



**Committee for Administering the Mechanism
for Promoting the Implementation and Compliance
of the Basel Convention**

Eleventh meeting

Geneva, 22–24 September 2014

Item 4 (d) of the provisional agenda*

**Review of general issues of compliance and
implementation under the Convention:
insurance, bond, guarantee**

Insurance, bond, guarantee¹

Note by the Secretariat

I. Introduction

1. Reference is made to the information set out in document UNEP/CHW/CC.10/10 which was considered by the Committee Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention (hereinafter “the Committee”) during its tenth meeting (Paris, France, 5–6 December 2013). Reference is also made to paragraphs 52 and 53 of the report of that meeting² according to which the Committee agreed, among other things, to request the Secretariat, under the guidance of the lead Committee member: to develop a questionnaire with a view to collecting information on how parties are implementing paragraph 11 of Article 6 of the Basel Convention, including challenges associated with this implementation and possible ways to overcome them: to publish in the website of the Convention responses received to the questionnaire; and to prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee at its eleventh meeting.

II. Implementation

2. Terms of reference for a consultant to support the work of the Committee were prepared in consultation with the lead Committee member and a call for applications was communicated to all parties and Basel Convention regional centres. Thanks to a financial contribution from the European Union, a consultant was subsequently hired.

3. Three electronic questionnaires were developed under the guidance of the lead Committee member and distributed to parties (in French, English and Spanish), Basel Convention regional centres and other organizations, and stakeholders from the private sector. The questionnaires were sent out between 29 March and 1 April 2014 and posted on the website of the Basel Convention, with a 30 May 2014 deadline to respond.

* UNEP/CHW/CC.11/1.

¹ This document has not been formally edited.

² UNEP/CHW/CC.10/14.

4. By 15 June 2014, responses had been received from 28 parties and six Basel Convention regional centres and other organizations. These responses were published on the website of the Basel Convention and are set out in document UNEP/CHW/CC.11/INF/4.
5. A report on the implementation of paragraph 11 of Article 6, including recommendations pertaining to the development of guidance on how to implement this provision, based on the responses received to the questionnaires, is set out in the annex to this note.
6. During the first meeting of the Small Intersessional Working Group on Legal Clarity established by decision BC-11/1 (2–3 June 2014, Montreux, Switzerland), the lead Committee member and the Chair of the Committee, in their capacity as members of that group, were informed that the Expert Working Group on Environmentally Sound Management established by that same decision was in the process of developing a practical manual on the issue of insurance and liability. The Expert Working Group recommended to the Small Intersessional Working Group on Legal Clarity that it define four terms, namely “bond”, “financial guarantee”, “insurance” and “liability”, in the glossary of terms under development by that group. The Small Intersessional Working Group on Legal Clarity however decided to defer this matter further to the Committee in the context of its work on insurance, bond and liability³.
7. Following consultations between the lead Committee member, the Chair of the Committee and the co-Chairs of the Expert Working Group, it was agreed that both the Committee and the Expert Working Group would be invited by their respective Chair and co-Chairs to make all efforts to coordinate their work and possibly develop a joint outcome.

III. Proposed action

8. The Committee is invited to consider the information contained in this note, including the recommendations set out in the draft report annexed thereto, and in document UNEP/CHW/CC.11/INF/4. Should the Committee decide to undertake further work on the issue of insurance, bond and guarantee, it may wish to consider consulting the Expert Working Group on Environmentally Sound Management with a view to developing a joint outcome for the consideration by the Conference of the Parties at its twelfth meeting.

³ Report of the first meeting of the Small Intersessional Working Group on Legal Clarity (Montreux, 2–3 June 2014), document UNEP/CHW/CLI_SIWG.1/4.

Annex

Report on the Implementation of Paragraph 11 of Article 6 of the Basel Convention, Pertaining to Insurance, Bond or other Guarantee for Transboundary Movements of Hazardous Wastes and other Wastes

Executive Summary

The Committee Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention has, through its adopted work programme, commissioned a study of the implementation of paragraph 11 of Article 6 of the Convention (“the provision”), on insurance bond and guarantee, to be undertaken by means of a questionnaire to Parties, Basel Convention Regional Centres and stakeholders, including the insurance industry.

The responses to questionnaires submitted for the purpose of preparing this report have added to and updated the information held by the Secretariat on the application of the provision. In total 34 unique responses were received. They have indicated a wide variety of application and methods of implementation of the provision, including differing legal requirements, various ways of calculating the value of an insurance, bond or guarantee, their scope and potential beneficiaries. While little experience of implementation and compliance has been reported (and it is thought to be largely self-policing), the challenges of: differing methods of calculation/lack of a common method of calculation of the guarantee and differing legal requirements between States were most often cited as the main challenges in implementation of the provision.

These variations in approach are amenable to better alignment through development and adoption of common guidance. A number of steps would need to be taken to prepare appropriate material including:

- (a) Initiate dialogue with relevant experts, especially in the environmental insurance market;
- (b) Initiate review of the interpretation aspects of the provision in all languages with a view to ensuring they are compatible at a global level;
- (c) Elaborate on the differences in legislation used to implement the provision;
- (d) Examine existing guidance documents on the matter;
- (e) Develop case studies based on information obtained from Parties and other stakeholders that serve to illustrate best practice in the operation of the provision and the mechanism;
- (f) Draft a suitable common basis for calculation of the value of a specific shipment’s insurance bond or guarantee taking into account any regional factors (that may include e.g. the assessment of ESM, costs of identification, transport and disposal);
- (g) Produce a draft document that combines the outputs from the above tasks that may be either used to complement existing guidance or be adopted and published as a stand – alone guidance document.

Such steps could be of assistance in developing guidance on how to implement this provision, for consideration and possible adoption by the twelfth meeting of the Conference of the Parties.

I. Introduction

1. By its decision BC-11/8 the Conference of the Parties to the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal, at its eleventh meeting, adopted the work programme for the biennium 2014–2015 of the Committee Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention (hereinafter “the Committee”). The Committee was requested to compile information on how Parties are implementing paragraph 11 of Article 6 of the Convention (hereinafter “the provision”), including through national legislation. The Committee were to consider the development of guidance on how to implement this provision, for consideration and possible adoption by the twelfth meeting of the Conference of the Parties. This activity was considered by the Committee during its tenth meeting (Paris, 5–6 December 2013) on the basis of document UNEP/CHW/CC.10/10¹.

2. During its tenth meeting, the Committee agreed to request the Secretariat, under the leadership of the Committee lead member and within available resources to, inter alia:

(a) Develop a questionnaire with a view to collecting information on how Parties are implementing paragraph 11 of Article 6, including challenges associated with this implementation and possible ways to overcome them;

(b) Send the questionnaire to Parties, Basel Convention Regional Centres and other relevant stakeholders;

(c) Publish on the website of the Convention the responses received to the questionnaire;

(d) Compile the information received and prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting.

3. The above activities constituted the terms of reference for the production of this report. The information obtained, including the preparation of the questionnaire, collation and analysis of the results of the questionnaire, and the draft recommendations form the basis of the report.

II. Part I - Article 6 of the Basel Convention paragraph 11 - Insurance, Bond and Guarantee

A. Purpose, questionnaire results, challenges for implementation and lessons learned

1. Article 6 paragraph 11 - Purpose

4. Article 6 of the Convention pertains to transboundary movements of hazardous and other wastes among Parties to the Convention. This article sets out the conditions and procedures that must be complied with for such a movement to take place in accordance with the Convention. Paragraph 11 of Article 6 reads as follows:

“11. Any transboundary 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.”

