



Distr.: General
20 April 2016

English only

**Committee Administering the Mechanism
for Promoting Implementation and Compliance
Twelfth meeting**

Nairobi, 4–6 June 2016

Item 4 (e) of the provisional agenda*

**Review of general issues of compliance and
implementation under the Convention:
control system**

Control system: transit issues¹

Note by the Secretariat

As referred to in document UNEP/CHW/CC.12/11, the annex to this note sets out a report on the implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit transboundary movements. The report was prepared by the Secretariat with the support of a consultant and in consultation with the lead Committee members. The Committee is invited to consider the report including the recommendations on how further to improve the implementation of paragraph 4 of Article 6 of the Basel Convention.

* UNEP/CHW/CC.12/1.

¹ This document has not been formally edited.

Annex

Report on the implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit transboundary movements

Contents

Background.....	4
I. Paragraph 4 of Article 6 of the Basel Convention: Purpose and genesis	4
1. The requirements of paragraph 4 of Article 6 and its role in the Basel Convention prior informed consent regime	4
2. The purpose of paragraph 4 of Article 6	5
3. The genesis of paragraph 4 of Article 6	5
4. Existing guidance on paragraph 4 of Article 6	5
II. Methodology	6
III. Summary and analysis of the responses received to the questionnaires	7
1. National or regional legal framework pertaining to the implementation of paragraph 4 of Article 6 of the Basel Convention	7
2. Definition of “transit” at the national level	7
3. Other aspects of paragraph 4 of Article 6	11
4. Experience in implementing paragraph 4 of Article 6 of the Basel Convention: challenges and best practices	12
IV. Recommendations on how further to improve the implementation of paragraph 4 of Article 6 of the Basel Convention.....	20
1. Adoption of a decision clarifying paragraph 4 of Article 6.....	20
2. Adoption of guidance	21
3. Changes to current formats and practices	22
4. Illegal traffic	22
5. Parties as States of transit.....	22
6. Capacity building.....	23
Appendix I: Questionnaire for Parties	24
Appendix II: Questionnaire for Stakeholders	38

Background

1. By its Decision BC-12/7, the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), at its twelfth meeting, adopted the work programme for the biennium 2016-2017, whereby the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (ICC) was requested to improve the implementation of and compliance with Article 6 of the Convention by considering what additional steps could be taken to improve the implementation of and compliance with that provision.

2. Within this mandate, the Committee has agreed to undertake activities more specifically aimed at improving paragraph 4 of Article 6 of the Convention on transit. To assist the Committee with its work, two questionnaires were sent, to Parties and stakeholders respectively, to collect their views and/or experience with respect to the implementation of and compliance with paragraph 4 of Article 6, including challenges faced and best practices, to implement this provision.

3. Paragraph 4 of Article 6 reads as follows:

“Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.”

4. Paragraph 12 of Article 2 reads as follows:

“State of transit” means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;”

I. Paragraph 4 of Article 6 of the Basel Convention: Purpose and genesis

1. The requirements of paragraph 4 of Article 6 and its role in the Basel Convention prior informed consent regime

5. Article 6 Basel provides for a prior informed consent (PIC) regime, which is at the heart of the Convention; along with other provisions of the Convention, the PIC regime aims to ensure that transboundary movements of hazardous wastes and other wastes are consistent with the protection of human health and the environment wherever the place of disposal, and that in particular such movements are permitted only when they do not endanger human health and the environment.

6. The PIC procedure begins when the exporter/generator of the wastes informs the Competent Authority of the State of export of a proposed shipment of hazardous wastes. A notification document is then issued and transmitted to all the States concerned by the proposed movement. Once the movement has been consented to by all concerned States, the Competent Authority of the State of export issues a movement document and authorizes the shipment to start. During transboundary movement the wastes will be accompanied by a movement document. Once the disposer has received the wastes, the exporter and the State of export should receive confirmation that the wastes have been disposed of as planned and in an environmentally sound manner.

7. Paragraph 4 of Article 6 sets out the role of the State of transit in the PIC procedure¹. The paragraph provides that after receiving a notification of a proposed movement, the State of transit must

¹ It may be noted that if the State of transit is not a Party to the Convention, article 7 of the Convention applies. Article 7, entitled “Transboundary movement from a Party through States which are not Parties” reads: “Paragraph 1 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State of States which are not Parties.” Quite separately the Convention regulates the export of hazardous wastes to a non-Party and the import of hazardous wastes from a non-Party: see paragraph 5 of Article 4 and Article 11 in particular.

promptly acknowledge the receipt of the notification. The State may respond to the notifier within 60 days: consenting to the movement with or without conditions; denying permission for the movement; or requesting additional information.

8. A state of transit that is a Party may waive the requirement for PIC, either generally or under specific conditions. Notice of that waiver must be given to all parties through the Secretariat pursuant to Article 13. Unless such notice is given, the State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.

2. The purpose of paragraph 4 of Article 6

9. As the Basel Convention is based on the premise that States should take necessary measures to ensure that the transboundary movement of hazardous wastes is consistent with the protection of human health and the environment, it is natural that states of transit should be given appropriate protection so that no danger to human health and the environment should arise whilst wastes pass through those states; so the Convention provides for example, for states of transit to refuse to allow movements through them or to impose conditions on such movements.

10. This is the most important power given to states of transit and part of a larger package of measures designed to protect them. For instance, the Convention says that the obligation of States in which hazardous wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit², and that any transboundary movement of hazardous 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 Party³.

3. The genesis of paragraph 4 of Article 6

11. There were lengthy and contentious negotiations, during the negotiation of the Basel Convention, about what rights should be given to transit states. Some states proposed that transit states should be given the same rights as states of import; others argued against this, maintaining that such rights would not be consistent with navigational rights and freedoms guaranteed in international law, in particular the right of innocent passage and overflight⁴.

12. During the negotiations several texts were on the table, and the current text reflects a last minute compromise with complex wording, which is in some respects ambiguous. In particular, the definition of “State of transit” is clearly a negotiating compromise and does not fully resolve the issues raised during negotiations.

13. Considering the history of paragraph 4 of Article 6, it is scarcely surprising that difficulties have arisen during its implementation. What is more the complexity of the PIC regime creates some difficulties that need to be addressed.

4. Existing guidance on paragraph 4 of Article 6

14. Whilst there is no guidance that focuses exclusively on paragraph 4 of Article 6, other guidance issued under the aegis of the Basel Convention provides assistance to Parties and stakeholders in implementation and application of that paragraph. For example, the Guide to the Control System⁵ provides an overview of the PIC procedure from the perspective of stakeholders, including generators, exporters, importers and disposers; and the leaflet on Controlling Movements of Hazardous Wastes⁶ provides a briefer guide to the procedure. Moreover the Manual for the Implementation of the Basel Convention⁷ provides guidance, inter alia, on the implementation of paragraph 4 of Article 6 and also

² See paragraph 10 of Article 4.

³ See paragraph 11 of Article 6.

⁴ The rival views were reflected in declarations made by States on adoption or signature of the Basel Convention. Some states asserted their right to control activities taking place in their adjacent sea areas, whilst other states asserted their rights of innocent passage.

⁵ At

<http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201415/Guidetothecontrolsystem/tabid/3561/Default.aspx>

⁶ At <http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/leaflet-control-procedures-en.pdf>

⁷ At

<http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201415/Manualfortheimplementation/tabid/4160/Default.aspx>

contains a related implementation checklist. These existing materials however do not seem to provide all the information Parties may need for the implementation of this provision.

15. Several initiatives and steps are currently being taken under the Convention that should improve the implementation of paragraph 4 of Article 6 of the Convention, however these do not specifically address the challenges raised by Parties with respect to this provision⁸.

II. Methodology

16. In order to assist the ICC with its work on transit, two questionnaires were developed under the guidance of the lead Committee members. One questionnaire was for Parties; it was available in English, French and Spanish and invited them to provide information about their experiences in implementing paragraph 4 of Article 6 of the Basel Convention. A separate questionnaire was developed for stakeholders (namely observers to meetings of governing bodies of the Basel Convention and other selected stakeholders) with an invitation for them also to share their views and experience with transit transboundary movements. It was explained to parties and stakeholders that information collected from them would be used as a basis for the development of recommendations to the Conference of the Parties on ways to improve the implementation of paragraph 4 of Article 6.

17. The questionnaire for parties asked for a considerable amount of information on the national or legal framework for the implementation of paragraph 4 of Article 6, whilst the questionnaire for stakeholders focussed on their experience of operating within that framework. Both questionnaires sought information on challenges and best practices with respect to regulation and practice concerning transit.

18. The questionnaires were sent to parties and stakeholders on 26 November 2015, and a deadline for replies was set to 31 January 2016. Copies of the questionnaires sent to Parties and stakeholders respectively are contained in Annexes I and II to this report. Responses received to the questionnaire are available on the website of the Convention⁹ as well as in document UNEP.CHW.CC.12/INF/10

19. 39 Parties responded to the questionnaire. From the African region the following 7 Parties replied: Central African Republic, Republic of the Congo, Cote d'Ivoire, the Democratic Republic of the Congo, Maldives, Rwanda, and Sao Tome and Principe. From the Asian region, the following 9 Parties replied: Afghanistan, Bangladesh, Malaysia, the Federated States of Micronesia, Nepal, Singapore, Thailand, Uzbekistan and Yemen. From the Central and Eastern Europe region, the following 7 Parties replied: Republic of Armenia, Bulgaria, Croatia, Estonia, Hungary, Montenegro and Slovakia. From the Latin America and Caribbean region, the following 7 Parties replied: Argentina, Colombia, Costa Rica, Cuba, the Dominican Republic, Guatemala and Panama. From the Western European and Others region, the following 9 Parties replied: Australia, Austria, Belgium, Canada, the European Union and its member States, Germany, Ireland, the Netherlands and Portugal.

