

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

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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, of guidance on the **illegal traffic take back provision (paragraph 2 of Article 9)**
- Comments by Argentina, Bahrain, Canada, Germany, EU, New Zealand, Switzerland, USA
- Consultations with OEWG 9 (16-19 September 2014), which brings together all the Basel Convention Parties
- Consideration of latest draft during ICC-11 (22-24 September 2014)
- COP12 to consideration for adoption (4-15 May 2015)

Article 9 paragraph 2 BC

“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.”

Draft guidance submitted to COP12

1. Objectives 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

Appendices

- Appendix 1: Form for the take back of wastes deemed to be illegal traffic in accordance with paragraph 2 of Article 9 of the Basel Convention: request for take back (Part I) and notification of take back (Part II)
- Appendix 2: Graphic illustration of the suggested take back procedure
- Appendix 3: Graphic illustration in case the take back is considered impracticable
- Appendix 4: Case study

Draft guidance submitted to COP12

1. Determining whether a shipment is deemed to be illegal traffic

- Definition of illegal traffic (Article 9 para 1 of BC)
- Determination that the case falls within the scope of the Convention: waste, “hazardous” or “other”, transboundary movement
- Determination that there appears to be a case of illegal traffic: fulfillment of the conditions set out in Article 9 para 1 of BC
- Determination that the illegal traffic is the result of the conduct of the generator or exporter

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2. The take back of the wastes by the State of export:

2.1 States and entities involved

- States involved: Parties or non-Parties
- Entities involved: it is advised that the Competent Authorities be given the responsibility to operationalize the take back provision in close cooperation with the entity that detected the illegally trafficked waste

2.2 Steps towards the take back: form available in appendix 1

- Request for take back: by State in which waste is located, to State of export (part I of the form).
- Notification of the take back: by State of export to all States concerned (part II of the form, amended notification form)

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- 2.3. In case the take back is « impracticable »: ESM to be ensured by the State of export
- 2.4 The costs related to the take back: costs of packaging, storage from the time of the request for take back, transport, disposal: to be borne by the State of export. Other costs (eg. storage prior to request, investigation): to be determined by national legal framework or between States involved
- 3. Action to be taken following the take back of the waste: ESM and legal proceedings for illegal traffic

THANK YOU!