5. Guarantees referred to in paragraph 11 of Article 6 “are intended to provide for immediate funds for alternative management of the waste in cases where shipment and disposal cannot be carried out as originally intended. These guarantees may take the form of an insurance policy, bank letters, bonds or other promise of compensation for damage, depending on the countries concerned”² (emphasis added). The exporter is to “arrange the necessary financial guarantees and insurances for the movement of waste required by the national legislation of the countries concerned. Some countries may require the financial guarantee to cover the cost of any necessary re-import and alternative disposal operations should the need arise, including cases referred to in Articles 8 and 9 of the Basel

¹ ICC-10 documents are available at :

<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>

² Guide to the Control System (Instruction Manual), adopted by the fourth meeting of the Conference of the Parties, Kuching, Malaysia February 1998, Section 4.4, page 8. The Guide is available at:

<http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>

Convention. Additionally, they may require separate insurance against damage to third Parties, held as appropriate by the exporter, carrier and the disposer”³ (emphasis added).

6. Accordingly, the notification document, which is required for transboundary movements/shipments of waste⁴ provides, in block 17, for the exporter - notifier / generator - producer to certify that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Similar language is set out in block 15 of the movement document.

2. Review of available information

7. The annex to document UNEP/CHW/CC.10/10, prepared by the Secretariat, sets out the information held by it, noting that the Manual for the Implementation of the Basel Convention does not provide further guidance on paragraph 11 of Article 6 to the Convention. The Guide to the Control System does set out the purpose of the guarantees and the requirements for proof of insurance in the notification and movement documents and the contract between the exporter and the disposer.

8. The Secretariat, as described in the annex to UNEP/CHW/CC.10/10, holds information in relation to national reporting, national definitions of hazardous waste and the Protocol on Liability and Compensation, the latter also reporting on several workshops in which the issue of insurance was raised. This document concludes that “(t)he information held by the Secretariat with respect to Parties’ implementation of paragraph 11 of Article 6, in particular as reported under paragraph 3 of Article 13, evidences that members of the European Union as well as several countries in the African region and in the Latin American and Caribbean region have specific requirements with respect to the coverage by insurance, bond or guarantee of transboundary movements of hazardous and other wastes.” This information is not deemed to be comprehensive as it relies on national reporting and the information held by the Secretariat as a result of the notification of a national definition of hazardous wastes does not address the matter of Parties’ implementation of paragraph 11 of Article 6. The information from Parties collected in the context of the Protocol on Liability and Compensation is also recognized as having a narrower scope than that of paragraph 11 of Article 6.

9. The OECD control system⁵ for the control of transboundary movement of hazardous recoverable waste sets out the scope of an appropriate financial guarantee. The OECD Decision requires that, where applicable, the exporter or the importer shall provide financial guarantees in accordance with national or international law requirements, in order to provide immediate funds for alternative recycling, disposal or other means of environmentally sound management of the wastes in cases where the transboundary movement and the recovery operations cannot be carried out as foreseen. It states that “A financial guarantee may take the form of an insurance policy, bank letters, bonds or other means of compensation, depending on the countries concerned.” It is also a requirement that OECD member countries make the information available to other member countries through a specific internet system established by the OECD Secretariat. The OECD maintains an interactive database⁶ on its website. The database includes the necessary information to complete the forms for notification and movement documents, including financial guarantee provisions of member States.

10. This information was to be supplemented with additional information obtained by questionnaires to assist the Committee to fulfil its mandate to consider the merits of development of guidance on how to implement the provision.

B. The Questionnaires – Development and scope

11. Three questionnaires were devised to elicit information from Parties and others about the use of the provision. One questionnaire was for Parties to the Basel Convention, another for Basel Convention Regional and Coordinating Centers (BCRCs) and other organizations, and a third one for other stakeholders with the potential to offer services in connection to insurance, bond and guarantee. While covering much the same ground, the questions were framed differently to take into account the relative perspectives of the three different groupings and their likely experience and information held. The questionnaires are set out in annexes I to III to this report.

12. The questionnaires sought information on the following areas:

³ Id. page 12.

⁴ The form was adopted by decision VIII/18 in 2006

⁵ Council Decision C(2001)107/Final, As Amended, On The Control Of Transboundary Movements Of Wastes Destined For Recovery Operations.

⁶ <http://www2.oecd.org/waste/>

- (a) Legislation in place/planned/other mechanisms;
- (b) TBM covered/ scope/beneficiary;
- (c) Financial mechanism (FM) type;
- (d) FM activation;
- (e) Calculation;
- (f) Monitoring;
- (g) Experience;
- (h) Availability of guidance;
- (i) Implementation challenges;
- (j) Improvements;
- (k) Any additional comments.

C. The Questionnaires - Responses received

13. All Parties, BCRCs, 15 organizations and 27 other stakeholders were invited to respond to the questionnaires. Replies provided by Parties, through their focal point, to the slightly differently worded questionnaire to BCRCs and other organizations have been counted as received from Parties. In total 34 unique responses were received:

- (a) 28 from Parties⁷ (two of which, namely Comores and Serbia, used the BCRC questionnaire to respond);
- (b) Two from BCRCs⁸ including 10 additional responses from Parties collected by one Centre (two of which also replied as Parties- Honduras and Guatemala)⁹;
- (c) Four responses from other organizations¹⁰.

14. No response was received from other stakeholders from the private sector.

15. Responses were published on the website of the Basel Convention and are set out in document UNEP/CHW/CC.11/INF/4. An analysis of the responses is given below.

16. Not all questions were answered by all the respondents. Among the Party responses some 17 Parties provided substantively complete information. This amounts to 10% of the total number of Parties to the Basel Convention. These can be joined with six substantive responses to the BCRCs and other questionnaires to provide 23 informative sets of data. All UN Regions are represented.

17. It can be deemed that a satisfactory range of responses was received both in terms of the number and the geographical coverage across UN regions. Overall these may be considered to be reasonably representative of the Parties' range of views. Disappointingly no other stakeholders, particularly insurance companies, submitted information.

1. Responses to the Questionnaire for Parties

18. The main points arising from the questionnaire are highlighted below. The responses vary between Parties and within regions covering many possible combinations. The commentary draws attention to key issues expressed by the respondents. These results are shown for the 28 Party responses, a number of which, as stated, were not complete. To avoid giving a false impression that this may reflect the views of all Parties, the number of respondents is usually recorded for a particular issue in preference to representing the figures as percentages.

⁷ Argentina, Bahrain, Belgium, Cabo Verde, Central African Republic, Colombia, Comoros, Cote d'Ivoire, Democratic Republic of Congo, Estonia, Finland, Germany, Guatemala, Guinea, Honduras, Iraq, Lithuania, Madagascar, Moldova, New Zealand, Oman, Portugal, Senegal, Serbia, Slovak Republic, Switzerland, Togo and Ukraine.

⁸ Basel Convention Regional Centre for Central Europe (Slovakia) and Basel Convention Coordinating Centre for Latin American and Caribbean Region (Uruguay).

⁹ Belize, Bolivia, Brazil, Dominican Republic, Ecuador, Guyana, Panama, Peru, Trinidad and Tobago, and Uruguay.