20. There was a good representation of all the regions, although parties from Western European and Others region were slightly preponderant.

21. The following 10 stakeholders responded to the stakeholders' questionnaire: Dr. Andrea Volpato, BCRC China, Centre for International Projects, Ecological Restorations, FTA Logistics Ltd, Hazardous Waste Europe, Man-West Environmental Group, Milieu Environment bv, PT Prasadha Pamunah Limbah Industri (PPLi) and Sustainable Research and Action for Environmental Development (SRADev Nigeria). There was a reasonable regional spread of stakeholders, but again stakeholders from the Western European and Others region were preponderant.

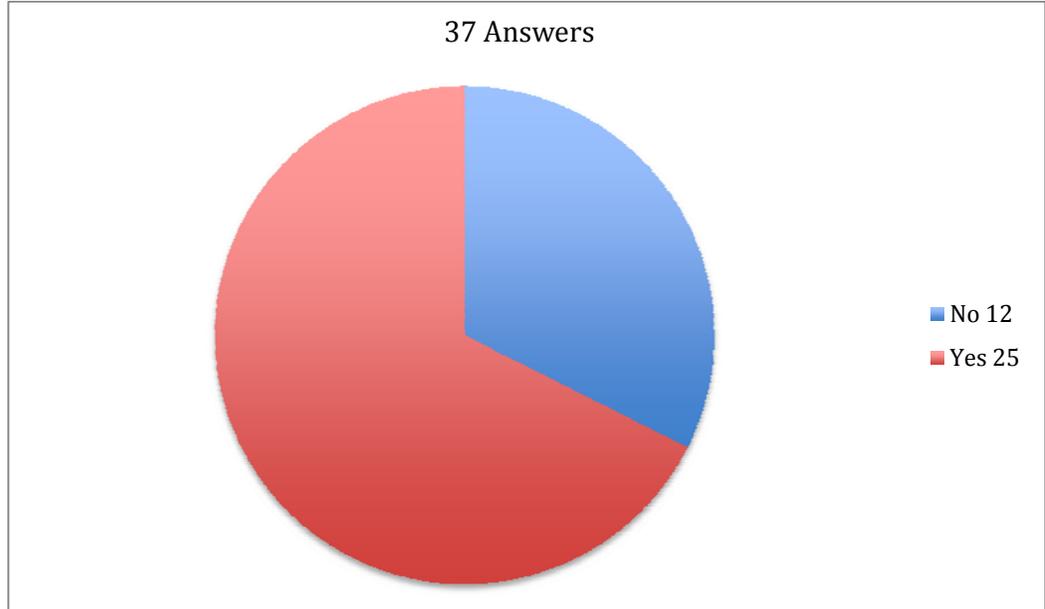
⁸ Current steps include for instance: the ongoing work of the Secretariat to facilitate the designation of competent authorities and the translation and dissemination in the six languages of the United Nations of notifications on national definitions of hazardous wastes or of import/export restrictions and prohibitions; the other activities of the Implementation and Compliance Committee with respect to improving the implementation of Article 6 (electronic approaches to the control system, designation of multiple competent authorities and article 11 agreements and arrangements); and the work of the Open-ended Working group on improvig legal clarity.

⁹ <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201617/ControlSystemTransitissues/tabid/4781/Default.aspx>

III. Summary and analysis of the responses received to the questionnaires

1. National or regional legal framework pertaining to the implementation of paragraph 4 of Article 6 of the Basel Convention

1. *Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 4 of Article 6 of the Basel Convention?*



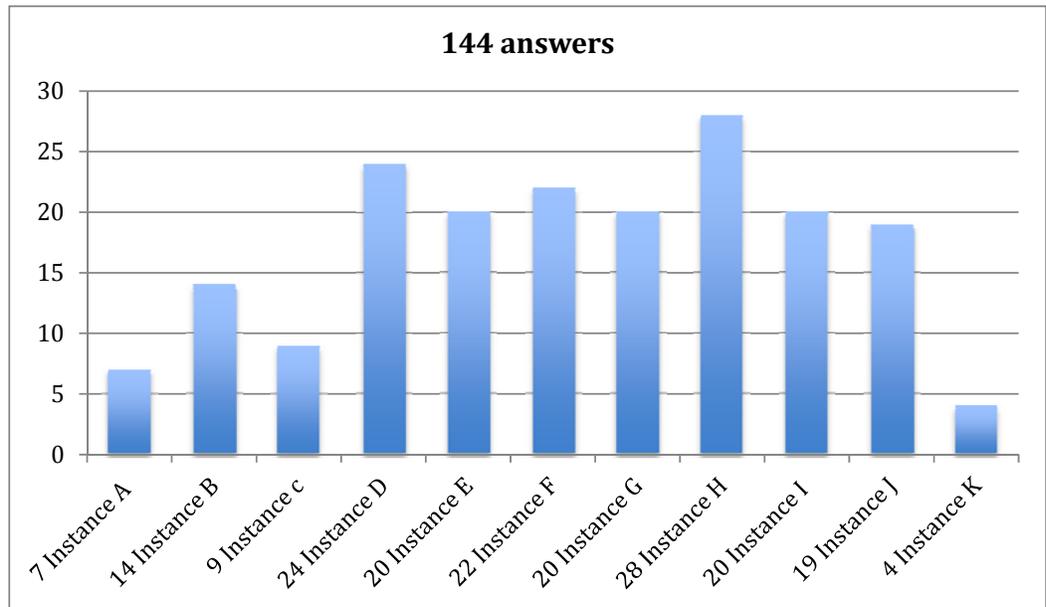
22. Most Parties that responded had measures in place to implement paragraph 4 of Article 6, although a substantial minority did not. Lack of implementing measures were explained in a variety of ways, which included the following: a prohibition of the movement of hazardous wastes through a Party's territory, the absence of any transboundary movements subject to paragraph 4 of Article 6, a lack of capacity, and the ability to comply with the requirements of paragraph without implementing measures.

2. Definition of "transit" at the national level

2. a. *Does your country have a definition of "transit"?*



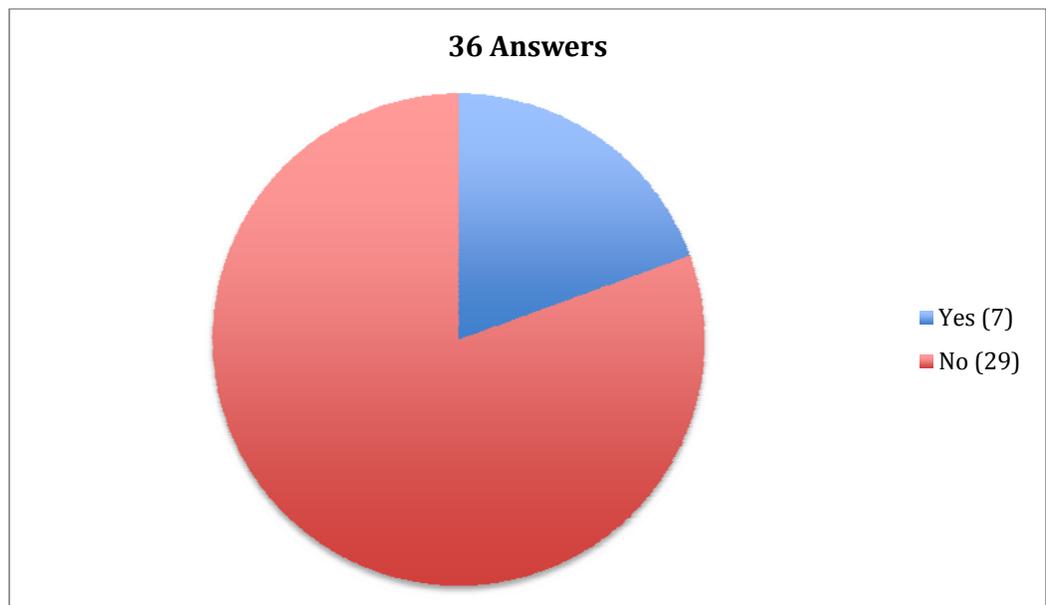
23. The number of states without a definition of transit was very similar to the number of states without measures implementing paragraph 4 of Article 6. There is an obvious correlation: states without implementing measures are much less likely to have definitions of “transit”.
2. b. *In your country, which of the following instances would fall within the meaning of “transit”?*
24. Parties could choose among the following instances:
- A. A ship transporting wastes covered by the Basel Convention enters the Exclusive Economic Zone (EEZ);
 - B. A ship transporting wastes covered by the Basel Convention enters territorial waters (territorial sea or internal waters);
 - C. A ship transporting wastes covered by the Basel Convention enters the free zone;
 - D. A ship transporting wastes covered by the Basel Convention calls at a port, without offloading the wastes, and leaves for a different port of discharge;
 - E. A ship transporting wastes covered by the Basel Convention calls at a port, with offloading and reloading of the wastes on the same ship, and leaves the port for a different port of discharge;
 - F. A ship transporting wastes covered by the Basel Convention calls at a port, with offloading and reloading of the wastes on a different ship destined for a different port of discharge;
 - G. A ship transporting wastes covered by the Basel Convention calls at a port, with offloading and reloading of the wastes on a different **transporter** (e.g. truck, train) destined for a different country;
 - H. A transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters and leaves the territory without offloading the wastes;
 - I. A transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters the territory, offloads and reloads the wastes and leaves the territory;
 - J. A transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters the territory, offloads and reloads the wastes on a different transporter that then leaves the territory;
 - K. Other instances.
25. The distribution of responses received is as follows:



26. The answers to the questionnaire clearly indicate a lack of consensus on what is meant by “transit”. Even the instance that was most commonly agreed by parties to amount to transit (i.e. a transporter other than a ship transporting wastes covered by the Basel Convention enters and leaves the territory without offloading the wastes) was only agreed to be transit by 28 parties out of the 39 that replied to the questionnaire. A majority of responders were able to agree that six instances fell within the definition of transit, but in three of those six instances the majority was slight: 20 responders out of a possible 39.

