Steps to improve implementation and compliance with Article 9 of the Basel Convention

Questionnaire for Parties

Introduction

Background

By its decision BC-13/9, the Conference of the Parties to the Basel Convention, at its thirteenth meeting, adopted the work programme for the biennium 2018-2019 whereby the Committee for Administering the Mechanism for Promoting the Implementation and Compliance with the Basel Convention (ICC) was requested to consider what additional steps could be taken to improve implementation of and compliance with Article 9 of the Convention.

To assist the Committee with its work, Parties are invited to provide information about their experience in implementing Article 9 of the Convention on illegal traffic by responding to this questionnaire. Information is sought in particular with a view to:

- Knowing the extent of the problem
- Identifying Parties' challenges/best practices with respect to the implementation of Article 9 of the Basel Convention; and learning about the experience of Parties and others in applying available guidance and tools with respect to the implementation of that provision
- Identifying views from Parties and others on the steps that could be taken to improve the implementation and compliance with Article 9 of the Basel Convention.

This questionnaire was developed thanks to a financial contribution received from the European Union.

Information collected from Parties will be used as a basis for the development of recommendations to the Conference of the Parties on additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention.

Article 9 of the Convention

Article 9 of the Convention reads as follows:

"1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) Without notification pursuant to the provisions of this Convention to all States concerned; or
(b) Without the consent pursuant to the provisions of this Convention of a State concerned;or
(c) With consent obtained from States concerned through falsification, misrepresentation or fraud ; or
(d) That does not conform in a material way with the documents ; or
(e) That 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,

Shall be deemed to be illegal traffic.

2. 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, the State of export shall ensure that the wastes in question are:

(a) Taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of the Convention,

Within 30 days from the time the 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 concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall cooperate, as necessary in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article."

Instructions for completing and submitting the questionnaire

The ICC encourages focal points to seek the cooperation of competent authorities as well as of entities involved in the enforcement of the Basel Convention in completing this questionnaire.

Questionnaires are to be submitted to the Secretariat no later than **30 June 2018**. Any substantive questions pertaining to this questionnaire may be addressed to Mrs Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT questions pertaining to this questionnaire may be addressed to Ms Leslie Angeles (leslie.angeles@brsmeas.org)

We thank you in advance for your kind cooperation.

The Implementation and Compliance Committee

I. Knowing the extent of the problem

1.1 In your country, is information about potential or confirmed cases of illegal traffic collected?

√ Yes ☐ No

If yes, please specify how:

☐ Through an established system where responsibilities of entities are clearly established
☐ On an ad hoc basis
√ Other (please specify)

Import from China – Computer Hard Disks and Diskettes (4 Containers) by Beng Beng Trading Co., Ltd. Action – Take Back to Original Country (China) with their own expanses. (2015)

Import from Japan - Use Computer Parts of Accessories and Use Game Machine with Parts of Accessories by Chang Min Import & Export Co., Ltd. Action – Take Back to Original Country (Japan) with their own expanses. (2015)

If no, please specify why:

☐ Lack of adequate legal framework to prevent and punish illegal traffic
☐ Lack of assignment of responsibility to an entity to collect such information
☐ Other (please specify)

1.2 In your country, how is information about potential or confirmed cases of illegal traffic usually brought to the attention of the designated Basel Convention Competent Authorities or Focal Point?

√ Through communication with Competent Authorities in other Parties
☐ Through communication with enforcement entities within your country (eg. Customs, police, environmental inspectors, port authorities)
☐ Through the press
☐ Other (please specify)

1.3 In your country, do you see challenges for Competent Authorities or the Focal Point to have access to information on potential or confirmed cases of illegal traffic?