¹⁰ Environment Agency & Scottish Environmental Protection Agency, Environmental Services Association, International Network for Environmental Compliance and Enforcement, and Swedish Recycling Industries' Association/FEAD

(a) Part I legislation and institutional framework: Q1-13**(i) Legislation in place/planned/ other mechanisms - Q1-3**

19. About half (15) of the Parties have legislation in place implementing paragraph 11 of Article 6. Three Parties were at the planning stage and six made use of mechanisms other than legislation. Five declared they had no provisions at all. One respondent (in French) queried if this provision was an obligation of the Convention as the French text of paragraph 11 of Article 6 uses the verb “pouvoir” or “may”). The Spanish text appears to express this provision in similar terms.

(ii) TBM covered/ scope/beneficiary - Q4-6 and Q8

20. Twelve Parties apply the mechanism to all modes of transboundary movements (export, import and transit), the rest variously covering export only or export and transit.

21. The beneficiary was given by nine as the State of export, import or transit, the generator by two Parties, the State of export alone by two Parties. The scope of the guarantee varied quite widely with nine providing for costs of storage, four covering costs of testing for identification, and 11 for costs of transport. On liability based matters, 12 covered costs of environmentally sound disposal. Cost of reinstatement or compensation for environmental damage (Q8 option g) was included by eight respondents, five cited loss of damage to property and four loss of life or personal injury. Only one cited loss of income. As reported by the Environment Agency & Scottish Environmental Protection Agency, the United Kingdom had the widest scope, covering all options.

(iii) FM type Q7

22. The main type of financial mechanism employed was insurance, or insurance and guarantee (15), with three of these also permitting bonds to be used. No Party employed bonds alone, these were always available alongside other options.

(iv) FM activation Q11

23. The decision to activate the financial mechanism was most frequently (12 responses) determined by a request from the beneficiary of the financial mechanism (option 11b in the questionnaire), three Parties mentioned a request by the entity required to cover the transboundary movement with a financial mechanism (option 11a) and three mentioned the mechanism was activated on insolvency of the entity required to cover the transboundary movement with a financial mechanism option (11e).

(v) Calculation Q12

24. In most cases a formula was applied (14). The level of the financial cover is calculated according to either the prevailing legislation, or a formula devised by the Competent Authority, with just two Parties claiming no formula was used and 12 not giving a response to this question.

(vi) Mechanisms in place to monitor implementation and compliance with paragraph 6 of Article 11 Q13

25. Monitoring was conducted in most cases (11 responses) by the monitoring of the notification and movement documents (option 13d of the questionnaire) with others relying on inspections by relevant authorities (seven Parties), only two (including the UK as reported by the Environment Agency & Scottish Environmental Protection Agency) employing both methods.

(b) Part II Experience with implementation - Q14-19

26. Several Parties (five) had not authorised movements due to non-compliance with paragraph 11 of Article 6, the reason given for all such cases being insufficiency of cover (option c(ii)). Additionally, in one instance, no authorization resulted from the failure to complete the notification/movement document (option c(i)). Some Parties reported activation of the provision (Q16), five reporting activation where disposal in an environmentally sound manner could not be completed (option b). On actions taken or sanctions for non-compliance with the provision, seven had taken some action of which five indicated that administrative sanctions had been taken, four indicated that administrative warnings had been issued and three mentioned prosecution. A large number of Parties (17) did not provide any answer to this question.

(c) **Part III Improving the Implementation of and Compliance with paragraph 11 of Article 6 - Q20-23**

(i) **Availability of guidance Q20**

27. The availability of guidance was indicated in nine responses¹¹ including those where the competent authority had issued the guidance (one).

(ii) **Implementation challenges Q21**

28. The differing methods of calculation/lack of a common method and legal requirements (options a, b, d) between States were most often cited (12 Parties) as the main challenges in implementation of the provision. A lack of action was cited by three Parties: in two of their cases failure of a relevant entity to initiate action (testing etc.. option f) and in two further cases a failure by the relevant entity to activate the financial mechanism (option g).

(iii) **Improvements Q23**

29. Improvements to the implementation and compliance with paragraph 11 of Article 6 were suggested to be made by a combination of better (or some) guidance (nine Parties) (option b), the development of legislation (six Parties) (option a) and information exchange between Parties on their respective legal requirements (eight Parties) (option c). Additional commentary pointed to the complexity of assessing the potential costs for longer term environmental damage and the difficulty that this creates in setting a value for the insurance or guarantee. Greater consistency in establishing such values could be achieved through common guidance, one suggestion was made that benchmarking costs would be of assistance.

2. **Responses to Questionnaire for BCRCs and other organizations**

30. Of those six non-Parties that responded to the questionnaire for BCRCs and other organizations, two were from BCRCs, one of which (BCRC Uruguay) detailed replies from 12 Parties. Two of these latter, Guatemala and Honduras, also made substantive replies as Parties whose information was included in the previous section. Two waste industry associations, one national and one European, and an NGO compliance body also replied. The numbers indicated below take into account the BCRC subset of responses.

(a) **Information on services**

31. The response from the BCRC Uruguay set out eight Party responses indicating the holding information on services. On the nature of the services offered the major areas identified were liability for damage to the environment and transport.

(b) **TBM covered/scope/beneficiary**

32. On information held on geographical scope of services, four held world-wide information, one regional and two national only. The majority held information on export and on import coverage. The scope varied widely only one offering all options, most others allowing for cost of storage, transport, loss of damage to property and environmental damage. This contrasts with the responses received directly from Parties where the greatest number was for environmentally sound disposal. On the entity that is the beneficiary of the financial mechanism, eight respondents held information on the exporter and four on the transporter. The beneficiary in most cases was the State of export, import or transit.

(c) **FM type**

33. The types of financial mechanism were said to be insurance (six responses), bond (three responses) and guarantee (five responses). Five offered more than one type.

(d) **Calculation**

34. Legislation accounted for five methods, competent authority formula for three.

¹¹ France, Finland, Germany, Madagascar*, New Zealand*, Portugal*, Switzerland*, Serbia, Ukraine; *these have attached a copy or provided a web link.

(e) Monitoring

35. The mechanism most cited to monitor the implementation and compliance were monitoring of the notification and movement documentation (six responses).

(f) Availability of guidance

36. Two responses indicated guidance was available¹², and in six cases it was not available.

(g) Implementation Challenges

37. The main challenges for implementation were reported to be differing calculation methods used by States of export/transit (six responses), lack of or differing legal requirements (five responses), lack of common method (five responses) and lack of clarity on legal requirements (four responses).

(h) Improvement

38. Most respondents felt that improvement steps should be through guidance (seven responses), information exchange between Parties on their respective legal requirements (six responses), development of legislation (five responses) and measures to facilitate cooperation (of all types) (five responses).

D. Summary of challenges associated with the implementation of paragraph 11 of Article 6

39. The overall impression gained from the responses to the questionnaires is that there is significant variation in the application and scope of the financial mechanism under paragraph 11 of Article 6 of the Convention. This could be described as a natural lack of uniformity in implementation by Parties which have implemented the provision as befits their specific circumstances. The full range of options made available by the provision is used with many combinations of mechanism (insurance, bond guarantee), calculation method, scope of application and activation approach employed. This gives rise to issues of consistency of application of the mechanism between Parties. A number of concerns have been raised about the variance in the calculation method for example including what factors to take into account and how to cost them.

40. A lack of and/or differing legal requirements have been mentioned several times without being specified. Further investigation of the actual challenges that this raises would be worthwhile.

41. The practical experience of activating any variant of the financial mechanism under paragraph 11 of Article 6 of the Convention is not high, as reported through the questionnaires. Those that have such experience might be able to provide further information to assist in the development of case studies that would serve to better illustrate the problems faced and how best to tackle them. Otherwise issues that have been identified in the responses to the questionnaire have related mainly to the technical complexity of the mechanism and variation in the method of application.