27. Assuming that the sample of parties who responded to the questionnaire is representative, there is a significant lack of agreement on the meaning of transit that must be an appreciable obstacle to the implementation of the Basel Convention.

2. c. *Would any answer above be different in the event a ship or transporter acted due to force majeure?*



28. A minority of parties reported that in some circumstances force majeure might lead to a different definition of transit, suggesting that there may be relatively little flexibility for parties to accommodate the change of a route of a transfrontier shipment of waste caused by an extraordinary event or circumstance beyond the control of those involved in the shipment.

2. d. Does the definition of “transit” include temporal elements, e.g. is the amount of time needed to go “through” your country relevant?



2. e. Do Customs have a responsibility in determining at the national level whether a “transit”, as defined under the Basel Convention, has occurred or may occur?



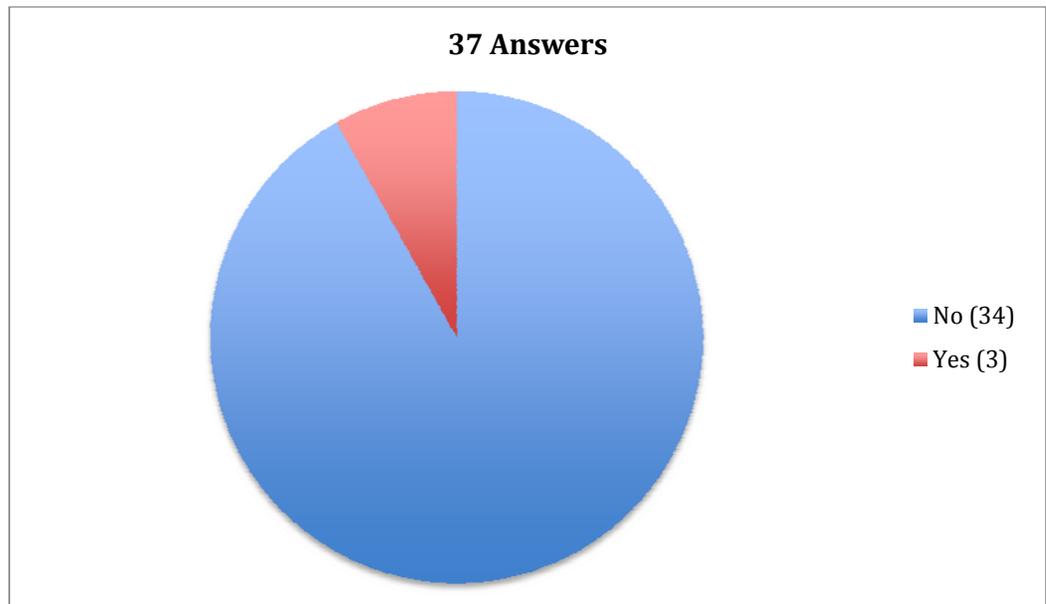
29. Relatively few parties change their approach to the meaning of “transit” on the basis of the timing of a shipment. Roughly 2/3 of responders answered that Customs or another entity had oversight of whether a “transit” had occurred or may occur, with a slight majority of those responders saying that Customs had the responsibility.

3. Other aspects of paragraph 4 of Article 6

3. a. *Has your country decided to not consent totally or partially to the transit of hazardous wastes and other wastes?*



3. b. *Has your country decided not to require prior written consent, either generally or under specific circumstances, for transit transboundary movements of hazardous wastes or other wastes?*



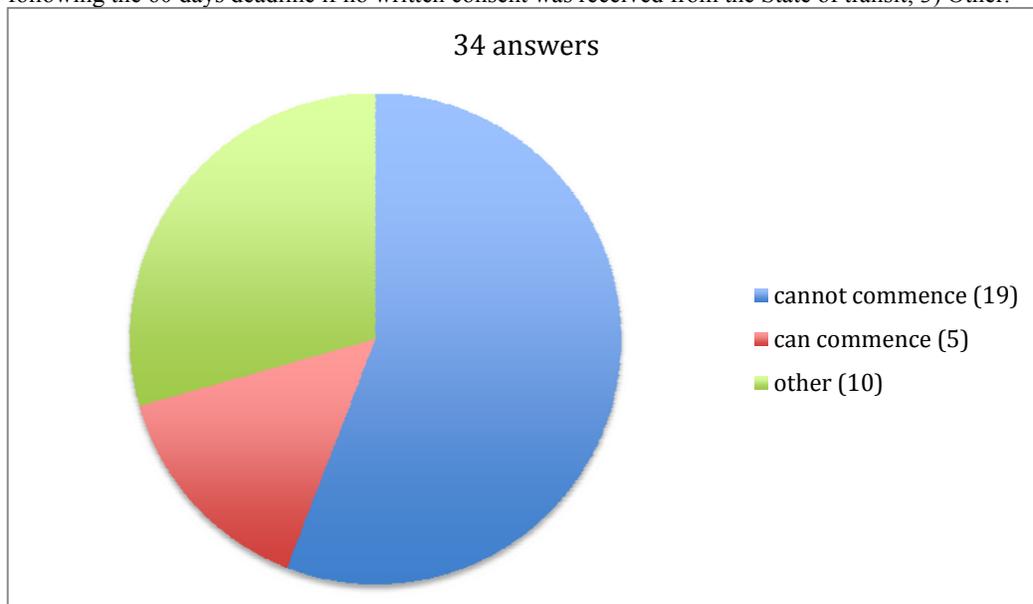
30. Slightly less than a quarter of responders have decided to not consent totally or partially to the transit of hazardous wastes through their territory, and less than a tenth of responders have decided not to require prior written consent for transboundary movements. Assuming the responders represent the parties as a whole, the overwhelming majority of parties want to control transit through their territory, with a substantial minority not consenting to transit at all.

3. c. *Paragraph 4 of Article 6 ab initio reads: “Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of*

transit.” (emphasis added).

Please provide information on your country’s understanding and implementation of paragraph 4 of Article 6 ab initio:

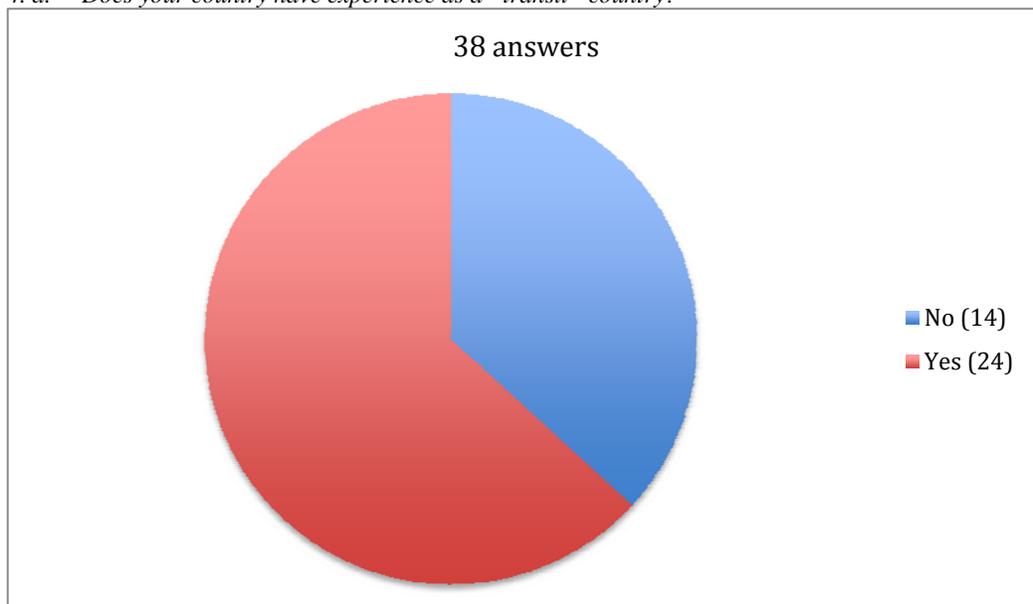
31. Parties had three options to express their understanding of answer paragraph 4 of Article 6 ab initio: 1) A transboundary movement cannot commence following the 60 days deadline if no written consent was received from the State of transit; 2) A transboundary movement can commence following the 60 days deadline if no written consent was received from the State of transit; 3) Other.



