the means for implementation. Typical responsibilities related to the implementation and enforcement of newly enacted legislation include:

- (a) Establishment of new institutional bodies or adjustment of existing bodies (e.g. staff capacity; office equipment; etc.) to take over newly assigned tasks;
- (b) Further development and implementation of regulatory schemes and related requirements (e.g. permit systems for waste management activities; prior informed consent procedure; waste management strategies; etc.);
- (c) Participation in international and regional activities relating to the implementation of the Basel Convention;
- (d) Actions to promote and ensure observance of national legislation on waste management, including those giving effect to the Basel Convention (e.g. through reporting requirements, inspections and other means);
- (e) Coordination amongst administrative authorities to promote efficiencies in the implementation and enforcement process;
- (f) Regular review of the overall adequacy of the national framework in achieving its objectives, including full compliance with the Basel Convention obligations, and adoption of measures to address identified problems.

105. Prioritization is key for administrative authorities to ensure effective operation under limitations of resources and capacities. Authorities involved in the implementation and enforcement of waste management legislation should therefore identify those actions of most importance.

106. Further guidance on compliance and enforcement can be found in the following manuals:

- (a) Guidance elements for detection, prevention and control of illegal traffic in hazardous waste;⁵⁹
- (b) Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes;⁶⁰
- (c) Basel Convention training manual on illegal traffic for customs and enforcement agencies;⁶¹
- (d) Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP);⁶²
- (e) Judicial Handbook on Environmental Law (UNEP);⁶³
- (f) Manual on Waste Crime and Waste Risks (UNEP).⁶⁴

⁵⁹ Guidance elements for detection, prevention and control of illegal traffic in hazardous waste (2002), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶⁰ Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes (2012), available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶¹ Basel Convention training manual on illegal traffic for customs and enforcement agencies, available at <http://basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

⁶² Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), available at http://www.acpmeas.info/publications/Manual_on_Compliance_with_and_Enforcement_of_MEAs.pdf.

⁶³ Judicial Handbook on Environmental Law (2005), available at <http://www.unep.org/delc/Portals/119/publications/Judicial-Handbook-Environmenal-Law.pdf>.

⁶⁴ Waste Crime – Waste Risks: Gaps in Meeting the Global Waste Challenge (2015), available at <http://www.unep.org/delc/Portals/119/publications/rra-wastecrime.pdf>.