42. Although implementation and compliance has mostly been monitored through documentation checks there has also been little experience reported of enforcement. The respondents have tended to indicate that this provision is largely a self-policing function. A notification or movement would not be approved by a competent authority unless the financial guarantee is in place. This has the effect of suppressing non-compliance at an early stage. Examples have been given in the responses to Q14 of non-approval of a notification/movement as a result of insufficient cover for the financial guarantee being provided. It may be that this would not be likely to deter illegal traffic as operators would need to also employ other measures to circumvent controls such as misdescription or transboundary movement of hazardous waste declared as goods.

43. The main issues facing Parties and others would appear to be therefore:

- (a) Clarifying legal requirements between States;
- (b) Establishing the scope of the mechanism – clarifying what activities it covers;
- (c) Lack of a common method of calculating the financial guarantee between States;
- (d) Calculation of the amount of the coverage (taking into account difficulties in predicting potential environmental damage).

¹² Environment Agency & Scottish Environmental Protection Agency, referring to guidance in the UK (attached), and BCRC Slovakia, referring to guidance in Ukraine (reference given).

E. Means to overcome the challenges

44. The Parties and others responding identified a need for guidance, development of legislation and exchange of information as the key actions that could be undertaken to overcome the challenges of implementation of the financial guarantee mechanism.

45. For legislation to assist it is assumed that this would not be at the Convention level requiring treaty amendment. The scope of the mechanism and the method of calculation of the guarantee, bond etc. could be examined with a view to achieving greater uniformity in its application. Environmental insurance is seen as a complex area with respect to assessments of costs and methodologies for calculation which should benefit from working more closely with insurers. This group may wish to consider the opportunity to assist in developing a common approach rather than dealing with an apparently fragmented scheme. One suggestion made was that costs should be benchmarked. This along with case studies could help to identify commonalities of calculation methods to be applied.

III. Part II - Recommendations on the Development of Guidance

46. This section discusses recommendations on the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting. The recommendations are to assist the Committee in determining whether the development of guidance is susceptible to address the challenges associated with the implementation of this provision. The scope of the guidance to be developed is discussed.

A. The potential for guidance to address the challenges associated with the implementation of the provision

47. The main challenges for implementation of the provision are set out in Part I above. Whether any guidance can assist in overcoming these challenges depend on the likely impact such guidance could have. In general guidance may take two main forms: i) to provide a common interpretation of issues of policy legislation etc. that elaborate on extant provisions for wider application and ii) to provide additional technical material at a more detailed level. These aspects are intended to assist in the consistency of implementation and practical application of relevant provisions and policy. Guidance itself is not mandatory but its development and promulgation serves to form a basis for application of good practice common to all users of it.

48. With respect to interpretative guidance on the provision, at the Convention level one response raised a question about the interpretation of the Convention with respect to the obligation of implementation paragraph of Article 6, in the French language version. Clarification of the extent of the obligation in the different UN language versions of the legal text might be helpful. This may not result in proposals for changes to the legal text but will serve to identify any subsequent need to consider the application of any guidance within and between UN Regions. Otherwise the provision itself is couched in general terms and is open to differing interpretations, a number of responses to the questionnaires have indicated differing legal requirements and a lack of clarity in some legal requirements.

49. With respect to additional technical material, elaboration of this can be helpful where more detailed issues can be described and good practice solutions identified. It is clear that a variety of measures are in place to assist with the technical method of calculating the appropriate level of insurance, bond or guarantee, whichever is employed. This is currently not applied consistently between States and in some cases is absent altogether. The scope of application, for good reasons, also differs between Parties – identifying how these may be correlated or become better aligned could also be elaborated in guidance. In some cases the failure to activate the mechanism has been suggested as an issue; when and how to act could also be a topic for a guidance document.

50. These factors above support the notion that guidance, if developed and adopted, could be beneficial in implementation of the provision.

B. Development of guidance

51. Guidance may take several forms. There may be new, stand-alone, guidance and/or adaptation of or addition to the existing guidance, such as the Manual for the Implementation of the Basel Convention and the Guide to the Control System. It seems most likely that a combination of the two would be preferable to enable the more technical aspects of the financial mechanism to be considered for elaboration in a separate document. This option may be kept open. Should it prove that the elaboration of the mechanics of the provision can be kept reasonably brief then this could be

incorporated as a section in the existing Manual for the Implementation of the Basel Convention and/or Guide to the Control system.

52. Some further preliminary studies may be required to ensure that any guidance is informed by current best practice and experience, beyond the information already received. Some gaps need to be considered with respect to the application of relevant expertise. The absence of input by financial institutions needs to be addressed. The environmental insurance market faces its own challenges in terms of valuing long and short term damage to the environment and how to conduct risk assessments, for example. It would therefore appear to be appropriate to increase dialogue with the private sector through representatives of this industry to assist in defining the parameters and suitable models. This would include such areas as: calculating the level of finance required taking into account existing models, as in the EU for example, and the formulae used by various competent authorities, which may be compared.

53. The guidance may address the following:

- (a) Description of paragraph 11 of Article 6 of the Convention: the text and the extent of the obligation;
- (b) Definition of terms such “bond”, “financial guarantee”, “insurance” and “liability”;
- (c) Elaboration of the purpose of paragraph 11 of Article 6 of the Convention : what it is intended to achieve;
- (d) The types of financial mechanism that may be employed: discussion of the approaches offered by insurance bond or guarantee and their relative merits;
- (e) Types of transboundary movement to which the financial mechanism applies;
- (f) The entities that would establish the guarantee and potential beneficiaries;
- (g) A methodology for calculating the value of the guarantee;
- (h) Means of monitoring the implementation of and compliance with the financial mechanism, data collection;
- (i) Activation of the guarantee: the circumstances under which the guarantee may be called upon;
- (j) Dealing with cases without guarantee:
 - (i) Alternative approaches to detect such cases;
 - (ii) Enforcement;
 - (iii) Illegal traffic.

54. A number of steps would need to be taken to prepare appropriate material including:

- (a) Initiate dialogue with relevant experts, especially in the environmental insurance market;
- (b) Initiate review of the interpretation aspects of the provision in all languages with a view to ensuring they are compatible at a global level;
- (c) Elaborate on the differences in legislation used to implement the provision;
- (d) Examine existing guidance documents on the matter;
- (e) Develop case studies based on information obtained from Parties and other stakeholders that serve to illustrate best practice in the operation of the provision and the mechanism;
- (f) Draft a suitable common basis for calculation of the value of a specific shipment’s insurance bond or guarantee taking into account any regional factors (that may include e.g. the assessment of ESM, costs of identification, transport and disposal);
- (g) Produce a draft document that combines the outputs from the above tasks that may be either used to complement existing guidance or be adopted and published as a stand – alone guidance document.

IV. Conclusion

55. The currently available information on Parties' implementation of paragraph 11 of Article 6 held by the Secretariat was not comprehensive as it relies on national reporting. There are limitations to the scope of other information held by the Secretariat such as that collected in the context of the Protocol on Liability and Compensation. The responses to questionnaires submitted for this report have added to and updated the information on application of the provision. They have demonstrated a wide variety of application and methods of implementation of the provision, including differing ways of calculating the value of an insurance, bond or guarantee. While little experience of implementation and compliance has been reported (and it is thought to be largely self-policing), many responses indicate difficulties in application of the provision due to differing legal requirements, lack of clarity in legal requirements and lack of a common method of calculation of the guarantee.