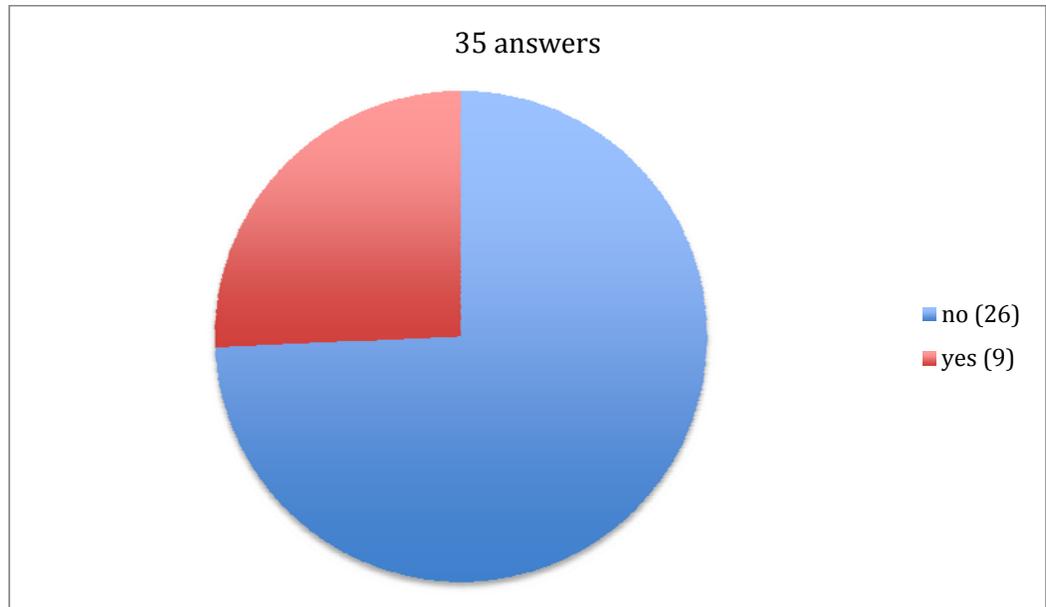
32. The responders may be closer to consensus than the chart above indicates; many of those answering “other” did so because the latter part of paragraph 4 (i.e. that part not quoted in question 3.c) expressly allows for states to not to require prior written consent, either generally or under specific conditions, for transit transboundary movements. It may follow that only a small minority of Parties consider that paragraph 4 of Article 6 ab initio allows for a movement if no consent is received from the state of transit. This shows that there is a need to clarify the meaning of paragraph 4 of Article 6 ab initio.

4. Experience in implementing paragraph 4 of Article 6 of the Basel Convention: challenges and best practices

4. a. Does your country have experience as a “transit” country?



4. b. *Can your country share best practices with respect to the implementation of paragraph 4 of Article 6 of the Basel Convention?*



33. A number of parties volunteered examples of best practice at the national level. One party considered that it was best practice for a State of transit not to give tacit consent; and as a result it does not take the option not to require prior written consent, as provided for in paragraph 4 of Article 6.

34. A party volunteered to share its experiences on:

- (a) Joint implementation by its various authorities with respect to the control of hazardous waste in transit;
- (b) Identification of incorrectly classified wastes that turn out to be hazardous and thus fall within the scope of the Basel Convention and national regulations;
- (c) International cooperation;
- (d) South - north and south-south transfrontier movements.

35. Another party that had capacity problems found it helpful to request assistance from other competent authorities, including those from a state with which it had historical connections. One party found it helpful to establish a committee of stakeholders for teaching purposes and to follow the transit of hazardous waste. That committee helped to consider a reported instance of a flawed transfrontier shipment. Another party only accepts transboundary shipment notifications documentation regarding transboundary movements by email, having seen the delays that can be caused when paper notifications are used.

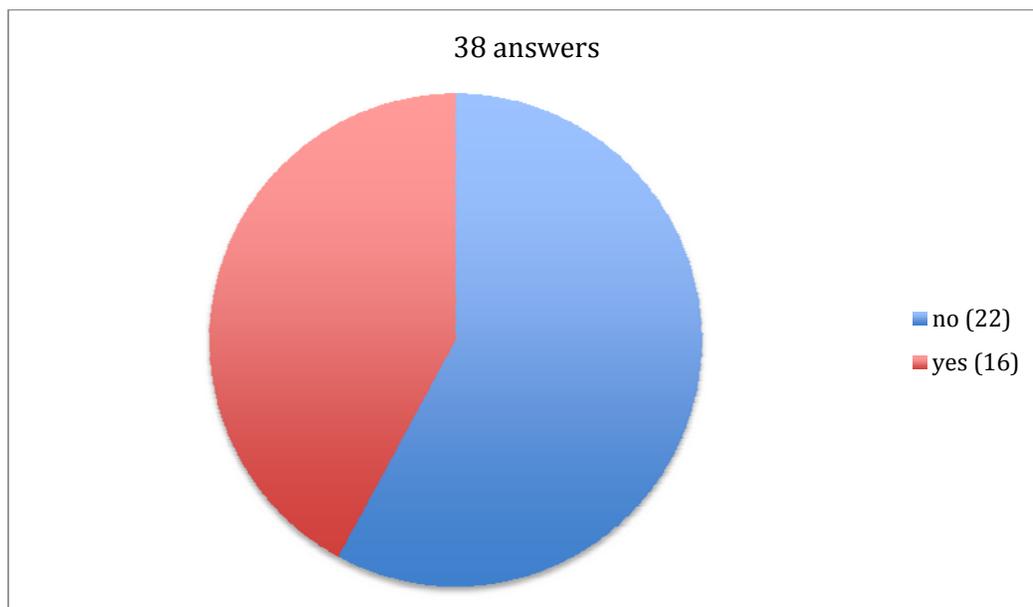
36. In the questionnaire for stakeholders, stakeholder were also invited to provide information on the best practices with respect to the implementation of paragraph 4 of Article 6. One stakeholder suggested that it might be best practice for a party of transit to waive the requirement for PIC under paragraph 4 of Article 6. Another observed that the efficiency of states' authorities is largely dependent on their experience.

37. Stakeholders volunteered their own best practices including:

- (a) Close collaboration with the competent authorities of states of export and transit;
- (b) Inserting all potential transit states in a notification form to account for possible changes of route;
- (c) Sending documents by courier and following that up by contacting the competent authority of the state of transit by email or by phone;
- (d) Engaging the help of the environment ministry and its embassy in the state of transit to deal with the latter's competent authorities;

(e) Doing appropriate research beforehand, inter alia asking help from relevant Parties and enterprises, checking relevant applicable laws on the Basel Convention website, and contacting focal points and experts in state of transit in order to prepare the way for a shipment.

4. c. *Has your country faced any difficulties in implementing the provision in paragraph 4 of Article 6 of the Basel Convention?*



(i) *Domestic difficulties*

38. Parties could choose among the following domestic difficulties:

(a) Lack of or inappropriate domestic legal or institutional framework to implement paragraph 4 of Article 6 of the Basel Convention;

(b) Lack of clarity about the definition of “transit” at the national level;

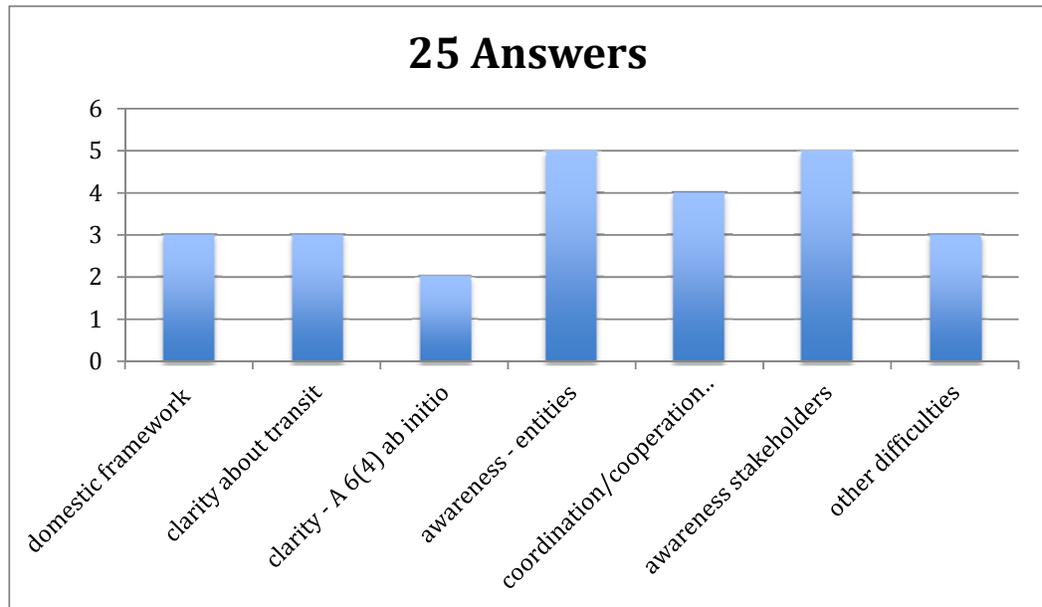
(c) Lack of clarity about the way to implement paragraph 4 of Article 6 ab initio (see question 3. c. above);

(d) Lack of awareness among relevant entities within the country involved in transit transboundary movements of hazardous and other wastes about the requirements of paragraph 4 of Article 6 (e.g. Customs, port authorities);

(e) Lack of coordination/cooperation at the national level among relevant entities involved in transit transboundary movements of hazardous and other wastes;

(f) Lack of awareness among stakeholders within the country involved in transboundary movements of hazardous and other wastes about the requirements of paragraph 4 of Article 6 (e.g. generators, transporters, exporters, importers, disposers).

39. The distribution of responses received is as follows:



40. Parties also reported that they faced many challenges when dealing with individual shipments. There were a number of problems in receiving responses from some states of transit, for instance that they:

- (a) May take months to respond, or do not respond at all. There were a number of complaints that states failed to meet the 60 day deadline in paragraph 4 of Article 6;
- (b) Do not keep their contact details up to date so the notification may not be sent to the appropriate addresses, leading to lengthy delays;
- (c) Do not consent to the transit of hazardous waste through particular ports that they have not notified the Secretariat, requiring new notifications with new routes; and/or
- (d) Decide not to require prior written consent, as provided for in paragraph 4 of Article 6, but fail to notify the Basel Convention Secretariat.

