



Distr.: General

18 March 2016

English only

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**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**

**Report on the review of Annex IV and related aspects of Annex IX  
to the Basel Convention**

**Note by the Secretariat**

As referred to in the note by the Secretariat on providing further legal clarity (UNEP/CHW/OEWG.10/8), the annex to the present note contains a report on the review of Annex IV and related aspects of Annex IX to the Basel Convention. The present note, including its annex, has not been formally edited.

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\* UNEP/CHW/OEWG.10/1.

## Annex

# Report on the review of Annex IV and related aspects of Annex IX to the Basel Convention: views received and recommendations on the way forward

## I. Background

1. The Basel Convention applies to wastes, as defined in its Article 2: wastes are “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”. In turn, the definition of “disposal” refers to the list of operations in Annex IV to the Convention. In other words, the definition of “wastes” under the Basel Convention hinges on the actual, intended or required destination of the substance or object, and consequently Annex IV is especially important in establishing the scope of the Convention and with respect to the distinction between wastes and non-wastes.

2. Clarifying the distinction between wastes and non-wastes has been one of the three areas of focus of the Parties to the Basel Convention in the context of the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention. One particular endeavour under this initiative has been the development by the small intersessional working group (SIWG) on legal clarity of a glossary of terms including explanations. A draft glossary of terms will be considered by the Open-ended Working Group at its tenth meeting<sup>1</sup> and, subsequently, by the Conference of the Parties at its thirteenth meeting. A second endeavour under the Indonesian-Swiss country-led initiative has been the identification by the SIWG of options for further steps towards the consistent interpretation of terminology, including both voluntary and legally binding options. It is this second track of work undertaken by the SIWG and the outcome of its deliberations as reported to the twelfth meeting of the Conference of the Parties that underpin this document.

3. By decision BC-12/1 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention, the twelfth meeting of the Conference of the Parties decided, among other things, 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 by the SIWG in section II of annex II to document UNEP/CHW.12/INF/52.

4. In its decision, the Conference of the Parties 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 and requested the Secretariat, in the absence of a lead country, to compile and assess the views received from parties and others on the options identified in section II.A of annex II to document UNEP/CHW.12/INF/52, which reads:

*“II. Legally binding option:*

*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”. In addition, the references to “direct reuse” and “reuse” in Annex IX entry B1110, including footnotes 20 and 21, may be reviewed.”*

5. In its decision, the Conference of the Parties also requested the preparation of recommendations, based on the assessment of the views submitted by Parties and others, on the review of Annex IV and related aspects of Annex IX to the Convention, for the consideration of the Open-ended Working Group at its tenth meeting.

<sup>1</sup> The draft glossary is set out in the annex to document UNEP/CHW/OEWG.10/INF/10.

6. As of 7 March 2016, comments had been received from Canada, European Union (EU) and its member States, United States of America (USA), Bureau of International Recycling (BIR), and Hazardous Waste Europe (HWE). These comments are posted on the Convention website<sup>2</sup> and available in document UNEP/CHW/OEWG.10/INF/11.

## **II. Comments on paragraph 6 of section II.A of annex II to document UNEP/CHW.12/INF/52**

7. The option identified in paragraph 6 of section II.A of annex II to document UNEP/CHW.12/INF/52 is to review Annex IV as a whole in order to, on one hand, update the description of certain disposal operations and to include recovery operations as they occur in practice, and, on the other hand, to possibly define relevant terms in this annex.

8. Canada, EU and its member States, BIR and HWE expressed agreement with the proposal to review Annex IV as a whole. All four also supported the objective of updating the description of certain disposal operations and to include recovery operations as they occur in practice.

9. The EU and its member States in particular mentioned that the existing list of operations is not comprehensive and suggested that a study of operations conducted in practice at the moment as well as an analysis of Parties national legislation would provide a better background against which to update the operations listed in Annex IV. In this regard the EU and its member States specified that its Waste Framework Directive contains lists of recovery and disposal operations that could be relevant to the review of Annex IV. The EU and its member States also mentioned that the listed operations potentially overlap (for example, landfilling may correspond to ‘deposit into or onto land’ (D1) or ‘specially engineered landfill’ (D5); incineration may correspond to ‘incineration on land’ (D10) or ‘use as a fuel’ (R1)) and highlighted that the two sections of Annex IV do not allow for a clear distinction between the operations listed therein.

10. Canada provided specific examples of new entries that could be added to Annex IV A, such as “waste used in the testing of new technology” and “release, including the venting of compressed or liquefied gases”. With respect to Annex IV B, Canada suggested the addition of operations for the recovery or regeneration of a substance not otherwise covered in the other R operations and, specifically with respect to electrical and electronic equipment, suggested the addition of operations to capture the reuse and/or repair and/or refurbishment of a piece of equipment. HWE did not make concrete suggestions for updating Annex IV but highlighted that some of the operations listed in that annex were no longer used.

11. With respect to the terms in Annex IV, EU and its member States, Canada and BIR supported the objective of reviewing the description of or define relevant terms in that Annex. Canada said that such a review, to be undertaken with respect to Annex IV A, would aim at determining whether the listed operations remain environmentally sound disposal operations as described. The EU and its member States proposed to define terms listed in the annex that are not defined in the Convention text or in the draft glossary of terms. The EU and its member States also said that its Waste Framework Directive contains definitions that may be relevant, for instance of the terms “recovery”, “recycling”, “disposal”, “preparing for reuse and “reuse”.

## **III. Comments on paragraph 7 of section II.A of annex II to document UNEP/CHW.12/INF/52**

12. The options identified in paragraph 7 of section II.A of annex II to document UNEP/CHW.12/INF/52 include: i) a review of the captions of Annex IV A and Annex IV B in relation to “direct reuse”, ii) a review of operation R9 in Annex IV B in relation to the term “reuse”, and iii) a review of the references to “direct reuse” and “reuse” in Annex IX entry B1110, including footnotes 20 and 21.

13. BIR and EU and its members States made comments on the captions of Annex IV A and Annex IV B. The EU and its member States highlighted the value of making a clearer distinction between the operations listed in Annex IV A and IV B by using the term “final disposal” as the generic term to encompass operations listed in Annex IV A, and of using “recovery” to encompass the operations listed in Annex IV B. As a consequence, the EU and its member States proposed that the captions of Annex IVA and IVB could be amended and that additional introductory text be included. Amending the captions would also provide the opportunity to address the references therein to “direct reuse” and “reuse”, highlighting that “direct reuse” is not relevant to Annex IV A, and that references to “reuse” and “direct reuse” in annex IV B should be distinguished from recovery operations that may lead to reuse. BIR as well indicated a preference for a caption to Annex IV A using the terminology “final disposal”, with or without explanatory text, and a caption to Annex IVB using the terminology “recovery”, again with or without explanatory text.

<sup>2</sup> <http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/tabid/4753/Default.aspx>.

14. With respect to the use of the term “reuse” in R9, both the EU and its member States and BIR submitted their views. BIR proposed changing “other reuses of previously used oil” (R9) to “other uses of previously used oil”, while the EU and its member States emphasized that the term “reuse” is employed in R9 to refer to recycling of waste oil.

15. The EU and its member States and USA provided comments on a review of the references to “direct reuse” and “reuse” in Annex IX entry B1110, including footnotes 20 and 21. The EU and its member States highlighted what it sees as an inconsistency between the current reference to “direct reuse” in entry B1110 (including footnotes 20 and 21), which appears to indicate that assemblies destined for direct reuse may be waste, and the understanding reflected in the “Technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention”<sup>3</sup> adopted on an interim basis by the twelfth meeting of the Conference of the Parties. The EU and its member States therefore suggested consideration of the deletion of the references to reuse and direct reuse, including the footnotes 20 and 21.

16. On the same issue, the USA also suggested taking into account the agreement reflected in the technical guidelines mentioned above. In its comments, this country emphasized that these guidelines allow for flexibility in determining whether equipment destined for repair, refurbishment, reuse and direct reuse should be considered a waste and suggested that the annexes to the Convention reflect this flexibility.

#### **IV. Comments on a possible way forward**

17. Canada, EU and its member States and USA shared their views on a possible way forward. For Canada, given the lack of a Party taking the lead, a review of the annexes, in particular of Annexes VIII and IX, would benefit from the establishment of a technical working group to ensure continuity and consistency in the approach and principles guiding the work ahead. The EU and its member States, as previously mentioned, saw value in a process that would encompass an analysis of existing legislation of Parties that is relevant to Annexes I, III, IV and IX as well as a review of existing studies of disposal activities as they occur in practice. For the USA, any amendment to Annexes IV and IX should go through a thorough review process, for instance by following the same process as that established by Decision VIII/15 on the review or adjustment of the lists contained in Annexes VIII and IX to the Convention (see the appendix to this report).

#### **V. Assessment and recommendations**

18. The views received and summarized in this note express general support for a review of Annex IV as a whole and with a view to achieving all the objectives identified in section II.A of annex II to document UNEP/CHW.12/INF/52.

19. Specific suggestions have also been put forward in each instance as examples of improvements that could be made to Annex IV and Annex IX entry B1110. Some of these proposals appear to be supported by more than one submitter, for instance: amending the captions of Annex IV; ensuring consistency with existing guidance, such as the technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention, or the draft glossary of terms; and reformulating R9. However the views received do not allow for the undertaking of a comprehensive assessment of the extent of support for specific proposals.

20. Concrete proposals have been made on a possible way forward for the review to be undertaken, and each submission emphasizes the importance of a rigorous process based on solid information.

21. This being said, only a limited number of views were submitted, and all the views submitted by Parties come from the same region. It would therefore seem advisable that further steps aim as a priority at securing broader engagement by Parties and others. This initial objective could be reached through the development of a questionnaire for Parties and others inviting information and views on each of the options identified in section II.A of annex II to document UNEP/CHW.12/INF/52 as well as inviting the sharing of relevant parts of national or regional legal frameworks and of any available study on disposal operations as they occur in practice. The questionnaire could also invite views on recommendations to the attention of the Conference of the Parties at its thirteenth meeting on the review of Annex IV and related aspects of Annex IX to the Convention.

22. In addition to the development of a questionnaire, an exercise similar to the one undertaken in view of the tenth meeting of the Open-ended Working Group could take place, with the development of a report compiling and assessing the responses to the questionnaire as well as preparing recommendations to the

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<sup>3</sup> UNEP/CHW.12/5/Add.1/Rev.1.

attention of the thirteenth meeting of the Conference of the Parties on the way forward. Such recommendations could include for instance the establishment of a small intersessional working group supported by voluntary funding (e.g. for a consultant and possibly a meeting) that could be mandated to prepare recommendations to the attention of OEWG-11, possibly complemented by proposals from parties to amend the annexes. The report and recommendations to be prepared for consideration by the Conference of the Parties at its thirteenth meeting would be developed either under the leadership of a Party, or if none expresses such interest, by the Secretariat.

23. With this in mind, recommendations on the way forward are for the Open-ended Working group to:

- (a) Request the Secretariat to develop by 15 July 2016 a questionnaire to seek views from parties and others on each of the options identified in section II.A of annex II to document UNEP/CHW.12/INF/52 and inviting the sharing of relevant parts of national or regional legal frameworks and of any available study on disposal operations as they occur in practice, as well as views on recommendations to the Conference of the Parties on the way forward;
- (b) Request the Secretariat, subject to the availability of resources, to make the questionnaire available in languages of the United Nations;
- (c) Encourage parties and others to complete the questionnaire by 15 September 2016;
- (d) Invite parties to inform the Secretariat by 15 September 2016 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;
- (e) Invite the lead party, or in its absence requests the Secretariat subject to the availability of resources, to assess the responses received from parties and others to the questionnaire and to prepare recommendations thereon for the consideration of the Conference of the Parties at its thirteenth meeting.

## Appendix

### **Decision VIII/15: Revisions to the procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX and the status of decision VII/21**

#### *The Conference of the Parties*

1. *Decides* to clarify the procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX of the Basel Convention set forth in the appendix to its decision VI/35 and adopts the amended procedure set forth in the annex to the present decision;
2. *Invites* Parties and others to provide comments with regard to a technical review of the wording of the entries in each of the language versions of Annexes VIII and IX of the Basel Convention, and particularly of entry B1030, by 31 March 2007, to be compiled by the Secretariat for further consideration by the Open-ended Working Group at its sixth session.

### **Annex to decision VIII/15**

#### **Procedure for the review or adjustment of lists of wastes contained in Annexes VIII and IX**

1. The review or adjustment of the lists of wastes contained in Annexes VIII and IX of the Basel Convention can entail either amendments or corrections of those annexes. There is a legal distinction between amendments, on the one hand, and corrections, on the other.
2. An amendment refers to formal changes made to the provisions of a treaty by the Parties. The procedure for amending annexes of the Convention is governed by articles 17 and 18 of the Convention. More particularly, any proposed amendment must be made by a Party and communicated by the Secretariat to all Parties at least six months before the meeting at which it is proposed for adoption. In addition, any such amendment must be adopted at a meeting of the Conference of the Parties and may become effective six months from the date of issuance of a circular notification by the Depositary.
3. Corrections to the original text of a treaty may become necessary because of:
  - (a) A physical error in typing or printing, spelling, punctuation, etc.;
  - (b) A lack of conformity of the original of the treaty with the official records of the diplomatic conference which adopted the treaty;
  - (c) A lack of concordance between the different authentic texts constituting the original of the treaty.
4. The procedures for correcting the original text of a treaty are governed by Depositary practice.

#### **I. Procedure for changes to the text of Annexes VIII and IX**

##### **A. Applications**

5. Applications for any changes to the text of Annexes VIII or IX must be submitted to the secretariat using the form below. Any Party, observer State, non-governmental organization, private company or individual has the right to fill out the application form with the proposed placement of wastes under Annex VIII or Annex IX or with a proposal for removing wastes from Annex VIII, Annex IX or working list C. Any application submitted to the secretariat shall be by or through a Party or observer State.
6. A Party submitting an application shall clearly state whether or not the application is also intended to serve as a formal proposal for amendment of the annexes to the Basel Convention in accordance with articles 17 and 18 of the Convention.
7. Competent authorities and focal points are requested to make available any information in addition to the form to all focal points of the Basel Convention and to advise the Secretariat that this has been done. If a competent authority or focal point is unable to make available any annexes or attachments to all focal points of the Basel Convention, it may request the Secretariat to undertake that function.

**B. Procedure for transmission of the form**

8. The applicant must present the application form with any additional information to a national authority for the Basel Convention.
9. The competent authority and/or focal point should consider the application form with any additional information and only forward it to the Secretariat of the Basel Convention if it is properly completed and if the completed application provides sufficient information for the Open-ended Working Group to reach a decision.
10. The Open-ended Working Group will consider the application at its following meeting, provided it is received by the Secretariat within the time frame stipulated in paragraph 11 (a) below.

**C. Time frame for application**

11. Paragraph 2 of article 17 of the Basel Convention requires that the text of any proposed amendment to the Convention be communicated to the Parties by the Secretariat at least six months before the meeting of the Conference of the Parties at which it is proposed for adoption. To this end, the following conditions must be met:

(a) The application form for placement or removal of wastes must be submitted to the Secretariat of the Basel Convention at least three months prior to the meeting of the Open-ended Working Group. Any information in addition to the form should also be submitted within that time frame;

(b) In exceptional circumstances, a Party may submit the application form for placement or removal of wastes two months before the meeting of the Open-ended Working Group if such proposal(s) cannot be sent to the Secretariat within the three-month deadline. The Open-ended Working Group will endeavour to consider such application(s) at its following meeting.

**D. Procedure before consideration in the Open-ended Working Group**

12. After receiving an application, the Secretariat will place the application on the Internet website of the Basel Convention ([www.basel.int](http://www.basel.int)) within 30 days.
13. The Secretariat will send an e-mail to all focal points announcing that the application is available. Those Parties which have no access to Internet or e-mail facilities will be sent the application by mail or facsimile.
14. The Secretariat will invite the Parties to comment on the application within 20 days directly to the applicant (by mail, facsimile or e-mail).
15. The applicant will make, as necessary, an addendum to the application containing answers to the questions within 20 days.
16. The Secretariat will make the addendum available to the Parties at least 20 days before the meeting.
17. In the exceptional cases mentioned in paragraph 11 (b) above, the time frames stipulated in paragraphs 12 and 15 above are reduced to 10 days.

**E. Action by the Open-ended Working Group**

18. The Open-ended Working Group will consider and review the applications for placement or removal of wastes in Annexes VIII and IX. The applications must be based on sound scientific assessment in accordance with paragraph 1 (a) of article 1 of the Basel Convention.
19. The Open-ended Working Group should arrive at a decision by consensus.
20. The decisions of the Open-ended Working Group on the placement or removal of wastes on the lists contained in Annexes VIII and IX shall be transmitted in a report of the Open-ended Working Group through the secretariat to the following meeting of the Conference of the Parties. In cases where no formal proposal for amendment to the annexes to the Basel Convention has been made by a Party when submitting an application, the Open-ended Working Group should invite other Parties to submit such a formal proposal to the Conference of the Parties in accordance with articles 17 and 18 of the Convention.

**F. Effective review procedure**

21. Costs of review should be kept to a minimum. Restricting the summary of cases to eight additional pages would help save costs, although a Party wishing to provide more information could do so at its own cost.

**G. Role of the Secretariat**

22. The Secretariat of the Basel Convention will assist the Parties by acting as liaison with the Depositary with a view to facilitating the implementation of the amendment procedure, as necessary.

**H. Reporting**

23. The Secretariat of the Basel Convention should provide a report to Parties on the status of the lists of wastes in Annexes VIII and IX of the Basel Convention on a regular basis and when changes have entered into force.

**II. Procedure for corrections**

24. Parties, the Open-ended Working Group or the Conference of the Parties may inform the Depositary on corrections of Annexes VIII and IX of the Basel Convention. In the case of a correction to Annex VIII and/or Annex IX of the Basel Convention, the Depositary initiates the formal correction procedure by notifying the Parties and signatories of the error and the proposed correction.

25. The Depositary has the responsibility to scrutinize each apparent error in order to determine that it falls into one of the above categories and that it does not have the effect of modifying the meaning or substance of the text of the treaty. In case of doubt, the Depositary will seek to resolve it in consultation with the Party that proposed the correction. The Secretariat of the Basel Convention will assist the Parties by acting as liaison with the Depositary, with a view to facilitating the implementation of the correction, as necessary.

26. If, on the expiry of a specified time limit, no signatory or Party objects, the Depositary circulates a procès-verbal of rectification to Parties and signatories and causes the corrections to be effected in the authentic text(s) ab initio. States have 90 days to object to a proposed correction; this period can be shortened if necessary.

**APPLICATION FORM FOR THE PLACEMENT OR REMOVAL OF WASTES ON ANNEXES VIII AND IX**

**A. WASTE IDENTIFICATION**

**Proposed wording for the placement (or replacement wording for an existing category)**

- 1. Name of the waste: \_\_\_\_\_
- 2. Origin of the waste: \_\_\_\_\_
- 3. Physical form: \_\_\_\_\_
- 4. Major constituents: \_\_\_\_\_
- 5. Typical contaminants: \_\_\_\_\_

- 6. Waste Code: UN Class \_\_\_\_\_ UN number \_\_\_\_\_  
 IWIC \_\_\_\_\_ OECD \_\_\_\_\_  
 EWC \_\_\_\_\_ Others (e.g. Harmonized System Code, BIR, ISRI, IPMI, etc.)

7. Enter all relevant Y numbers

8. Hazardous characteristics

- |                               |                               |                               |                              |
|-------------------------------|-------------------------------|-------------------------------|------------------------------|
| <input type="checkbox"/> H1   | <input type="checkbox"/> H4.3 | <input type="checkbox"/> H6.2 | <input type="checkbox"/> H12 |
| <input type="checkbox"/> H3   | <input type="checkbox"/> H5.1 | <input type="checkbox"/> H8   | <input type="checkbox"/> H13 |
| <input type="checkbox"/> H4.1 | <input type="checkbox"/> H5.2 | <input type="checkbox"/> H10  |                              |
| <input type="checkbox"/> H4.2 | <input type="checkbox"/> H6.1 | <input type="checkbox"/> H11  |                              |

**B. PROPOSED PLACEMENT**

List A of Annex VIII   
 List B of Annex IX

**PROPOSED REMOVAL**

From list A of Annex VIII   
 From list B of Annex IX

**C. NATIONAL DEFINITION**

Is the waste legally defined as or considered to be hazardous in the country submitting the application?

Yes  No

**D. COMMERCIAL CLASSIFICATION**

Is the waste routinely traded through established channels and is that evidenced by commercial classifications?

Yes  No

**SUMMARY OF REASONS FOR PROPOSED PLACEMENT**

NB: A detailed case study (no more than eight additional pages) should be attached, taking into consideration the category(ies) in Annex I to the Basel Convention under which the waste falls and with evidence demonstrating that the waste does or does not exhibit any of the hazardous characteristics in Annex III to the Convention (guidance document to be drafted). Additional material may be submitted in the form of annexes or attachments. All such annexes or attachments must be listed in the application form, together with instructions on how to obtain the documents.

**E. NAME OF APPLICANT**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Tel: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Party   
 Observer State   
 NGO   
 Company   
 Individual

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Stamp)

**F. AUTHORITY TRANSMITTING APPLICATION**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 (Signature)

Tel: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 \_\_\_\_\_  
 (Stamp)

Date of transmission: \_\_\_\_\_

This application form may include up to 8 additional pages.

\_\_\_\_\_