56. These variations in approach are amenable to better alignment through development and adoption of common guidance. A number of steps would need to be taken to prepare appropriate material including: further dialogue with the insurance industry (whose responses were notably absent despite invitation by questionnaire); establishment of a basis for the scope of the financial mechanism for consistent application; development of a number of case studies based on information obtained from Parties and other stakeholders that serve to illustrate best practice in the operation of the provision and the mechanism and drafting a suitable common basis for calculation of the value of a specific shipment's insurance bond or guarantee taking into account any regional factors (that may include e.g. the assessment of ESM, costs of identification, transport and disposal).

Annex I to the report – Questionnaire for Parties

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

Introduction

By its decision BC-11/8 the Conference of the Parties at its eleventh meeting adopted the work programme for the biennium 2014-2015 of the Committee, whereby the Committee was requested to compile information on how parties are implementing paragraph 11 of article 6 of the Convention, including through national legislation, and consider the development of guidance on how to implement this provision for consideration and possible adoption by the twelfth meeting of the Conference of the Parties.

To assist the Committee with its work, Parties are invited to provide information about their experiences in implementing paragraph 11 of Article 6 of the Convention by responding to this questionnaire, including any further information describing how Parties' own approach has been developed and implemented as well as challenges encountered and possible ways to overcome them.

Article 6 of the Convention pertains to transboundary movements of hazardous and other wastes among Parties to the Convention. This article sets out the conditions and procedures that must be complied with for such a movement to take place in accordance with the Convention. Paragraph 11 of Article 6 reads as follows:

“11. Any transboundary 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.”

Background

The Manual for the Implementation of the Basel Convention does not provide further guidance on paragraph 11 of Article 6. The Guide to the Control System provides that the guarantees referred to in paragraph 11 of Article 6 “are intended to provide for immediate funds for **alternative management** of the waste in cases where shipment and disposal cannot be carried out as originally intended. These guarantees may take the form of an insurance policy, bank letters, bonds or other promise of **compensation for damage**, depending on the countries concerned” (emphasis added). The guide further provides that the exporter is to “arrange the necessary financial guarantees and insurances for the movement of waste required by the national legislation of the countries concerned. Some countries may require the financial guarantee to cover the cost of any necessary **re-import** and **alternative disposal** operations should the need arise, including

cases referred to in Articles 8 and 9 of the Basel Convention. Additionally, they may require separate insurance against **damage to third parties**, held as appropriate by the exporter, carrier and the disposer” (emphasis added).

The notification document for transboundary movements/shipments of waste provides, in block 17, for the exporter - notifier / generator - producer to certify that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Similar language is set out in block 15 of the movement document.

This activity of the work programme of the Committee was considered by the Committee during its tenth meeting (5-6 December 2013) on the basis of document UNEP/CHW/CC.10/10 at what time the Committee agreed to request the Secretariat, under the leadership of the Committee lead member and within available resources to, inter alia:

- develop a questionnaire with a view to collecting information on how parties are implementing paragraph 11 of Article 6, including challenges associated with this implementation and possible ways to overcome them;
- send the questionnaire to Parties, Basel Convention Regional Centres and other relevant stakeholders;
- publish on the website of the Convention the responses received to the questionnaire;
- compile the information received and prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting.

Instructions for completing and submitting the questionnaire

A **login and password** have been provided by the Secretariat to each Party’s focal point. The login and password allow access to the online questionnaire and can be shared by the focal point with other entities contributing to completing the questionnaire. In addition, a **submission password** has been provided by the Secretariat to the focal point: the submission password will need to be used for the Party to submit the questionnaire to the Secretariat. The Committee encourages focal points to seek the cooperation of competent authorities and other relevant entities at the national level in completing this questionnaire.

Questionnaires are to be submitted to the Secretariat no later than **30 May 2014**. Any substantive question pertaining to this questionnaire may be addressed to Ms. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT question pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

I. Legal and institutional framework

1. Is legislation (any legal requirement: an act, regulation, ordinance, etc.) in place to implement paragraph 11 of Article 6 of the Convention?

Yes (please provide text)



If possible attach a copy

upload file

No

2. If answer to 1 above is “no”, is any legislation (any legal requirement: an act, regulation, ordinance, etc.) planned to implement paragraph 11 of Article 6 of the Convention?

Yes (please provide draft text)



No

3. Are any other mechanisms employed to implement paragraph 11 of Article 6 of the Convention?

Yes (please provide description)

No

If answers to questions 1 to 3 are “no”, you may stop here and submit your questionnaire.

4. Please identify to what types of transboundary movements the requirement of coverage by a financial mechanism applies:

- Import
- Export
- Transit

5. Which entity is required to cover the transboundary movement with a financial mechanism:

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- Other : (Please specify)

6. Which entity is the beneficiary of the financial mechanism covering the transboundary movement:

- The generator
- The exporter
- The importer
- The disposer

- The transporter
- The State export, import or transit
- Other : (Please specify)

7. What type of financial mechanism is required to fulfil the requirements of paragraph 11 of Article 6 of the Convention?

- Insurance
- Bond
- Guarantee
- Other : (Please specify)

8. What is the scope of coverage of the financial mechanism:

- Costs of storage
- Costs of testing for identification, re-packaging and re-loading the wastes
- Costs of transport
- Costs of disposal in an environmentally sound manner (ESM)
- Loss of life or personal injury
- Loss of or damage to property
- Environmental damage e.g. costs of reinstatement or compensation
- Loss of income
- Other : (Please specify)

9. What period of time must be covered by the financial mechanism:

- From the export to the completion of disposal in an environmentally sound manner (ESM)
- From the export to the import
- During the transit
- Other : (Please specify)

10. In what context does the financial mechanism operate:

- Cases where the transboundary movement cannot be completed as intended
- Cases where the disposal in an environmentally sound manner (ESM) cannot be completed as intended
- Cases of illegal traffic
- Other : (Please specify)

11. How is the financial mechanism activated and what requirements apply:

- Request by the entity required to cover the transboundary movement with a financial mechanism
- Request by the beneficiary of the financial mechanism
- Insolvency of the entity required to cover the transboundary movement with a financial mechanism
- Other : (Please specify)

12. How is the total amount of the coverage calculated?

- As specified in the legislation
- By a specific formula employed by the Competent Authority/ies of export/transit/import (please specify)
- By a specific formula employed by the exporter/generator/importer/dispenser/transporter (please specify)
- By a specific formula employed by the company providing the financial mechanism
- No formulae applied
- Other method of calculation (please specify)

13. What mechanisms are in place to monitor the implementation of and compliance with paragraph 11 of Article 6?

- Inspection by relevant authority
- Reporting by company providing financial mechanism
- Reporting by generator/exporter/transporter/importer/dispenser (please specify)

Monitoring of notification/Movement document completion

Other : (Please specify)

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

II. Experience with implementation of paragraph 11 of Article 6 of the Convention

14. Have any proposed movements been not authorized or consented to due to non-compliance with paragraph 11 of Article 6 of the Convention?