√ Yes ☐ No

If yes, please indicate why:

- ☐ Lack of cooperation at the international level
- ☐ Lack of communication and coordination between entities at the national level
- √ Lack of adequate legal framework to enforce the provisions of the Basel Convention
- √ Lack of awareness of enforcement entities about the provisions of the Basel Convention
- √ Lack of technical capacity to detect cases of illegal traffic
- ☐ Other (please specify)

1.4 In the last 5 years, to your knowledge have there been cases of transboundary movement of hazardous wastes and/or other wastes involving your country which were deemed to be illegal

√ Yes ☐ No

If yes, please indicate the number of cases of illegal traffic:

- √ between 1 and 5
- ☐ between 6 and 10
- ☐ between 11 and 20
- ☐ more than 20

1.5 Has information about these cases been transmitted to the Secretariat using the form for confirmed cases of illegal traffic or the national reporting format?

√ Yes ☐ No

If no, please specify why:

- ☐ Competent Authority and/or Focal Point does/do not have access to the information
- ☐ Transmission of information would not necessarily achieve the objectives of the Convention

☐ Other (please specify)

1.6 Is information about cases of illegal traffic transmitted to other entities at the international level?

√ Yes ☐ No

If yes, please specify which ones:

☐ BCRC

☐ Regional organization (please specify)

☐ United Nations body (please specify)

Workshop 2016 of the Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Wastes, 6-8 September 2016, Semarang, Indonesia and other related international workshops and meetings.

II. Identifying Parties' challenges/best practices with respect to the implementation of Article 9 of the Basel Convention

2.1 Can your country share **best practices** with respect to the implementation of Article 9 of the Basel Convention?

√ No ☐ Yes

If yes, please elaborate:

☐ Adequate domestic legal and institutional framework implementing Article 9 of the Basel Convention and complementing it as necessary to enable its enforcement (eg. penalties in case of illegal traffic)

☐ Awareness of stakeholders involved in transboundary movements (eg. generator, exporter, transporter, importer and disposer) of the relevant provisions of the Basel Convention pertaining to the control of such movements and illegal traffic;

☐ Training activities for enforcement entities, for instance integration of the Basel Convention in the national training or educational curricula of Customs, police, prosecutors, the judiciary and other enforcement entities;

☐ Establishment of environmental units within enforcement entities;

☐ Clear assignment of responsibilities between all the entities involved in the enforcement of Article 9 of the Basel Convention, and adequate communication or coordination mechanisms among them;

☐ Other best practices

Please elaborate on the nature of the "other best practice" and on any box you have ticked

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

☐ No √ Yes

If yes, provide the nature of the difficulties encountered:

(i) Domestic difficulties:

√ Lack of or inappropriate domestic legal or institutional framework to implement Article 9 of the Basel Convention;

√ Lack of clarity about what is deemed to be illegal traffic at the national level;

☐ Lack of clarity with respect to the applicable rules;

√ Lack of understanding of the distinction between waste and non-waste at the national level;

☐ Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements);

√ Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic

☐ Lack of awareness among relevant entities within the country involved in preventing and combating illegal traffic about the requirements of Article 9 (e.g customs, port authorities, etc.);

☐ Lack of coordination/cooperation at the national level among relevant entities involved in transboundary movements of hazardous and other wastes;

☐ Other difficulties.

Please elaborate on the nature of the "other difficulties" and on any box you have ticked

(ii) International cooperation difficulties :

☐ Lack of information on other Parties' definition or understanding of what is deemed to be illegal traffic;

☐ Lack of harmonized definition or understanding of the meaning of 'waste', 'hazardous waste' and 'other waste';

√ Lack of shared understanding among Parties of how to implement Article 9 of the Convention;

☐ Difficulties in communicating/cooperating with the relevant entities from the States concerned (State of transit, State of export);

☐ Difficulties in identifying or communicating with exporter or generator;

☐ Lack of shared understanding of how to operationalize paragraphs 2, 3 and 4 of Article 9;

☐ Other difficulties

Please elaborate on the nature of the "other difficulties" and on any box you have ticked

2.3. Is your country aware of any difficulties faced by stakeholders (e.g generators, exporters, transporters, importers, disposers, etc.) involved in transboundary movements of waste with the implementation of Article 9 of the Basel Convention?

