

App. 10 Main provisions of the Basel Convention

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General Regulatory framework

The **Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal** aims:

- to minimize the generation of hazardous wastes in terms of quantity and hazardousness;
- to dispose of them as close to the source of generation as possible;
- to reduce the movement of hazardous wastes.

Adopted on 22 March 1989, it entered into force in 1992 and now has 172 Parties (for the full text of the Convention, refer to www.basel.int > “Text of the Convention”). The Secretariat is administered by the United Nations Environment Programme (UNEP).

Note. Countries will also consider OECD Decision C(2001)107 final (as amended by C(2004)20, unofficial consolidated text) - applies to shipments of green-listed wastes for recovery, and bilateral and multilateral agreements (as registered under the Basel Convention), if applicable.

Definitions under the Basel Convention

“Waste”

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.

- Annex I of the Convention, as further clarified in Annexes VIII and IX, lists those wastes that are classified as hazardous and subject to the control procedures under the Annex II of the Convention.
- Convention identifies those wastes that require special consideration (known as “other wastes”, and which primarily refer to household wastes).
- Parties may also inform the Convention Secretariat of additional wastes, other than the wastes listed in Annexes I and II of Convention, that are considered or defined as hazardous wastes under their national legislation and of any requirements concerning Trans-boundary movement procedures applicable to such wastes.

Oil spill waste is usually considered as part of Annex 1: Categories of wastes to be controlled, and as such hazardous waste.

Note. National definitions vary, some chemicals are hazardous in some circumstances and not others, and many wastes are a mix of different substances and may contain only very small amounts of toxic chemicals.

“Trans-boundary movement”

“Trans-boundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement.

“Competent Authority”

“Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a trans-boundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification

Main provisions of the Basel convention regarding trans-boundary shipments of hazardous waste

- First, the Basel Convention regulates the trans-boundary movements of hazardous and other wastes applying the “Prior Informed Consent” procedure (shipments made without consent are illegal). Shipments to and from non-Parties are illegal unless there is a special agreement.

- Each Party is required to introduce appropriate national or domestic legislation to prevent and punish illegal traffic in hazardous and other wastes. Illegal traffic is criminal.
- Second, each shipment of hazardous waste or other waste shall be accompanied by a movement document from the point at which a trans-boundary movement begins to the point of disposal.
 - Last, the Convention obliges its Parties to ensure that hazardous and other wastes are managed and disposed of in an environmentally sound manner (ESM). To this end, Parties are expected to minimize the quantities that are moved across borders, to treat and dispose of wastes as close as possible to their place of generation and to prevent or minimize the generation of wastes at source. Strong controls have to be applied from the moment of generation of a hazardous waste to its storage, transport, treatment, reuse, recycling, recovery and final disposal.

Implementation of the Basel Convention

At national level

As for all international instruments, the Basel Convention, Article 4(4) of the Convention provides that: "Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention".

At bi-lateral and regional level

Some bilateral, multilateral or regional agreements or arrangements have been entered into by two or more parties. E.g. a 2002 decision by OECD addressed the waste movements between member countries and makes a distinction between non hazardous waste, which is not subject to a preliminary notification (Green Control Procedure) and hazardous wastes (Amber Control Procedure) for which the provisions of the Basel Convention should apply (*C(2001)107/FINAL, 21 May 2002, Decision of the council concerning the revision of decision C(92)39/final on the control of trans-boundary movements of wastes destined for recovery operations*)

The Basel convention: General Obligations (extracts of Article 4)

- (...) 1. (a) *Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.*
- (b) *Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.*
- (c) *Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.*
2. *Each Party shall take the appropriate measures to:*
- (a) *Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;*
- (b) *Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;*
- (c) *Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;*
- (d) *Ensure that the trans-boundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;*
- (e) *Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;*

- (f) Require that information about a proposed trans-boundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;
- (g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;
- (h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the trans-boundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic. (...)

Control Procedure for the movements of waste

The table below outlines the main items of the control procedure to implement.