- No
- Yes

If yes what were the specific reasons:

- Failure to complete box on notification/movement document
- Lack of or insufficient insurance etc. cover provided
- Unacceptable level of cover
- Other : (Please specify)

15. What data are collected on application and use of the insurance, bond etc.?

- All movements
- All incidents requiring insurance etc. to be effected
- None

16. In what contexts has the financial mechanism been activated:

- Cases where the transboundary movement could not be completed as intended (Please specify: import, transit or export)

- Cases where the disposal in an environmentally sound manner (ESM) could not be completed as intended

- Cases of illegal traffic

- Other : (Please specify)

17. What entity has activated the financial mechanism:

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- The State of export, import or transit
- Other : (Please specify)

18. For what purpose has the financial mechanism been activated:

- Costs of storage
- Costs of testing for identification, re-packaging and re-loading the wastes
- Costs of transport
- Costs of disposal in an environmentally sound manner (ESM)
- Loss of life or personal injury
- Loss of or damage to property
- Environmental damage e.g. costs of reinstatement or compensation
- Loss of income
- Other : (Please specify)

19. Have any actions for compliance and enforcement under paragraph 11 of Article 6 been taken by:

- Administrative warnings
- Administrative sanctions
- Prosecution
- Other : (Please specify)

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

III. Improving the implementation of and compliance with paragraph 11 of article 6 of the Convention

20. Is any guidance made available within your country on compliance with paragraph 11 of Article 6 of the Convention?

If possible attach a copy

21. What challenges have been encountered in implementing paragraph 11 of Article 6?

- Differing system/calculation methods used by states of export/transit
- Lack of or differing legal requirements
- Lack of clarity in legal requirements
- Lack of common method
- Lack of mechanism by which the selected method(s) is implemented
- Failure by relevant entity to initiate action (testing, storing transport etc.)
- Failure by relevant entity to activate the financial mechanism
- Other : (Please specify)

22. What steps could be taken to improve implementation and compliance with paragraph 11 of Article 6?

- Development of legislation
- Development of guidance

-
- Information exchange between Parties on their respective legal requirements as they pertain to insurance, bond or guarantee
 - Access to information on availability of relevant providers of financial mechanisms
 - Analysis of the value for a Party to require that any transboundary movement be covered by insurance, bond or guarantee
 - Measures to facilitate cooperation between competent authorities, between entities, or between competent authorities and entities (please specify)
 - Other : (Please specify)

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

IV. Additional Comments

23. Please add here any further commentary on Implementation of Paragraph 11 of Article 6 of the Basel Convention that is not included in answers to the above questions.

A large empty rectangular box with a scroll bar on the right side, intended for providing additional comments. The box is currently empty and has a light gray border.

Implementation of Paragraph 11 of Article 6 of the Basel Convention

on insurance, bond and guarantee

Questionnaire for Parties

SUBMITTER INFORMATION

24. Submitting Party:

Submitting Party:

25. 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 progress" button and exit the questionnaire.

Submission password:

Annex II to the report – Questionnaire for BCRCs and other organizations

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

Introduction

One of the subsidiary bodies of the Conference of the Parties to the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal is the Committee administering the mechanism for promoting implementation and compliance of the Basel Convention (hereinafter “the Committee”). This Committee is charged with reviewing general issues of compliance and implementation under the Convention through its adopted work programme.

By its decision BC-11/8 the Conference of the Parties at its eleventh meeting adopted the work programme for the biennium 2014-2015 of the Committee, whereby the Committee was requested to compile information on how parties are implementing paragraph 11 of Article 6 of the Convention, including through national legislation, and consider the development of guidance on how to implement this provision, for consideration and possible adoption by the twelfth meeting of the Conference of the Parties.

Article 6 of the Convention pertains to transboundary movements of hazardous and other wastes among Parties to the Convention. This article sets out the conditions and procedures that must be complied with for such a movement to take place in accordance with the Convention. Paragraph 11 of Article 6 reads as follows:

“11. Any transboundary 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.”

Background

Guarantees referred to in paragraph 11 of Article 6 “are intended to provide for immediate funds for **alternative management** of the waste in cases where shipment and disposal cannot be carried out as originally intended. These guarantees may take the form of an insurance policy, bank letters, bonds or other promise of **compensation for damage**, depending on the countries concerned” (emphasis added). The exporter is to “arrange the necessary financial guarantees and insurances for the movement of waste required by the national legislation of the countries concerned. Some countries may require the financial guarantee to cover the cost of any necessary **re-import** and **alternative disposal** operations should the need arise, including cases referred to in Articles 8 and 9 of the Basel Convention. Additionally, they may require separate insurance against **damage to third parties**, held as appropriate by the exporter, carrier and the disposer” (emphasis added).

Accordingly, the notification document, which is required for transboundary movements/shipments of waste provides, in block 17, for the exporter - notifier / generator - producer to certify that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Similar language is set out in block 15 of the movement document.

This activity of the work programme of the Committee was considered by the Committee during its tenth meeting (Paris, 5-6 December 2013) on the basis of document UNEP/CHW/CC.10/10 at what time the Committee agreed to request the Secretariat, under the leadership of the Committee lead member and within available resources to, inter alia:

- develop a questionnaire with a view to collecting information on how parties are implementing paragraph 11 of Article 6, including challenges associated with this implementation and possible ways to overcome them;
- send the questionnaire to Parties, Basel Convention Regional Centres and other relevant stakeholders;
- publish on the website of the Convention the responses received to the questionnaire;
- compile the information received and prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting.

Instructions for completing and submitting the questionnaire

The present questionnaire is for the Basel Convention Regional Centres and other Organizations with respect insurance they may hold on to the implementation of paragraph 11 of Article 6 of the Convention.

To assist the Committee in its work, Centres and other Organizations are encouraged to complete the attached questionnaire with as much detail as can be provided. If you require additional space for any of your responses, please attach these as annexes to the completed questionnaire.

A login and password have been provided by the Secretariat to your organization. The login and password allow access to the online questionnaire and can be shared with other persons in your organization contributing to completing the questionnaire. In addition, a **submission password** has been provided by the Secretariat to your organization: the submission password will need to be used for your organization to submit the questionnaire to the Secretariat.

Questionnaires are to be submitted to the Secretariat no later than **30 May 2014**. Any substantive question pertaining to this questionnaire may be addressed to Ms. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT question pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

I. Nature of services

1. Do you have information on services offered by financial mechanisms within your region in connection with paragraph 11 of Article 6 of the Convention?

Yes

No

If answer to question 1 is “No”, you may stop here and submit your questionnaire.

If the answer to question 1 is “Yes”, please complete the following for each service offered.

2. Do you have information on the nature of the services offered within your region in connection with paragraph 11 of Article 6 of the Convention?

For liability based services: what kind of damage:

- Personal injury
- Personal damage
- Damage to the environment
- Other : (Please specify)

For non-liability based services:

- Transport
- Disposal
- Storage
- Other : (Please specify)

Other services (please specify)



No information

3. Do you have information on the geographical scope of services offered?

Worldwide

Worldwide with exclusions (please indicate which)

Regional (please indicate regional scope)

National only (please state where)

No information

4. Do you have information on the types of transboundary movements to which the coverage by a financial mechanism applies within your region:

Import

Export

Transit

No information

5. Do you have information on which entity can request coverage by a financial mechanism within your region?

The generator

The exporter

The importer

The disposer

The transporter

Other : (Please specify)

No information

6. Do you have information on which entity within your region is the beneficiary of the financial mechanism covering the transboundary movement:

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- The State export, import or transit
- Other : (Please specify)

No information

7. Do you have information on the type of financial mechanism offered within your region to fulfil the requirements of paragraph 11 of Article 6 of the Convention?

