



Distr.: General
14 December 2015

Original: English

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

Nairobi, 30 May–2 June 2016

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

**Matters related to the work programme of the
Open-ended Working Group for 2016–2017:
legal, governance and enforcement matters:
providing further legal clarity**

Providing further legal clarity

Note by the Secretariat

I. Introduction

1. In its decision BC-12/1, on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Conference of Parties, among other things, took note of the draft glossary of terms and related explanations prepared by the small intersessional working group on legal clarity¹ and decided that it shall serve as the basis for further work on the matter. The Conference of the Parties invited the small intersessional working group on legal clarity to continue its work, including, subject to the availability of resources, through a face-to-face meeting, and to prepare a revised version of the draft glossary including explanations, taking into account the comments received from parties and observers,² as well as the outcomes of the twelfth meeting of the Conference of the Parties, and to submit it to the Secretariat five months before the tenth meeting of the Open-ended Working Group.

2. In the same decision, the Conference of the Parties requested the Secretariat to submit the revised version of the draft glossary including explanations to the Open-ended Working Group for consideration at its tenth meeting. The Conference of the Parties invited the Open-ended Working Group at its tenth meeting to finalize the glossary and related explanations as a useful piece of guidance, and to prepare a draft decision on these matters for consideration and possible adoption by the Conference of the Parties at its thirteenth meeting.

3. In the same decision, the Conference of the Parties further decided to initiate a process for the review of Annexes I, III and IV and related aspects of Annex IX to the Basel Convention, taking as a basis the legally binding options identified in section II of annex II to document UNEP/CHW.12/INF/52. It invited parties and others to submit to the Secretariat by 30 November 2015 their views on the options identified in section II.A and section II.B of annex II to document UNEP/CHW.12/INF/52.

* UNEP/CHW/OEWG.10/1.

¹ UNEP/CHW.12/INF/52, annex I.

² UNEP/CHW.12/INF/55.

4. The legally binding options identified in section II.A and section II.B of annex II to document UNEP/CHW.12/INF/52 are as follows:

“A. Waste / non-waste

6. It may be considered to review Annex IV as a whole in order to update the description of certain disposal operations and to include recovery operations as they occur in practice, and to possibly define relevant terms in this Annex.

7. It may also be considered i) to review the captions of Annex IV A and Annex IV B in relation to ‘direct reuse’ and ii) to review operation R9 in Annex IV B in relation to the term ‘reuse’.”

“B. Hazardous / non-hazardous waste

8. It may be considered to review Annex I of the Convention, in the light of the fact that in practice the national law of some countries recognizes other constituents than the ones listed from Y19 in Annex I. It may also be considered to review Annex III as a whole, taking into account the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), in order to update the description of certain hazardous characteristics and to include hazardous characteristics as they occur in practice.”

5. With respect to the options identified in section II.A of annex II to document UNEP/CHW.12/INF/52, in decision BC-12/1 the Conference of the Parties invited parties to inform the Secretariat by 30 November 2015 of their interest in taking the lead on the review of Annex IV and related aspects of Annex IX to the Convention identified in section II.A of annex II to document UNEP/CHW.12/INF/52. It requested the Secretariat to compile the views received from parties and others on options identified in section II.A of annex II to document UNEP/CHW.12/INF/52, and invited the lead party, or in its absence requested the Secretariat, subject to the availability of resources, to assess the views received from parties and others and to prepare recommendations thereon for the consideration of the Open-ended Working Group at its tenth meeting.

6. With respect to the options identified in section II.B of annex II to document UNEP/CHW.12/INF/52, the Conference of the Parties requested the Secretariat to compile the views received from parties and others in relation to the review of Annexes I and III to the Convention and to submit them to the Open-ended Working Group at its tenth meeting.

II. Implementation

A. Glossary of terms

7. The Secretariat received a financial contribution from the Government of Japan that enabled the third meeting of the small intersessional working group on legal clarity to be held in Geneva on 21 and 22 September 2015. The report of the third meeting is set out in document UNEP/CHW/CLI_SIWG.3/3. The revised draft glossary of terms reflecting the outcome of the meeting is set out in document UNEP/CHW/OEWG.10/INF/10.

B. Review of Annexes I, III and IV and related aspects of Annex IX to the Basel Convention

8. The views received from parties and others in relation to the review of Annexes I, III and IV and related aspects of Annex IV to the Basel Convention are set out in document UNEP/CHW/OEWG.10/INF/11.

9. As at 30 November 2015, the Secretariat had not been informed of any party’s interest in taking the lead on the review of Annex IV and related aspects of Annex IX. The Secretariat received a financial contribution from the Government of Japan and retained a consultant to assist with assessing the views received from parties and others, and preparing recommendations on options for the review of Annex IV and related aspects of Annex IX for the consideration of the Open-ended Working Group at its tenth meeting.

10. A report assessing the views received from parties and others and setting out recommendations on the review of Annex IV and related aspects of Annex IX to the Convention is set out in document UNEP/CHW/OEWG.10/INF/12.

III. Proposed action

11. The Open-ended Working Group may wish to adopt a decision along the following lines:

The Open-ended Working Group

1. *Welcomes* the work undertaken by the small intersessional working group on legal clarity;
2. *Recommends* that the Conference of the Parties at its thirteenth meeting adopts the glossary of terms developed by the small intersessional working group on legal clarity;³
3. *Requests* the Secretariat to prepare recommendations on the review of Annexes I and III to the Convention, taking into account the comments from parties and others on the matter⁴ as well as the outcome of the tenth meeting of the Open-ended Working Group, for consideration and possible adoption by the Conference of the Parties at its thirteenth meeting;
4. *Takes note* of the report assessing the views received from parties and others and setting out recommendations on the review of Annex IV and related aspects of Annex IX to the Convention;⁵
5. *Requests* the Secretariat to prepare revised recommendations on the review of Annex IV and related aspects of Annex IX to the Convention, taking into account the above-mentioned report as well as the outcome of the tenth meeting of the Open-ended Working Group, for consideration and possible adoption by the Conference of the Parties at its thirteenth meeting.

³ UNEP/CHW/OEWG.10/INF/10.

⁴ UNEP/CHW/OEWG.10/INF/11.

⁵ UNEP/CHW/OEWG.10/INF/12.