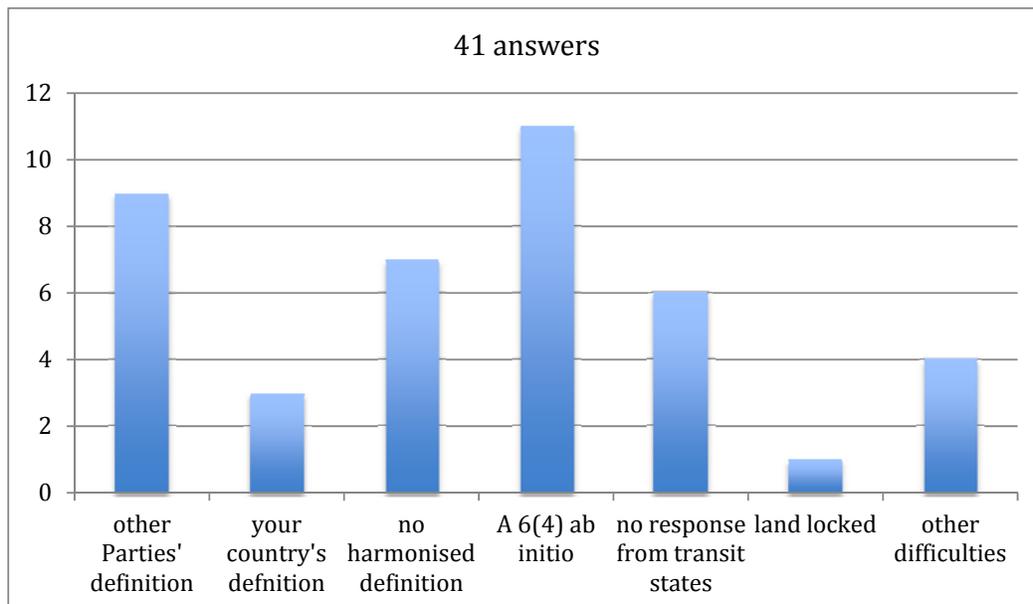
41. Moreover there were other more general problems: challenges relating to a lack of capacity, particularly in developing countries. One state reported a lack of knowledge of the Basel Convention generally, and paragraph 4 of Article 6, in particular in its judiciary. Another reported difficulties validating the information contained in notification and movement documents. It was reported that there is a general failure to communicate by states involved in transboundary movements. A developing country reported having difficulties completing consent forms, and requested assistance in this regard. One Party said it lacked experience, and would welcome knowledge sharing with developed countries and technical assistance.

(ii) *International cooperation difficulties*

42. Parties could choose among the following international cooperation difficulties:

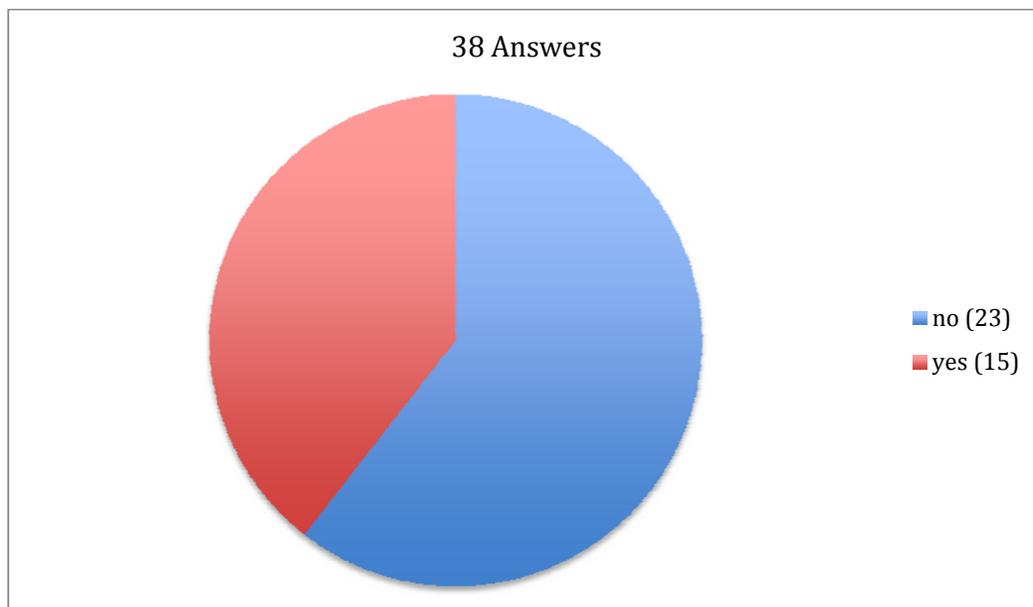
- (a) Lack of information on other Parties' definition or understanding of "transit";
- (b) Lack of information by other Parties or stakeholders within other Parties of your country's definition or understanding of "transit";
- (c) Lack of harmonized definition or understanding of the meaning of "transit" at the global level;
- (d) Lack of shared understanding among Parties of how to implement paragraph 4 of Article 6 ab initio (see question 3. c. above);
- (e) Lack of response from transit States to a proposed transboundary movement;
- (f) Difficulties as a land-locked country.

43. The distribution of responses received is as follows:



44. The Parties mentioned a number of challenges faced at the international level. There was a concern about the lack of a precise definition of the word “transit” and no common understanding of its scope. It was also pointed out that there could be more of a harmonization of the Parties’ understanding of the requirements of paragraph 4 of Article 6 concerning the consent of the State of transit, and the practice of States of transit; for example some transit states do not allow ships to land hazardous wastes, whilst other transit states allow storage in ports (for example in warehouses), sometimes for a limited period of time. There were concerns that this lack of understanding could cause uncertainty and delay.

4. d. *Is your country aware of any difficulties faced by stakeholders (e.g. generators, transporters, disposers) involved in transit transboundary movements with the implementation of paragraph 4 of Article 6 of the Basel Convention?*



45. Parties reported that stakeholders face a number of problems. It was reported that there was a general lack of awareness among stakeholders of the requirements of paragraph 4 of Article 6 (e.g. generators, transporters, exporters, importers, disposers) and a consequent need for capacity building.

46. Problems in receiving consents from some states of transit, and the lack of capacity in some states of transit, may well disrupt transboundary movements and impose difficulties on stakeholders. One party mentioned that it was unclear how states of transit should acknowledge and respond to notifications. Should this be through email with digital signature, or mail attaching a scanned signed note if the original notification was by hard copy? Or should this be through the Competent Authority, the Focal Point or through an interested stakeholder on behalf of the Authority? This causes complications for stakeholders when they have to deal with multiple authorities.
47. A widely reported issue was that is very common that due to unforeseen circumstances, ships may call temporarily at ports that are not shown in the original notification without unloading any wastes. In such situations the port State may request a new notification, and the subsequent necessity to wait for consent from all authorities may cause delays and impose an economic burden on operators.
48. There may be extra challenges for stakeholders where a State of transit decides, under Article 1(1)(b) of the Convention, that there are additional nationally defined categories of hazardous wastes. In any event, the necessity for stakeholders to understand the applicable provisions in national regulations in States of transit will cause administrative burdens.
49. One party mentioned a range of problems encountered with respect to illegal traffic including:
- (a) Lack of information about possible cases of transboundary movements of illegal traffic;
 - (b) Challenges in identifying specific cases of illegal traffic;
 - (c) Challenges in identifying who is responsible for illegal traffic;
 - (d) Lack of awareness of which entities should be involved in combating illegal traffic;
 - (e) Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic.
50. In the questionnaire for stakeholders, stakeholder were also invite to provide information on the challenges they faced. Stakeholders that completed the questionnaire all reported that they were aware of the legal requirements with respect to the implementation of paragraph 4 of Article 6 in the countries in which they operate, but two reported that they were not aware of the definition of state of transit; the two raised issues that related to freedom of navigation.
51. Stakeholders were, however, almost evenly divided in having differing and competing understandings of the effect of paragraph 4 of Article 6 with respect to the sixty-day deadline and whether transboundary movements may commence if written consent has not been received within 60 days.
52. The stakeholders had varying degrees of involvement in movements of hazardous wastes; several stakeholders shared best practices with respect to the implementation of Article 6.
53. The most serious difficulty experienced by shareholders in implementing paragraph 4 of Article 6 was a failure by transit states to respond. After that, there were reported to be problems with the following: a lack of shared understanding among Parties of how to implement paragraph 4 of Article 6 ab initio; difficulties associated with a change in a transit State subsequently to the initiation of the movement and to secure a response (consent or denial to the proposed movement) from a new transit State; and lack of awareness among relevant entities within the country involved in transit transboundary movements of hazardous wastes about the requirements of paragraph 4 of Article 6 (e.g. Customs, port authorities).
54. Stakeholders identified a range of challenges generated by Parties' practice in implementation of paragraph 4 of Article 6, including the following:
- (a) Lack of information about the laws applicable to transit;
 - (b) Different Parties understandings the meaning of "transit" in different ways;
 - (c) Failures of Parties fully to communicate to each other during the PIC procedure;
 - (d) Difficulties in contacting the authorities of Parties; for example there was a complaint that some authorities were not reachable by telephone, email or fax and that contact details are sometimes not available on the Basel website.
55. In particular there were complaints about responses to notification including
- (a) Excessive bureaucracy;

- (b) Treating transit as if it were an import or an export;
- (c) Slowness in responses to notifications, or a complete failure to respond.

56. One stakeholder commented that patience and perseverance may overcome challenges, but said generators of waste may not be so patient and may seek less environmentally sound alternatives to a delayed shipment. Another stakeholder reiterated the point that a change of the route of a shipment can cause particular problems, including restarting the notification process, and related loss of time and money.

4. e. *Has your country been able to overcome difficulties stated under sections 4. c. and 4. d. above?*



57. An overwhelming majority of parties responses they were unable to overcome challenges in the implementation of paragraph 4 of Article 6. In contrast, a majority of stakeholders reported that they were able to overcome difficulties.