- Insurance
- Bond
- Guarantee
- Other : (Please specify)

No information

8. Do you have information on the scope of coverage of the financial mechanism available within your region?

- Costs of storage
- Costs of testing for identification, re-packaging and re-loading the wastes
- Costs of transport
- Costs of disposal in an environmentally sound manner (ESM)
- Loss of life or personal injury
- Loss of or damage to property
- Environmental damage e.g. costs of reinstatement or compensation

Loss of income

Other : (Please specify)

No information

9. Do you have information on the period of time covered by the financial mechanism?

From the export to the completion of disposal in an environmentally sound manner

From the export to the import

During the transit

Other : (Please specify)

No information

10. Do you have information on the time limit determined in practice?

By request for release of the bond/guarantee

By fixed time period for insurance

Other : (Please specify)

No information

11. Do you have information on the context in which the financial mechanism operates?

Cases where the transboundary movement cannot be completed as intended

Cases where the disposal in an environmentally sound manner cannot be completed as intended

Cases of illegal traffic

Other : (Please specify)

No information

12. Do you have information on how the total amount of the coverage is calculated?

As specified in legislation

By a specific formula employed by the Competent Authority/ies of export/transit/import (please give examples)

- By a specific formula employed by the exporter/generator/importer/dispenser/transporter (please give examples)

- By a specific formula employed by the company providing the financial mechanism
- No formulae applied
- Other method of calculation (please specify)

- No information

13. Do you have information on what mechanisms are known to be employed to monitor the implementation of and compliance with paragraph 11 of Article 6?

- Inspection by relevant authority
- Reporting by company providing financial mechanism
- Reporting by generator/exporter/transporter/importer/dispenser (please specify)

- Monitoring of notification/Movement document completion
- Other : (Please specify)

- No information

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

II. Experience with cover as provided for in paragraph 11 of Article 6 of the Convention

14. Do you have information on any proposed movements not authorized or consented to due to non-compliance with paragraph 11 of Article 6 of the Convention?

- No
- Yes

If yes what were the specific reasons:

- Failure to complete box on notification/movement document
- Lack of or insufficient insurance etc. cover provided
- Unacceptable level of cover
- Other : (Please specify)

15. Does your Organization collect data on use of insurance bonds etc.?

- All movements
- All incidents requiring insurance etc. to be effected
- None

16. Do you have information on contexts in which the financial mechanisms have been activated?

- Cases where the transboundary movement could not be completed as intended (Please specify: import, transit or export)

- Cases where the disposal in an environmentally sound manner could not be completed as intended
- Cases of illegal traffic

Other : (Please specify)

No information

17. Do you have information on what entity has activated the financial mechanism within your region?

The generator

The exporter

The importer

The disposer

The transporter

The State of export, import or transit

Other : (Please specify)

No information

18. Do you have information on purpose for which the financial mechanism has been activated within your region?

Costs of storage

Costs of testing for identification, re-packaging and re-loading the wastes

Costs of transport

Costs of disposal in an environmentally sound manner

Loss of life or personal injury

Loss of or damage to property

Environmental damage e.g. costs of reinstatement or compensation

Loss of income

Other : (Please specify)

No information

19. Do you have information on instances in which any claim with respect to insurance, bond etc has been rejected?

Yes (please give reasons for any cases)

- No
- No information

20. Do you have information on any actions for compliance and enforcement under paragraph 11 of Article 6 known to have been taken by:

- Administrative warnings
- Administrative sanctions
- Prosecution
- Other : (Please specify)

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

III. Improving the implementation of and compliance with paragraph 11 of article 6 of the Convention

21. Do you have any guidance on compliance with paragraph 11 of Article 6 of the Convention?

If possible attach a copy

upload file

22. Do you have information on challenges encountered in implementing paragraph 11 of Article 6?

- Differing system/calculation methods used by states of export/transit
- Lack of or differing legal requirements
- Lack of clarity in legal requirements
- Lack of common method
- Lack of mechanism by which the selected method(s) is implemented
- Failure by relevant entity to initiate action (testing, storing transport etc.)
- Failure by relevant entity to activate the financial mechanism
- Other : (Please specify)

- No information

23. What steps could be taken to improve implementation and compliance with paragraph 11 of Article 6?

- Development of legislation
- Development of guidance
- Information exchange between Parties on their respective legal requirements as they pertain to insurance, bond or guarantee
- Access to information on availability of relevant providers of financial mechanisms
- Analysis of the value for a Party to require that any transboundary movement be covered by insurance, bond or guarantee
- Measures to facilitate cooperation between competent authorities, between entities, or between competent authorities and entities (Please specify)

- Other : (Please specify)

24. What kind of advice can you give or do you provide to Parties to assist with implementation of paragraph 11 of Article 6?

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Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

IV. Additional Comments

25. Please add here any further commentary on your experience in connection with implementation of paragraph 11 of Article 6 of the Basel Convention that is not included in answers to the above questions.



Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from BCRCs and other Organizations

SUBMITTER INFORMATION

26. Submitting Organization:

Submitting Organization:

27. 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 progress" button and exit the questionnaire.

Submission password:

Annex III to the report – Questionnaire for stakeholders

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

Introduction

One of the subsidiary bodies of the Conference of the Parties to the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal is the Committee administering the mechanism for promoting implementation and compliance of the Basel Convention (hereinafter “the Committee”). This Committee is charged with reviewing general issues of compliance and implementation under the Convention through its adopted work programme.

By its decision BC-11/8 the Conference of the Parties at its eleventh meeting adopted the work programme for the biennium 2014-2015 of the Committee, whereby the Committee was requested to compile information on how parties are implementing paragraph 11 of Article 6 of the Convention, including through national legislation, and consider the development of guidance on how to implement this provision, for consideration and possible adoption by the twelfth meeting of the Conference of the Parties.

Article 6 of the Convention pertains to transboundary movements of hazardous and other wastes among Parties to the Convention. This article sets out the conditions and procedures that must be complied with for such a movement to take place in accordance with the Convention. Paragraph 11 of Article 6 reads as follows:

“11. Any transboundary 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.”

Background

Guarantees referred to in paragraph 11 of Article 6 “are intended to provide for immediate funds for **alternative management** of the waste in cases where shipment and disposal cannot be carried out as originally intended. These guarantees may take the form of an insurance policy, bank letters, bonds or other promise of **compensation for damage**, depending on the countries concerned” (emphasis added). The exporter is to “arrange the necessary financial guarantees and insurances for the movement of waste required by the national legislation of the countries concerned. Some countries may require the financial guarantee to cover the cost of any necessary **re-import** and **alternative disposal** operations should the need arise, including cases referred to in Articles 8 and 9 of the Basel Convention. Additionally, they may require separate insurance against **damage to third parties**, held as appropriate by the exporter, carrier and the disposer” (emphasis added).

Accordingly, the notification document, which is required for transboundary

movements/shipments of waste provides, in block 17, for the exporter - notifier / generator - producer to certify that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Similar language is set out in block 15 of the movement document.

This activity of the work programme of the Committee was considered by the Committee during its tenth meeting on the basis of document UNEP/CHW/CC.10/10 at what time the Committee agreed to request the Secretariat, under the leadership of the Committee lead member and within available resources to, inter alia:

- develop a questionnaire with a view to collecting information on how parties are implementing paragraph 11 of Article 6, including challenges associated with this implementation and possible ways to overcome them;
- send the questionnaire to Parties, Basel Convention Regional Centres and other relevant stakeholders;
- publish on the website of the Convention the responses received to the questionnaire;
- compile the information received and prepare a report that includes recommendations pertaining to the development of guidance on how to implement paragraph 11 of Article 6, for the consideration of the Committee during its eleventh meeting.