☐ No √ Yes

If yes, provide the nature of the difficulties encountered

There are many internal processes between relevant departments/ organizations to get the approval for export/ import of hazardous wastes and other wastes.

2.4 Have the guidance documents developed under the Convention pertaining to preventing and combating illegal traffic (http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx#) been disseminated, transposed in national legislation or are they being used in your country?

(i) Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9):

☐ Yes, it has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

(ii) Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes

☐ Yes, is has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

(iii) Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Waste:

☐ Yes, is has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

If the guidance documents are used, please elaborate on how you disseminated them and how useful they have been for your country:

If not, please elaborate on why:

We refer the Basel Convention Text.

2.5 Have the training tools developed by the Secretariat pertaining to preventing and combating illegal traffic been disseminated, transposed in national legislation or are they being used in your country?

(i) Interactive Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions (http://www.basel.int/Implementation/Publications/TrainingManuals/tabid/2363/Default.aspx)

☐ Yes, is has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

(ii) Basel Convention Training Manual on Illegal Traffic for Customs and Enforcement Agencies (http://www.basel.int/Implementation/Publications/TrainingManuals/tabid/2363/Default.aspx)

☐ Yes, is has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

(iii) E-leaning module for law enforcement officers on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm Conventions

(http://synergies.pops.int/Implementation/TechnicalAssistance/ToolsandMethodologies/Elearningmoduleforlawenforcement/tabid/3534/language/en-US/Default.aspx)

☐ Yes, is has been disseminated ☐ No, it has not been disseminated

☐ Yes, it has been transposed in legislation √ No, it has not been transposed in legislation

☐ Yes, it is used ☐ No, it is not used ☐ I don't know if it is used

If the tools are used, please elaborate on how you disseminated them and how useful they have been for your country:

If no, please elaborate on why:

We need to learn the international best practices cooperation with the secretariat and parties of the Basel Convention.

III. Identify views from Parties on the steps that could be taken to improve the implementation and compliance with Article 9 of the Basel Convention

3.d. What steps would you suggest could be taken to improve implementation of Article 9 of the Basel Convention, whether at the national or global level?

Please number in order of priority, 5 being the highest:

☐ Establishment of coordinating mechanisms between Competent Authorities and enforcement entities

√ Review and strengthening of legal and institutional framework implementing the Basel Convention, in particular whether it embodies the necessary provisions of the Convention pertaining to illegal traffic

☐ Further prioritization of preventing and combating illegal traffic as a policy priority at the national level

☐ Better understanding the drivers of illegal traffic and the scope of the problem

- √ Strengthening of the Secretariat's and the BCRCs' technical assistance activities (please specify below the areas of assistance needed and the nature of the activities sought eg, country-specific, workshop, webinar)
- ☐ Review of the ENFORCE terms of reference (annex to decision BC-11/8) with a view to strengthening this partnership
- √ Development further guidance documents at the global level (please specify below the scope of such guidance)
- ☐ Broader dissemination of existing guidance and technical assistance tools developed under the Convention
- ☐ Greater access to information on the work of organizations with a mandate on preventing and combating illegal traffic
- √ Strengthening of international cooperation among international organizations with a mandate in preventing and combating illegal traffic
- √ Learning from possible lessons under other multilateral environmental agreements with trade control regimes (eg. CITES; Montreal Protocol, Cartagena Protocol)
- ☐ Other (please specify below)

IV. Other relevant information

Please add any additional information or comments pertaining to the implementation of Article 9 of the Basel Convention that is not included in answers to the above questions.

VI. Submitter information

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Name of the person who completed the questionnaire: Mr. Min Maw
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Date of submission :

If you do not wish to submit the questionnaire at this time, you can click on the ["Save progress"] button and exit the questionnaire.

[Submission password]

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Thank you for your participation. Your answers have been saved.

To enter again the questionnaire, click on the following link: XXX