4. f. *Would you have suggestions to the Committee on how to improve the implementation of paragraph 4 of Article 6 of the Basel Convention, whether at the national or global level (eg. development of guidance, information sharing, technical assistance)?*

58. A considerable number of parties suggested the development of **targeted guidance** relating to the implementation of paragraph 4 of Article 6. There were a number of suggestions as to what that guidance could contain. Those suggestions include the following:

- (a) A common understanding of the term “transit” may be useful;
- (b) Clarification of whether the 60 days deadline refers to the number of days from the date of receipt or the date of despatch of the notification;
- (c) Whether a transboundary movement can commence after the 60 days deadline if no written consent was received from the State of transit;
- (d) Guidance on the effect of a lack of response from a State of transit to a notification and associated problems, including:
 - (i) what happens when it is not clear how the state of transit is going to acknowledge the notification;
 - (ii) how there should be communication between the notifier and the competent authority of the State of transit (e.g. by mail with digital signature, or mail attaching a scanned signed note if note, or a signed paper original); and
 - (iii) whether a negative response by email from a State of transit amounts to conclusive evidence of refusal, or whether it should be followed by a formal written response.
- (e) How to improve the interface with better environmentally sound management of wastes;

- (f) An emphasis on the importance of timeliness on responding to notifications;
- (g) How to deal with shipments when there are differing views on the meaning of “hazardous waste”.

59. It was also suggested that there should be discussions of the **interpretation** of paragraph 4 of Article at forthcoming meetings of the Parties of the Basel Convention.

60. A considerable number of parties suggested **amendments to current practices** under the Basel Convention to improve the implementation of paragraph 4 of Article 6. These suggestions are listed below:

- (a) The format for national reporting under Article 13 could be amended to include a question related to third sentence of paragraph 4 of Article 6¹⁰. The legal basis for this change in the format could be Article 13(3)(c) or (i); Article 13 does not expressly relate to the third sentence of paragraph 4 of Article 6;
- (b) To supplement that practice, there could be a decision by the next Conference of the Parties inviting Parties to inform the Secretariat whether they have decided not to require written consent pursuant to the third sentence of paragraph 4 of Article 6. The Secretariat could be requested to publish the information provided on the Basel website. This would improve the information available to Parties on which countries do not require written consent pursuant to the third sentence of paragraph 4 of Article 6;
- (c) Steps need to be taken to ensure the contact details of Competent Authorities, including e-mail addresses, are kept up to date;
- (d) With this in mind, the Basel Convention website could be designed so that representatives of Competent Authorities, with the appropriate electronic authorisations, may log in and update details;
- (e) Parties could inform other parties on their requirements for written consent when they are States of transit (and perhaps in other cases too). This could be done through a survey conducted by the Secretariat and mandated under Article 13.

61. One party suggested that there could be a number of measures taken with respect to illegal traffic, including the following:

- (a) Provision of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer;
- (b) Identification of transboundary movement of hazardous wastes that may be illegal traffic;
- (c) Determining when the responsibility for illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer;
- (d) Identifying States concerned with illegal traffic;
- (e) Raising awareness of relevant entities that should be involved in combating illegal traffic;
- (f) Increasing awareness of, and cooperation with respect to, illegal shipments by importers or disposers;
- (g) Coordination and cooperation at the national level among the relevant entities involved in combating illegal traffic;
- (h) Dispose of the waste in an environmentally sound manner.

62. There were a few suggestions for the improvement of the **practice** of individual parties. For example one party said that it needed to update its own laws to be more specific on the definition of transit. And another party advocated ratification of the Convention’s Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their

¹⁰ "However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13."

Disposal, which it considered would be an important component of the improvement of the implementation of paragraph 4 of Article 6.

63. Parties suggested a number of steps for **capacity building at a regional level**. There was a suggestion to provide training to countries on the transit of hazardous waste. A Party argued that measures were required to strengthen the capacity of all relevant stakeholders, and to help them to sort, identify and monitor the presence of hazardous waste in transboundary movements.

64. There were further proposals for capacity building that might occur at a regional or global level, including the following:

- (a) Parties should share information on the issue of transit and problems that have arisen with respect to transit;
- (b) There should be technical assistance to help countries that do not have much relevant experience to reinforce the capacity of their customs officers;
- (c) There should be technical assistance to help in the review of regulations.

65. A number of stakeholders argue that the **wording** of paragraph 4 of Article 6 needs to be clarified. In particular, there needs to be clarity on the consequences of a failure of the state of Transit state to respond within 60 days: does this amount to be implicit consent?

66. Also it was suggested by a stakeholder **that the definition** of “transit” in the Convention should cover waste that is transported in a customs transit operation from an office of departure to an office of destination under “customs transit”¹¹ within the meaning of the Kyoto International Convention on the Simplification and Harmonization of Customs procedures as revised (the revised Kyoto Convention). Another stakeholder argued that the definition of ‘state of transit’ is too broad and in any event needed clarification. Yet another stakeholder urged Parties individually to harmonise their definitions of different wastes with the definitions in the Basel Convention in order more effectively to control transboundary shipments.

67. Stakeholders emphasised the importance of keeping an **up to date** the lists of designated focal points, competent authorities, and parties that had decided, under paragraph 4 of Article 6, not to require prior informed consent when they are states of transit.

68. Another stakeholder urged all countries involved in a transboundary movement to be actively involved in the permitting process. It was also suggested that if the EU and its member States were treated as one Party that would ease the workload for stakeholders and states.

69. Several stakeholders urged more rigorous training, *inter alia* for officials in states of transit and export; for global and regional stakeholders; and on the PIC process generally.

IV. Recommendations on how further to improve the implementation of paragraph 4 of Article 6 of the Basel Convention

70. The responses to the questionnaires have shown that there are a considerable number of concerns, challenges and suggestions that could be met by action by individual parties, the Conference of the Parties, the ICC, and the Secretariat.

1. Adoption of a decision clarifying paragraph 4 of Article 6

71. The work of the ICC has revealed a number of uncertainties about the legal effect of paragraph 4 of Article 6. These uncertainties create significant difficulties for parties and stakeholders which, for the most part would need to be resolved by the Conference of Parties itself by adopting decisions on the effect of paragraph 4 of Article 6 in three key areas, namely the re-routing of ships, the meaning of “transit” and the 60 day deadline. It would also be helpful to clarify the requirement for the State of transit to “promptly” acknowledge receipt of the notification of the proposed transboundary movement.

¹¹ Customs transit is defined by Specific Annex E of the Revised Kyoto Convention as the Customs procedure under which goods are transported under Customs control (and without imposing Customs duties) from one Customs office to another. This definition includes national transit operations, i.e. transports between departure and destination offices within the same country or territory, as well as international Customs transit, i.e. transports across one or more frontiers in accordance with a bilateral or multilateral agreement.

72. Such a decision could reflect the consensual understanding of the Conference of the Parties on these issues and could be adopted at its thirteenth meeting. It is recommended that the ICC consider drafting such a decision for the consideration of the Conference of the Parties at its thirteenth meeting.

1.1 Re-routing of ships

73. One point that clearly emerges from the responses of parties and stakeholders is this: a change, by a shipping line, in the route of a transboundary movement can create administrative problems, which may require a re-notification and considerable delays of a shipment.

74. A great majority of parties who responded to the questionnaire say that force majeure does not affect the way they interpret “transit”; so, for example, if a ship is transporting hazardous waste, and that ship changes its route to avoid a hurricane and berths in a port in a state that has not been notified of the transfrontier shipment there is a real possibility that this will be considered to trigger a requirement for a new notification to seek consent of the transit State.

75. This raises an issue for the Conference of the Parties to consider: in the circumstances described, would the parties wish there to be a new notification, or would they wish there to be an exemption from the requirements of paragraph 4 of Article 6? And in what circumstances should any such exemption be available?

1.2 The meaning of “transit”

76. It is clear from the questionnaire that there is no consensus amongst parties as to the meaning of “transit” for the purposes of paragraph 4 of Article 6, and some issues are controversial, for example whether transit occurs when a ship transporting wastes covered by the Basel Convention enters an exclusive economic zone or territorial waters.

77. A common understanding of the term would greatly facilitate the implementation of paragraph 4 of Article 6. It was also suggested that the meaning of “transit” needs to be clarified, with reference to the revised Kyoto Convention.

1.3 The 60 day deadline

78. It is also clear from the questionnaire that there is no consensus amongst parties as to the effect of paragraph 4 of Article 6 *ab initio*, and parties and stakeholders complain of the confusion that is generated by differing views of the 60 day deadline. There are also complaints that some transit states fail to respond to notifications - either at all, or within the 60 day deadline; that leads to uncertainty about shipments for stakeholders and States concerned by a transboundary movement of wastes.

79. Moreover in responses to the questionnaire there have been requests for clarification of whether a transboundary movement can commence after the 60 days deadline if no written consent was received from the State of transit; and whether the 60 day deadline refers to the number of days from the date of receipt or the date of dispatch of the notification.

80. It is recommended that the Conference of the Parties should endeavour to reach a consensus on the meaning and consequences of a “prompt” acknowledgment of receipt of the notification of a proposed transit transboundary movement; on whether the 60 day deadline refers to the number of days from the date of receipt or the date of dispatch of the notification; and the effect of the lapse of the sixty day deadline in the first part of paragraph 4 of Article 6 in the event no written consent was given.