Instructions for completing and submitting the questionnaire

The present questionnaire is for stakeholders with an interest in the provision of services with respect to insurance, bond, guarantee etc. for the purposes of paragraph 11 of Article 6 of the Convention.

To assist the Committee in its work, stakeholders are encouraged to complete the attached questionnaire with as much detail as can be provided. If you require additional space for any of your responses, please attach these as annexes to the completed questionnaire.

A login and password have been provided by the Secretariat to your organization. The login and password allow access to the online questionnaire and can be shared with other persons in your organization contributing to completing the questionnaire. In addition, a **submission password** has been provided by the Secretariat to your organization: the submission password will need to be used for your organization to submit the questionnaire to the Secretariat.

Questionnaires are to be submitted to the Secretariat no later than **30 May 2014**. Any substantive question pertaining to this questionnaire may be addressed to Ms. Juliette Voinov Kohler (juliette.kohler@brsmeas.org). Any IT question pertaining to this questionnaire may be addressed to Mr. Julien Hortonedá (julien.hortonedá@brsmeas.org).

We thank you in advance for your kind cooperation.

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

I. Nature of services

1. What services are offered by your organisation in connection with paragraph 11 of Article 6 of the Convention?

For liability based services, what kind of damage:

- Personal injury
- Personal damage
- Damage to the environment
- Other : (Please specify)

For non-liability based services:

- Transport
- Disposal
- Storage
- Other : (Please specify)

Other services (Please specify):

▲

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None (Please indicate why):



If Answer to question 1 is none, you may stop here and submit your questionnaire.

2. What is the geographical scope of services offered?

- Worldwide
- Worldwide with exclusions (please indicate which):
- Regional (please indicate regional scope):
- National only (please state where):

3. Please identify to what types of transboundary movements the coverage by a financial mechanism applies:

- Import
- Export
- Transit

4. Which entity can request coverage by a financial mechanism offered by your organisation?

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- Other : (Please specify)

5. Which entity is the beneficiary of the financial mechanism covering the transboundary movement:

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- The State export, import or transit
- Other : (Please specify)

6. What type of financial mechanism is offered to fulfil the requirements of paragraph 11 of Article 6 of the Convention?

- Insurance
- Bond
- Guarantee
- Other : (Please specify)

7. What is the scope of coverage of the financial mechanism?

- Costs of storage
- Costs of testing for identification, re-packaging and re-loading the wastes
- Costs of transport
- Costs of disposal in an environmentally sound manner (ESM)
- Loss of life or personal injury
- Loss of or damage to property
- Environmental damage e.g. costs of reinstatement or compensation
- Loss of income
- Other : (Please specify)

8. What period of time is covered by the financial mechanism?

- From the export to the completion of disposal in an environmentally sound manner

- From the export to the import
- During the transit
- Other : (Please specify)

9. How is the time limit determined in practice?

- By request for release of the bond/guarantee
- By fixed time period for insurance
- Other : (Please specify)

10. In what context does the financial mechanism operate?

- Cases where the transboundary movement cannot be completed as intended
- Cases where the disposal in an environmentally sound manner cannot be completed as intended
- Cases of illegal traffic
- Other : (Please specify)

11. How is the total amount of the coverage calculated?

- As specified in legislation
- By a specific formula employed by the Competent Authority/ies of export/transit/import (please give examples)

- By a specific formula employed by the exporter/generator/importer/disposer/transporter (please give examples)

- By a specific formula employed by the company providing the financial mechanism
- No formulae applied
- Other method of calculation (please specify)

12. What mechanisms are known to be employed to monitor the implementation of and compliance with paragraph 11 of Article 6?

- Inspection by relevant authority
- Reporting by company providing financial mechanism
- Reporting by generator/exporter/transporter/importer/dispenser (please specify)

- Monitoring of notification/Movement document completion
- Other : (Please specify)

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

II. Experience with cover as provided for in paragraph 11 of Article 6 of the Convention

13. Do you have information on any proposed movements not authorized or consented to due to non-compliance with paragraph 11 of Article 6 of the Convention?

No

Yes

If yes, what were the specific reasons:

Failure to complete box on notification/movement document

Lack of or insufficient insurance etc. cover provided

Unacceptable level of cover

Other : (Please specify)

14. What data are collected on use of insurance bonds etc.?

All movements

All incidents requiring insurance etc. to be effected

None

15. In what contexts have financial mechanisms been activated?

Cases where the transboundary movement could not be completed as intended (Please specify: import, transit or export)

Cases where the disposal in an environmentally sound manner could not be completed as intended

Cases of illegal traffic

Other : (Please specify)

16. What entity has activated the financial mechanism?

- The generator
- The exporter
- The importer
- The disposer
- The transporter
- The State of export, import or transit
- Other : (Please specify)

17. For what purpose has the financial mechanism been activated?

- Costs of storage
- Costs of testing for identification, re-packaging and re-loading the wastes
- Costs of transport
- Costs of disposal in an environmentally sound manner
- Loss of life or personal injury
- Loss of or damage to property
- Environmental damage e.g. costs of reinstatement or compensation
- Loss of income
- Other : (Please specify)

18. Have you refused any claim with respect to insurance, bond etc.?

- Yes (please give reasons for any cases)

- No

- Not applicable (e.g. not an insurer or other relevant entity)

19. Have any actions for compliance and enforcement under paragraph 11 of Article 6 known to have been taken by:

- Administrative warnings
- Administrative sanctions
- Prosecution
- Other : (please specify)

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Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

III. Improving the implementation of and compliance with paragraph 11 of article 6 of the Convention

20. Do you have any guidance on compliance with paragraph 11 of Article 6 of the Convention?

If possible attach a copy

upload file

21. What challenges have been encountered in implementing paragraph 11 of Article 6?

- Differing system/calculation methods used by states of export/transit
- Lack of or differing legal requirements
- Lack of clarity in legal requirements
- Lack of common method
- Lack of mechanism by which the selected method(s) is implemented
- Failure by relevant entity to initiate action (testing, storing transport etc.)
- Failure by relevant entity to activate the financial mechanism
- Other : (Please specify)

22. What steps could be taken to improve implementation and compliance with paragraph 11 of Article 6?

- Development of guidance
- Information exchange between Parties on their respective legal requirements as they pertain

to insurance, bond or guarantee

- Access to information on availability of relevant providers of financial mechanisms
- Analysis of the value for a Party to require that any transboundary movement be covered by insurance, bond or guarantee
- Measures to facilitate cooperation between competent authorities, between entities, or between competent authorities and entities (Please specify)

- Other : (Please specify)

23. What kind of advice can you give or do you provide to Parties to assist with implementation of paragraph 11 of Article 6?



Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

IV. Additional Comments

24. Please add here any further commentary on your experience of provision of services in connection with implementation of paragraph 11 of Article 6 of the Basel Convention that is not included in answers to the above questions.



25. Would you be willing to be contacted in connection with your responses to this questionnaire?

- Yes
- No

26. Do you wish for your responses to this questionnaire to remain anonymous?

- Yes
- No

Implementation of Paragraph 11 of Article 6 of the Basel Convention, pertaining to insurance, bond or other guarantee for transboundary movements of hazardous wastes and other wastes

Questionnaire for the collection of information from Stakeholders

SUBMITTER INFORMATION

27. Submitting Organization:

Submitting Organization:

28. 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 progress" button and exit the questionnaire.

Submission password:
