

# Illegal traffic under the Basel Convention: Guidance on the take back provision

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Juliette Voinov Kohler

Secretariat of the Basel Convention – [juliette.kohler@brsmeas.org](mailto:juliette.kohler@brsmeas.org)

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## ICC work programme for 2014-2015

- Basel Convention Implementation and Compliance Committee (ICC) work programme. Decision BC-11/8 Annex II
- Development, including through consultations with the OEWG (September 2014), of guidance on the **take back provision**, for consideration and possible adoption by COP-12 (Spring 2015)
- Comments by Canada, EU, Switzerland and USA
- Consideration of latest draft during ICC-10 (5-6 December 2013, Paris, France)
- Document UNEP/CHW/CC.10/9 available at <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>

## ICC work programme for 2014-2015

•BC Article 9 paragraph 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 this 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.

## Current draft guidance

1. Objective of the guidance document:
2. Determining whether a shipment is deemed to be illegal traffic
3. The take back of the wastes by the State of export
4. Action to be taken following the take back of the waste

Three annexes

## Current draft guidance

1. Objective of the guidance document: harmonized operationalization of the take back provision
  - ★ Prevention, punishment and ESM ★
2. Determining whether a shipment is deemed to be illegal traffic
  - 2.1. Definition of illegal traffic in the BC, examples of national definitions of illegal traffic, the requirement that illegal traffic is criminal, and the consequences of illegal traffic as per para 2 to 5 of Article 9 of BC.

## Current draft guidance

- 2.2. Determining whether the take procedure is to be initiated:
- the case falls within the scope of the Convention: W, H (Article 1.1.a or national definition) or O, TBM;
  - there appears to be a case of illegal traffic i.e. on the five conditions listed in para 1 of Article 9 is fulfilled (lack of notification, lack of consent, consent through fraud etc...: material discrepancy or dumping)
  - the illegal traffic is the result of the conduct of the generator or exporter (will also require that this stakeholder be identified);
  - stakeholders involved in these determinations: variety of entities of the enforcement chain, as provided by national legal framework, but central role of the CA at the national and at the international levels

## Current draft guidance

### 3. The take back of the wastes by the State of export:

#### 3.1. States and entities involved:

- States involved: States concerned (export/transit/import); Parties or non-Parties and Article 11 agreements
- Entities involved: primarily the CAs

## Current draft guidance

### 3.2. Steps towards the take back

Approach: use appropriate features of the PIC procedure and movement document to ensure ESM and punishment of action in contravention to BC. Additional features: deadlines, costs.

- State in which wastes are located requests take back: initial contact; formal initiation of the take back procedure by notifying the State of export (part I of form, within 15 days, information, evidence)
- State of export acknowledges receipt of the notification (OK or additional information sought); 30 day deadline for take back starts running;
- State of export notifies States concerned of take back (part II of form, ESM contract, no consent required, movement document).



## Current draft guidance

### 3.3 The costs related to the take back

- Financial guarantee?
- Costs of take back (packaging, labeling, transport and disposal): borne by the exporter, generator or if necessary the State of export
- Costs of storage incurred from the notification: borne by the exporter
- Other costs (storage prior to notification, investigation): to be specified in national legal framework and dealt with via legal proceedings

## Current draft guidance

### 3.4. In case the take back is impracticable

- Eg: no adequate facility in State of export, risks of damage to human health and the environment during TBM, or State of export not a Party
- ESM in State where wastes are located
- ESM in other State: take back applicable mutatis mutandis
- Costs to be covered by exporter, generator or, if necessary, State of export.

## Current draft guidance

### 4. Action to be taken following the take back of the waste:

- ESM: monitor take back until reception and inform States concerned about reception
- legal proceedings: punish conduct in contravention to the BC

### Three annexes:

- Form for requesting the take-back (Part I) and for notifying of the take back (Part II)
- Step by step guidance (graphic illustration)
- Case study (Indonesia-UK)

## Current draft guidance

### 3.4. In case the take back is impracticable

- Eg: no adequate facility in State of export, risks of damage to human health and the environment during TBM, or State of export not a Party
- ESM in State of import
- ESM in other State: take back applicable mutatis mutandis
- Costs to be covered by exporter, generator or, if necessary, State of export.

THANK YOU!