2. Adoption of guidance

81. A considerable number of parties suggested the development of targeted guidance relating to the implementation of paragraph 4 of Article 6. Such guidance could complement a possible decision of the Conference of the Parties aimed at clarifying this provision, but it could also be developed without such a decision. There were a number of suggestions as to what that guidance could contain. Those suggestions include guidance on the following:

- (a) The effect of a lack of acknowledgment of receipt and of lack of response from a State of transit to a notification;
- (b) What happens when it is not clear how the state of transit is going to acknowledge the notification;

- (c) How there should be communication between the notifier and the competent authority of the State of transit (e.g. by mail with digital signature, or mail attaching a scanned signed note, or a signed paper original);
- (d) Whether a negative response by email from a State of transit amounts to conclusive evidence of refusal, or whether it should be followed by a formal written response;
- (e) How to improve the interface with better environmentally sound management of wastes;
- (f) An emphasis on the importance of timeliness on responding to notifications;
- (g) How to deal with shipments when there are differing views on the meaning of “hazardous waste”.
- (h) The harmonisation of the practice of the States of transit; for example some transit states do not allow ships to land hazardous wastes, whilst other transit states allow storage in ports (for example in warehouses), sometimes for a limited period of time.

82. If there is to be guidance, it would also cover the paragraph 4, Article 6 issues mentioned above: re-routing; the meaning of “transit”; and the sixty day deadline.

83. It is recommended that the ICC consider initiating the development of such guidance for the consideration of the Conference of the Parties at its thirteenth meeting, and include its finalization in its 2018-2019 work programme.

3. Changes to current formats and practices

84. A considerable number of parties suggested changes to current formats and practices under the Basel Convention with respect to the implementation of paragraph 4 of Article 6. It is recommended that the ICC put forward the following recommendations to the Conference of the Parties at its thirteenth meeting, as follows:

- (a) The Conference of the Parties should amend the format for national reporting under Article 13 to include a question related to third sentence of paragraph 4 of Article 6 as well as, for sake of completeness, a question on the meaning of “transit” at the national level. The legal basis for this change in the format could be Article 13(3)(c) or (i); Article 13 does not expressly relate to the third sentence of paragraph 4 of Article 6;
- (b) To complement this change and ensure harmonization between both the notification and the reporting formats, the Conference of the Parties should similarly amend the Standardized reporting format for transmitting information under paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention (import and export prohibitions);
- (c) The Conference of the Parties should also encourage parties to inform the Secretariat whether they have decided not to require written consent pursuant to the third sentence of paragraph 4 of Article 6, either through their national report or through notification and request the Secretariat to publish the information provided on the Basel Convention website. This would improve the information available to parties on which countries do not require written consent pursuant to the third sentence of Paragraph 4 of Article 6;
- (d) The Conference of the Parties should further encourage parties to ensure the contact details of Competent Authorities, including e-mail addresses, are kept up to date. With this in mind, the Basel Convention website could be designed so that representatives of Competent Authorities, with the appropriate electronic authorisations, may log in and update details.

4. Illegal traffic

85. There have been a number of issues raised with respect to illegal traffic. It is recommended that these issues should be separated out and, for the sake of effectiveness and focus, dealt with during current and/or future work on illegal traffic.

5. Parties as States of transit

86. As we have seen, issues were raised about states of transit. Some of the mentioned challenges are directed at the lack of compliance by such States with specific obligations:

- (a) The obligation to “promptly” acknowledge receipt of notifications;
- (b) The obligation to inform the Secretariat of changes regarding the designation of competent authorities or focal points;

(c) The obligation to notify the Secretariat that they have decided not to require prior written consent, as provided for in Paragraph 4 of Article 6.

87. It is recommended that States of transit comply with the requirements of paragraph 4 of Article 6 and associated decisions and procedures, and that the Conference of the Parties remind parties of their obligations to do so.

6. Capacity building

88. There also appear to be problems relating to a lack of capacity, including in some parties:

- (a) A lack of knowledge, in the judiciary or among Customs, of Basel Convention provisions;
- (b) The need to review of national legal frameworks to ensure they adequately the provisions of the Basel Convention pertaining to transit transboundary movements;
- (c) Difficulties completing the notification form, and requested assistance in this regard;
- (d) Difficulties in validating the information contained in notification and movement documents.

89. It is recommended that States of transit that need capacity building seek all assistance available to them under the Convention, including from the Secretariat and the Basel Convention Regional Centres (BCRCs). It also recommended that the Secretariat undertake capacity building activities aimed at improving the completion of the notification and document forms, and targeting Customs and the judiciary. With respect to the review of national legal frameworks, it is suggested that this objective be considered by the Committee in the context of its activity aimed at improving the implementation and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention.

Appendix I

Questionnaire for Parties

Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

Introduction

Background

By its Decision BC-12/7, the Conference of the Parties to the Basel Convention, at its twelfth meeting, adopted the work programme for the biennium 2016-2017, whereby the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (ICC) was requested to improve the implementation of and compliance with Article 6 of the Convention by considering what additional steps could be taken to improve the implementation of and compliance with that provision.

Within this mandate, the Committee has agreed to undertake activities more specifically aimed at improving paragraph 4 of Article 6 on transit. To assist the Committee with its work, Parties are invited to provide information about their experiences in implementing paragraph 4 of Article 6 of the Basel Convention by responding to this questionnaire, including the difficulties faced by Parties and possible ways to overcome them. Information collected from Parties will be used as a basis for the development of recommendations to the Conference of the Parties on way to improve the implementation of this provision.

Paragraph 4 of Article 6 reads as follows:

"Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit."

Instructions for completing and submitting the questionnaire

The ICC encourages focal points to seek the cooperation of competent authorities in completing this questionnaire.

Questionnaires are to be submitted to the Secretariat no later than **31 January 2016**. Any substantive questions pertaining to this questionnaire may be addressed to Mrs. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT questions pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

The Implementation and Compliance Committee

Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

I. National or regional legal framework pertaining to the implementation of paragraph 4 of Article 6 of the Basel Convention

1. a. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 4 of Article 6 of the Basel Convention?

- No
 Yes

If **yes**, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

Please also provide the text of such relevant national provision implementing paragraph 4 of Article 6 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 4 of Article 6 of the Basel Convention

If possible attach a copy or indicate where this can be downloaded

upload file

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If **no**, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 4 of Article 6 of the Basel Convention

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Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

II. Definition of "transit" at the national level

The Basel Convention defines "State of transit" as "any State, other than the State of export or import, *through which* a movement of hazardous or other wastes is planned or takes place" (*emphasis added*).

2. a. Does your country have a definition of "transit"?

- No
 Yes

If yes, provide the definition.

2. b. In your country, which of the following instances would fall within the meaning of "transit"?

- A ship transporting wastes covered by the Basel Convention enters the **Exclusive Economic Zone (EEZ)**¹;
- A ship transporting wastes covered by the Basel Convention enters **territorial waters** (territorial sea or internal waters);
- A ship transporting wastes covered by the Basel Convention enters the **free zone**;
- A ship transporting wastes covered by the Basel Convention calls at a port, **without offloading the wastes**, and leaves for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on the same ship**, and leaves the port for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on a different ship** destined for a different port of discharge;
- A ship transporting wastes covered by the Basel Convention calls at a port, with **offloading and reloading of the wastes on a different transporter** (eg. truck, train) destined for a different country;

- A transporter other than a ship (eg. truck, train) transporting wastes covered by the Basel Convention enters and leaves the territory **without offloading the wastes**;
- A transporter other than a ship (eg. truck, train) transporting wastes covered by the Basel Convention enters the territory, **offloads and reloads the wastes** and leaves the territory;
- A transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters the territory, **offloads and reloads the wastes on a different transporter** that then leaves the territory;
- Other instances.

Please describe any such other instances in which a "transit" is deemed to take place (e.g. activities such as storage or repackaging of the wastes)

¹ Without prejudice to Parties' national legislation and views, definitions of "Exclusive Economic Zone", "territorial sea" and "free zone" may be found in the United Nations Convention on the Law of the Sea, respectively in Articles 55, 2 and 3, and 126. See: http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

2. c. Would any answer above be different in the event a ship or transporter acted due to force majeure?

- No
- Yes

If **yes**, please explain what would amount to "force majeure" in your country and how it would impact the meaning of "transit" and the implementation of paragraph 4 of Article 6.

2. d. Does the definition of "transit" include temporal elements, e.g. is the amount of time needed to go "through" your country relevant?

- No
- Yes

If **yes**, please elaborate.



2. e. Do Customs have a responsibility in determining at the national level whether a "transit", as defined under the Basel Convention, has occurred or may occur?

- No
- Yes
- Other entity has this responsibility (Please specify which)



If **yes**, please explain the responsibility of Customs and how they interact with the Basel Convention Competent Authority



Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

III. Other aspects of paragraph 4 of Article 6

3. a. Has your country decided to **not consent** totally or partially to the transit of hazardous wastes and other wastes?

- No
 Yes

If **yes**, please provide information on your country's restriction or ban of transit transboundary movements of hazardous wastes or other wastes

3. b. Has your country decided **not to require prior written consent**, either generally or under specific circumstances, for transit transboundary movements of hazardous wastes or other wastes?

- No
 Yes

If **yes**, please provide information on the scope of your country's decision and whether this information was notified to the Secretariat

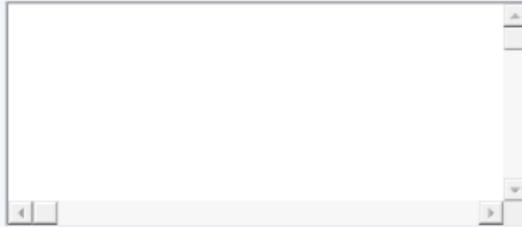
3. c. Paragraph 4 of Article 6 ab initio reads: *"Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It **may** subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export **shall not allow the transboundary***

movement to commence until it has received the written consent of the State of transit. (emphasis added).