Responsibility to notify	The State of export shall notify, or shall require the generator or exporter to notify in writing, using appropriate documentation of the competent authority of the State of export, the competent authorities of the States concerned of any trans-boundary movement of hazardous wastes or other wastes.
Documentation and general notification	Specific documents are to be used to notify the competent authorities in the concerned countries of all trans-boundary movements of hazardous wastes and other wastes and, subsequently, to accompany the movement of waste. → The Notification document for trans-boundary movements/shipments of waste, → The Movement document for trans-boundary movements/shipments of waste.
Contracts	The existence of a contract between the exporter and the disposer (complying with the requirements set in the Basel Convention and in relevant national legislation) specifying environmentally sound management of the waste in question is an important precondition for the authorization of the trans-boundary movement of waste. A contract should normally be concluded before the notification is provided and the competent authorities have issued their authorizations.
Financial guarantees	"Any trans-boundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party" (Art. 6, para. 11) to provide for immediate funds for alternative management of the waste in cases where shipment and disposal cannot be carried out as originally intended.
International transport rules and regulations	Hazardous wastes and other wastes subject to trans-boundary movement shall be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices (Art. 4, para. 7(b)).
Environmentally sound management of hazardous wastes and other wastes	the Technical Working Group of the Basel Convention has prepared technical guidelines to assist relevant authorities and other bodies to assess and improve the standard of disposal operations on their waste streams and disposal operations to ensure that hazardous wastes and other wastes are disposed of in an environmentally sound manner.

Case of the European Union

(Source: http://europa.eu/legislation_summaries/environment/waste_management/l11022_en.htm)

The European Union has set up a system for the supervision and control of shipments of waste within its borders and with the countries of the European Free Trade Association (EFTA), the Organisation for Economic Cooperation and Development (OECD) and third countries which are party to the Basel Convention (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste).

Summary

This Regulation aims at strengthening, simplifying and specifying the procedures for controlling waste shipments to improve environmental protection. It thus reduces the risk of waste shipments not being controlled. It also seeks to include into Community legislation the provisions of the Basel Convention as well as the revision of the Decision on the control of trans-boundary movements of wastes destined for recovery operations, adopted by the OECD in 2001.

Scope

This Regulation applies to shipments of waste:

- between Member States, within the Community or with transit through third countries;
- imported into the Community from third countries;
- exported from the Community to third countries;
- in transit through the Community, on the way from and to third countries.

The Regulation concerns almost all types of waste shipped. Only radioactive waste and a few other types of waste do not fall within its application, insofar as they are subject to separate control regimes. Derogations concern, for example, shipments of waste generated on board vehicles, trains, aeroplanes and ships, until such waste is offloaded for recovery or disposal, etc.

Lists of wastes

The Regulation also reduces the number of lists of wastes whose shipment is authorised from three to two. Wastes subject to notification are set out in the "Amber List" (Annex IV), while wastes subject only to information requirements are set out in the "Green List" (Annex III). Wastes for which export is prohibited are listed separately (Annex V).

Applicable procedures

This Regulation also reduces the number of waste shipment control procedures from three to two:

- the "green listed" procedure applies to non-hazardous waste intended for recovery;
- the notification procedure applies to shipments of all waste intended for disposal and hazardous waste intended for recovery;

Whatever the procedure, all persons involved in shipment must ensure that they take all necessary measures in order that waste is managed in an environmentally sound manner throughout the shipment process and when it is recovered or disposed of. The notification procedure requires that the competent authorities of the countries concerned by the shipment (country of dispatch, country of transit and country of destination) give their consent prior to any shipment.

Waste shipments must be the subject of a contract between the person responsible for shipping the waste, or having it shipped, and the consignee of such waste. Where the waste in question is subject to a notification requirement, the contract must include financial guarantees.

Under the notification procedure, the notification must be submitted by the notifier only to the competent authority of dispatch which, in turn, will be responsible for passing it on to the competent authorities of destination and transit. The competent authorities must give their consent (with or without conditions) or express their objections within 30 days. Any changes involving the main aspects of the shipment (quantity, itinerary, etc.) must be the subject of a new notification, save in cases where all the competent authorities grant the notifier an exemption from this obligation.

App. 11 Bibliography

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