Please provide information on your country's understanding and implementation of paragraph 4 of Article 6 ab initio:

- A transboundary movement cannot commence following the 60 days deadline if no written consent was received from the State of transit;
- A transboundary movement can commence following the 60 days deadline if no written consent was received from the State of transit;
- Other.

If your country has a different understanding of paragraph 4 of Article 6 ab initio, please elaborate.



Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

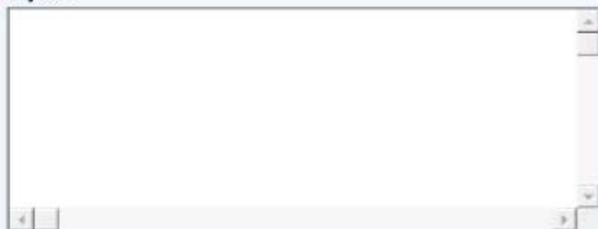
Questionnaire for Parties

IV. Experience in implementing paragraph 4 of Article 6 of the Basel Convention: challenges and best practices

4. a. Does your country have experience as a "transit" country?

- No
 Yes

If **yes**, please provide information on how often on average your State has been a transit State in the last five years



4. b. Can your country share **best practices** with respect to the implementation of paragraph 4 of Article 6 of the Basel Convention?

- No
 Yes

If **yes**, please elaborate



4. c. Has **your country** faced any **difficulties** in implementing the provision in paragraph 4 of Article 6 of the Basel Convention?

- No

Yes

If **yes**, provide the nature of the difficulties encountered:

(i) Domestic difficulties:

- Lack of or inappropriate domestic legal or institutional framework to implement paragraph 4 of Article 6 of the Basel Convention;
- Lack of clarity about the definition of "transit" at the national level;
- Lack of clarity about the way to implement paragraph 4 of Article 6 ab initio (see question 3. c. above);
- Lack of awareness among relevant entities within the country involved in transit transboundary movements of hazardous and other wastes about the requirements of paragraph 4 of Article 6 (e.g. Customs, port authorities);
- Lack of coordination/cooperation at the national level among relevant entities involved in transit transboundary movements of hazardous and other wastes;
- Lack of awareness among stakeholders within the country involved in transboundary movements of hazardous and other wastes about the requirements of paragraph 4 of Article 6 (e.g. generators, transporters, exporters, importers, disposers);

Other difficulties:

Please also elaborate on any box you have ticked

(ii) International cooperation difficulties:

- Lack of information on other Parties' definition or understanding of "transit";
- Lack of information by other Parties or stakeholders within other Parties of your country's definition or understanding of "transit";
- Lack of harmonized definition or understanding of the meaning of "transit" at the global level;
- Lack of shared understanding among Parties of how to implement paragraph 4 of Article 6 ab initio (see question 3. c. above);
- Lack of response from transit States to a proposed transboundary movement;

Difficulties as a land-locked country;

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

4. d. Is your country aware of any **difficulties** faced by **stakeholders** (e.g. generators, transporters, disposers) involved in transit transboundary movements with the implementation of paragraph 4 of Article 6 of the Basel Convention?

- No
- Yes

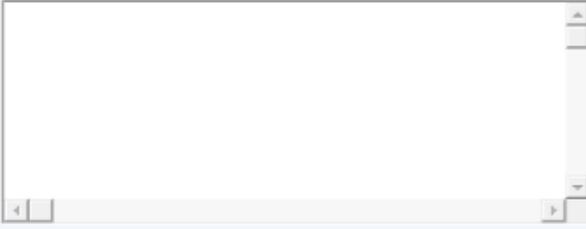
If yes, provide the nature of the difficulties encountered

4. e. Has your country been able to overcome difficulties stated under sections 4. c. and 4. d. above?

- No
- Yes

If yes, explain how

4. f. Would you have **suggestions** to the Committee on how to improve the implementation of paragraph 4 of Article 6 of the Basel Convention, whether at the national or global level (eg. development of guidance, information sharing, technical assistance)?

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Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

V. Other relevant information

Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraph 4 of Article 6 of the Basel Convention that is not included in answers to the above questions.

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Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Parties

VI. Submitter information

Submitting Party:

Party:

Contact details of the person who completed the questionnaire:

Name:

Title:

Address:

Telephone:

Fax:

E-mail:

To submit the questionnaire, please enter the Submission password provided and click on "Next page".

If you do not wish to submit the questionnaire at this time, you can click on the "Save" button and exit the questionnaire.

Submission password:

Appendix II

Questionnaire for Stakeholders

Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Stakeholders

Introduction

Background

By its Decision BC-12/7, the Conference of the Parties to the Basel Convention, at its twelfth meeting, adopted the work programme for the biennium 2016-2017, whereby the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (ICC) was requested to improve the implementation of and compliance with Article 6 of the Convention by considering what additional steps could be taken to improve the implementation of and compliance with that provision.

Within this mandate, the Committee has agreed to undertake activities more specifically aimed at improving paragraph 4 of Article 6 on transit. To assist the Committee with its work, Parties are invited to provide information about their experiences in implementing paragraph 4 of Article 6 of the Basel Convention by responding to this questionnaire, including the difficulties faced by Parties and possible ways to overcome them. Information collected from Parties will be used as a basis for the development of recommendations to the Conference of the Parties on way to improve the implementation of this provision.

Paragraph 4 of Article 6 reads as follows:

"Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit."

Instructions for completing and submitting the questionnaire

Questionnaires are to be submitted to the Secretariat no later than **31 January 2016**. Any substantive questions pertaining to this questionnaire may be addressed to Mrs. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT questions pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

The Implementation and Compliance Committee

Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

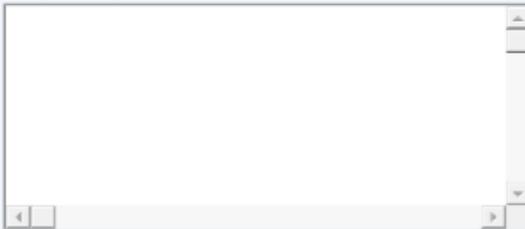
Questionnaire for Stakeholders

I. National or regional legal framework pertaining to the implementation of paragraph 4 of Article 6 of the Basel Convention

1. a. Are you aware of the legal requirements within the country/ies you operate with respect to their implementation of paragraph 4 of Article 6 of the Basel Convention?

- No
 Yes

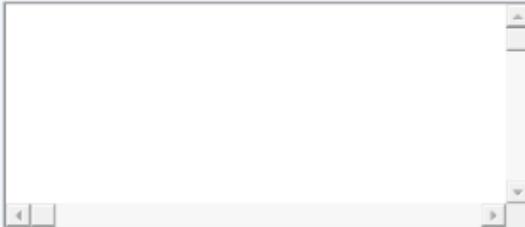
If **no**, please provide information on the reasons for this.

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1. b. The Basel Convention defines "State of transit" as "any State, other than the State of export or import, *through which* a movement of hazardous or other wastes is planned or takes place" (*emphasis added*). Are you aware of the definition of "state of transit" within the country/ies you operate?

- No
 Yes

If **no**, please provide information on the reasons for this.

A large, empty text input field with a vertical scrollbar on the right and horizontal scrollbars at the top and bottom, intended for providing reasons for a 'no' answer to question 1.b.

1. c. Paragraph 4 of Article 6 ab initio reads: "Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It **may** subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export **shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.**" (emphasis added).

Please provide information on your understanding of paragraph 4 of Article 6 ab initio:

- A transboundary movement cannot commence following the 60 days deadline if no written consent was received from the State of transit
- A transboundary movement can commence following the 60 days deadline if no written consent was received from the State of transit
- Other.

If you have a different understanding of paragraph 4 of Article 6 ab initio, please elaborate.



Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Stakeholders

II. Experience with transits: challenges and best practices

2. a. Does your organization have experience with "transit" transboundary movements of hazardous and other wastes?

- No
 Yes

If **yes**, please provide information on how often on average your organization has been involved in such movements in the last five years



2. b. Can your organization share **best practices** with respect to transit transboundary movements of hazardous and other wastes?

- No
 Yes

If **yes**, please elaborate



2. c. Has your organization faced any **difficulties** with transit transboundary movements of hazardous and other wastes?

- No
- Yes

If **yes**, provide the nature of the difficulties encountered:

- Lack of information on Parties' definition or understanding of "transit";
- Lack of harmonized definition or understanding of the meaning of "transit" at the global level;
- Lack of shared understanding among Parties of how to implement paragraph 4 of Article 6 ab initio;
- Difficulty in receiving a response (consent or denial to the proposed movement) from all transit States;
- Difficulties associated with a change in a transit State subsequently to the initiation of the movement and to secure a response (consent or denial to the proposed movement) from a new transit State;
- Lack of awareness among relevant entities within the country involved in transit transboundary movements of hazardous and other wastes about the requirements of paragraph 4 of Article 6 (e.g. Customs, port authorities);
- Other difficulties:

Please also elaborate on any box you have ticked

2. d. Has your organization been able to **overcome** any of the difficulties stated above?

- No
- Yes

If **yes**, explain how

2. e. Would you have **suggestions** to the Committee on how to improve the implementation of

paragraph 4 of Article 6 of the Basel Convention, whether at the national or global level (eg. development of guidance, information sharing, technical assistance)?



Implementation of and compliance with paragraph 4 of Article 6 of the Basel Convention on transit

Questionnaire for Stakeholders

III. Other relevant information

Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraph 4 of Article 6 of the Basel Convention that is not included in answers to the above questions.



**Implementation of and compliance with
paragraph 4 of Article 6
of the Basel Convention on transit
Questionnaire for Stakeholders**

IV. Submitter information

Submitting Stakeholder:

Organization:

Contact details of the person who completed the questionnaire:

Name:

Title:

Department:

Address:

Country:

Telephone:

Fax:

E-mail: