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on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
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Basel Convention**

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

**Guidance on the implementation of the Basel Convention
illegal traffic take-back provision (paragraph 2 of Article 9)**

Note by the Secretariat

As referred to in document UNEP/CHW.12/9, the annex to the present note sets out the guidance on the implementation of the Basel Convention illegal traffic take-back provision (paragraph 2 of Article 9) prepared by the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention.

* UNEP/CHW.12/1.

Annex

Guidance on the Implementation of the Basel Convention Illegal Traffic Take-back Provision (paragraph 2 of Article 9)

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Foreword

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter referred to as the “Basel Convention”) was adopted in 1989 and entered into force on 5 May 1992. As of March 2014, 180 States and the European Union were Parties to the Convention.

The Basel Convention establishes, among others, an internationally agreed binding mechanism to control transboundary movements of hazardous wastes and other wastes subject to the Convention. Such movements can only take place in compliance with specific conditions and procedures. In Article 9, the Convention defines under what circumstances a transboundary movement of hazardous or other wastes is deemed to be illegal traffic and also provides for some of the consequences of such illegal traffic.

Under the Convention, parties consider that illegal traffic is criminal. Moreover, each party has the obligation to introduce appropriate national/domestic legislation to prevent and punish illegal traffic. Parties have a general obligation to cooperate with a view to achieving the objects of Article 9 of the Convention. One of the obligations set out in paragraph 2 of this Article, is for the State of export to ensure that, in case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as a result of conduct on the part of the exporter or generator, the wastes in question are taken back by the exporter or generator or, if necessary, by itself into the State of export, or, if impracticable, are otherwise disposed of in accordance with the provisions of the Basel Convention. Improper implementation of the take-back provision may lead to the dumping of the wastes and therefore damage to human health and the environment.

This guidance document has been prepared with a view to providing guidance to parties on how to implement in practice the take-back obligation embedded in paragraph 2 of Article 9 of the Convention. Users should also ensure that they are familiar with relevant regional, national or other domestic laws implementing the Basel Convention, as each State’s approach can vary slightly, and parties have the right under the Convention to supplement the Basel Convention with their own national definitions of hazardous wastes, and their own restrictions or prohibitions of imports, transit or exports, or otherwise take more stringent measures than provided under the Convention.

The preparation of this guidance document was initiated under the 2012-2013 work programme of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Convention, more particularly the request that the Committee review parties’ implementation of and compliance with the take-back provision set forth in paragraph 2 of Article 9 of the Basel Convention as well as develop a guidance document based on best practices suggesting a harmonized approach to the implementation of the take-back provision. The finalization of this guidance document was undertaken within the framework of the 2014-2015 work programme of the Committee, including through consultations with the Open-ended Working Group of the Basel Convention during its ninth meeting.

This guidance document was submitted to the consideration of the Conference of the Parties at its twelfth meeting, and was adopted by decision BC-12/[XX].

The development of this guidance document was made possible thanks to the financial support provided by the European Union.

1. Objectives of the guidance document

1. The Conference of the Parties at its tenth meeting (COP10), in its decision BC-10/11, mandated the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention (hereinafter referred to as the “ICC”) to review parties’ implementation of and compliance with the take-back provision set forth in paragraph 2 of Article 9 of the Basel Convention,¹ as well as to develop a guidance document based on best practices suggesting a harmonized approach to the implementation of the take-back provision.² It should be noted that pursuant to paragraph 3 of Article 9, where the illegal traffic is the result of conduct on the part of the importer or disposer, the State of import has obligations with respect to handling of those shipments. This guidance is not meant to address those situations.

2. The guidance document is intended to provide practical and workable guidance for all actors involved in the control of transboundary movements of the wastes subject to the Basel Convention: Competent authorities, as well as the various entities involved directly or indirectly in the implementation and enforcement of the Convention (e.g. Customs, port authorities, environmental inspectors, police, prosecutors, judges). The guidance aims also at harmonizing the way parties undertake the take-back of shipments of hazardous wastes and other wastes deemed to be illegal traffic. The content of the guidance document is based on experiences of parties that have participated in situations that required a take-back of the waste and on guidance documents developed by relevant enforcement networks.³ These experiences were gathered by means of a questionnaire⁴ developed by the ICC, which aimed to collect information from parties on their implementation of and compliance with the take-back provision set forth in paragraph 2 of Article 9 of the Basel Convention, including the difficulties faced by parties.

3. This guidance focuses on three aspects of the operationalization of the take-back obligation: the determination of whether there is a case of deemed illegal traffic; the take-back of the waste by the State of export, including what to do if the take-back is impracticable; and the actions to be taken following the take-back of the waste. Four appendices complete this guidance: appendix 1 is a form to be used for requesting the take-back and for notifying about the take-back of wastes deemed to be illegal traffic, appendix 2 provides a graphic illustration of the take-back procedure, appendix 3 provides a graphic illustration for those cases where take-back of the wastes is considered impracticable, and appendix 4 is a case study of how the take-back procedure has been implemented in one instance.

4. The guidance document focuses on offering guidance on the take-back procedure itself, including environmentally sound disposal of the wastes taken back. This guidance builds on and, as appropriate, refers to some of the guidance developed in the framework of the Convention to assist parties implement and comply with their obligation, under paragraph 4 of Article 4 and paragraph 5 of Article 9, to adopt adequate legal frameworks. Regarding the take-back provision, the Checklist for the Legislator,⁵ for instance, mentions that national legislation should include provisions for actions to be taken by the exporter, generator, importer or disposer in the case of illegal traffic. This guidance document is also intended to complement existing guidance available under the Basel Convention pertaining to the detection, investigation and prosecution of illegal traffic, namely:

¹ The text of the Basel Convention is available at:

<http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>.

² It is worth noting that the Conference of the Parties at its tenth meeting also adopted BC-10/3 on the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention, that requests the Secretariat to collect and disseminate examples of best practices in enforcement in addition to practical arrangements such as procedures for take-back in case of detected illegal traffic. Clarity as to the practical implementation – or operationalization - of the take-back provision embedded in paragraph 2 of Article 9 thus appears to be of particular importance to the Parties to the Convention. The issue of the implementation of the take-back provision was discussed at the seventh session of the ICC. At that time Committee members and observers, for instance the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)-Transfrontier Shipments of Waste (TFS) cluster, engaged in a discussion on possible opportunities of cooperation to ensure the take back of waste (Paragraph 10 of the report of the seventh session of the Committee (UNEP/CHW/CC/7/10)).

³ IMPEL TFS Manual on the return of illegal shipments of waste: <http://impel.eu/projects/manual-on-the-return-of-illegal-shipments-of-waste/>; International Network for Environmental Compliance and Enforcement (INECE) Operational Guidance for the Take-back of Detected Illegal Shipments of Waste.

⁴ Information document UNEP/CHW/CC.9/INF/4: Take-back provision: responses from parties and examples of take-backs is available at:

<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC9/MeetingDocuments/tabid/2872/Default.aspx>.

⁵ [The Checklist for the legislator is set out in annex I to the manual for the implementation of the Basel Convention adopted by the twelfth meeting of the Conference of the Parties by decision BC-12/XX. The manual is available at: <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>].

- (a) The *Guidance Elements for the Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes* adopted by the sixth meeting of the Conference of the Parties⁶;
- (b) The *Training Manual for the Enforcement of Laws Implementing the Basel Convention: Guidance for Safe and Effective Detection, Investigation and Prosecution of Illegal Traffic in Hazardous and other Wastes* adopted by the fifth session of the Open-ended Working Group of the Basel Convention (hereafter the “OEWG”),⁷ on behalf of the Conference of the Parties;⁸
- (c) The *Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes* approved by COP10.⁹

5. It is important to note that a proper understanding of the Basel Convention control procedure for transboundary movements of hazardous and other wastes is a prerequisite for the implementation of the Convention’s provisions pertaining to illegal traffic, including the take-back provision. Information and guidance on the Basel Convention control procedure, as set out in Article 6 of the Convention, is available in a leaflet on Controlling Transboundary Movement of Hazardous Wastes,¹⁰ in the Guide to the Control System¹¹ and, more generally, in the Manual for the Implementation of the Basel Convention.¹² The attention of the reader is therefore directed to these resources as well.

6. It should also be noted that the take-back of the wastes should be considered as a last resort: priority should be given to promoting various measures to prevent illegal traffic from occurring in the first place.

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

2.1. The Basel Convention provisions pertaining to illegal traffic

7. The Basel Convention defines in paragraph 1 of its Article 9 in what instances a transboundary movement of waste shall be deemed to be illegal traffic. Five specific instances are listed:

(a) A transboundary movement without notification pursuant to the provisions of this Convention to all States concerned.

The State of export, or the generator or exporter of the wastes,¹³ needs to notify in writing the competent authority of the States concerned (import and transit if applicable) of any proposed transboundary movement of hazardous wastes and other wastes (paragraph 1 of Article 6). A transboundary movement of wastes undertaken without such prior notification to all concerned competent authorities amounts to illegal traffic.

(b) A transboundary movement without the consent pursuant to the provisions of this Convention of a State concerned.

The State of import has to respond to the notifier (State of export, generator or exporter) in writing, consenting to the movement with or without conditions, or denying permission for the proposed transboundary movement of hazardous wastes and other wastes, or requesting additional information (paragraph 2 of Article 6). The Convention also contains provisions with respect to the State of transit (paragraph 4 of Article 6). A transboundary movement of wastes undertaken without the consent of a State concerned, as provided under the Convention, amounts to illegal traffic.

⁶ Decision VI/16. The *Guidance Elements for the Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes* is available at: <http://archive.basel.int/legalmatters/illegtraff/index.html>.

⁷ Decision OEWG-V/9. The *Training Manual for the Enforcement of Laws Implementing the Basel Convention: Guidance for Safe and Effective Detection, Investigation and Prosecution of Illegal Traffic in Hazardous and other Wastes* is available at: <http://archive.basel.int/legalmatters/illegtraff/index.html>.

⁸ Decision VII/34.

⁹ Decision BC-10/18. The *Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes* is available at: <http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

¹⁰ This publication, developed by the Implementation and Compliance Committee, is available at: <http://www.basel.int/TheConvention/Publications/BrochuresLeaflets/tabid/2365/Default.aspx>.

¹¹ A revised version of the Guide to the control system was adopted by the twelfth meeting of the Conference of the Parties by decision BC-12/XX. The Guide is available at: <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

¹² An updated version of the Manual for the implementation of the Basel Convention was adopted by the twelfth meeting of the Conference of the Parties by decision BC-12/XX. The Manual is available at: <http://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

¹³ In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous only by the State of import or by the States of import and transit which are Parties, the requirements of paragraph 1 of Article 6 that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively.

(c) A transboundary movement with consent obtained from States concerned through falsification, misrepresentation or fraud is considered to amount to illegal traffic.

(d) A transboundary movement that does not conform in a material way with the documents is considered as illegal.

If there is a material discrepancy between the movement document accompanying the waste and the actual amount/nature of the wastes, the transboundary movement is considered to amount to illegal traffic.

(e) A transboundary movement that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law is considered to amount to illegal traffic.

8. All the Competent Authorities concerned, namely from the State of export, the State of transit (if any) and State of import, are to check whether the movement is planned to or is taking place in accordance with applicable rules and regulations implementing the Basel Convention.

9. Legislation implementing the Basel Convention must implement paragraph 1 of Article 9. Examples of extended national definitions of illegal traffic may include the following circumstances:

(a) The intended disposer does not exist;

(b) The intended disposer does not have a licence to dispose of the wastes in an environmentally sound manner;

(c) The intended disposer does not have the required capacity to treat the wastes in an environmentally sound manner;

(d) There is no contract between the exporter and the disposer specifying ESM of the wastes in question;

(e) There is an import ban in the State of import;

(f) There is an export ban in the State of export.

10. However, parties are only responsible to take-back a shipment of hazardous wastes deemed to be illegal traffic as defined in paragraph 1 of Article 9 and in the circumstances described in paragraphs 2 to 4 in Article 9. In addition to defining what is deemed to constitute illegal traffic, the Basel Convention provides that parties consider that illegal traffic is criminal,¹⁴ and each Party has the obligation to introduce appropriate national/domestic legislation to prevent and punish illegal traffic.¹⁵

11. The Basel Convention goes one step further by specifying the consequences of instances in which a transboundary movement of hazardous or other wastes is deemed to be illegal traffic and the obligations of the State of export in these instances. Paragraph 2 of Article 9 of the Convention addresses the specific cases where a transboundary movement is deemed to be illegal traffic as the result of conduct on the part of the exporter or generator:

“2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export”.

12. In paragraphs 3 and 4 of Article 9, the Convention also specifies the consequences of instances in which a transboundary movement of hazardous or other wastes is deemed to be illegal traffic as a result of conduct on the part of the importer or disposer¹⁶ and the obligations of the State of import and export in these

¹⁴ Paragraph 3 of Article 4 of the Basel Convention.

¹⁵ Paragraph 4 of Article 4 of the Basel Convention; Paragraph 5 of Article 9 of the Basel Convention.

¹⁶ Paragraph 3 of Article 9 reads: “In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of

instances, as well as those instances in which the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer.¹⁷

13. Regardless of the scenario, parties have an obligation to cooperate with a view to achieving the objects of Article 9 of the Convention.¹⁸

2.2. Determining whether the take-back procedure is to be initiated

14. The starting point for the take-back procedure is the detection of a particular shipment whose transboundary movement may amount to illegal traffic, as well as of the location of that shipment. The determination of whether there is an instance of illegal traffic that may lead to the take-back of the wastes requires a three-step approach to determine whether the case falls within the scope of the Convention, whether there appears to be a case of illegal traffic, and whose conduct resulted in the illegal traffic. This section of the guidance will also look into the actors involved in making such a determination.

2.2.1. Steps for determining whether the take-back procedure may be initiated

2.2.1.1. Determination that the case falls within the scope of the Convention

15. The parties concerned must determine that:

- (a) The content of the shipment falls within the definition of “wastes”;¹⁹
- (b) The wastes in question are “hazardous”²⁰ wastes or “other” wastes;²¹
- (c) A “transboundary movement”²² has taken place (this latter determination will involve identifying the State of export).

16. Determining these elements will require the involvement and cooperation of the competent authorities of the States of import and export. Available guidance in this regard also includes the previously mentioned leaflet on Controlling Transboundary Movement of Hazardous Wastes,²³ the Guide to the Control System (aimed at the private sector)²⁴ and, more generally, the Manual for the Implementation of the Basel Convention,²⁵ outlining the obligations of parties.

17. When determining whether the case falls within the scope of the Convention, one must bear in mind that the national legal framework may provide for a national definition of hazardous wastes under paragraph

time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.”

¹⁷ Paragraph 4 of Article 9 reads: “In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.”

¹⁸ Paragraph 5 of Article 9.

¹⁹ For the purpose of the Convention, “wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (paragraph 1 of Article 2). How to distinguish a “waste” from a “non-waste” is a matter that has been tackled in the framework of the small intersessional working group on legal clarity established by decision BC-11/1. For the outcome of the work of that group reference is made to report of the twelfth meeting of the Conference of the Parties.

²⁰ “The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention: (a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and (b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.” (paragraph 1 of Article 1). Annex I is further elaborated upon in Annexes VIII and IX of the Convention.

²¹ “Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purpose of the Convention. (paragraph 2 of Article 1). Annex II lists: wastes collected from households and residues arising from the incineration of household wastes.

²² For the purpose of the Convention, a transboundary movement means any movement of hazardous or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement (paragraph 3 of Article 2).

²³ This publication, developed by the ICC, is available at: <http://www.basel.int/TheConvention/Publications/BrochuresLeaflets/tabid/2365/Default.aspx>.

²⁴ This manual, which is currently under revision by the ICC, is available at: <http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

²⁵ This publication is available at: <http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

1 (b) of Article 1 and Article 3, or import/transit/export restrictions and prohibitions under paragraph 1 (a) of Article 4 and paragraph 2 of Article 13. Such national specificities must also be respected if they are properly notified under the Convention as they will affect the determination of whether a transboundary movement of hazardous or other wastes falls within the scope of the Basel Convention. Such national specificities must be notified to all parties through the Secretariat that maintains a collection of them on its website.²⁶ It should also be noted that paragraph 5 of Article 6 provides for different responsibilities for the transboundary movement where the waste is only considered hazardous by one of the parties to the transaction, and this must be kept in mind in assessing what is a case of “illegal traffic”. Paragraph 5 of Article 6 provides:

“In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:

- (a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;
- (b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or
- (c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.”

18. Paragraph 5 of Article 6 may come into play for instance in the following cases:

- (a) A party may, on the basis of paragraph 1 (b) of Article 1 of the Convention, also classify other wastes than those listed in Annexes I and II of the Convention as hazardous wastes in accordance with its national legislation;
- (b) Because of differences in the national legislation of the States, as regards the definition of waste, a certain substance or object may not be considered as waste by all the States concerned; or
- (c) The competent authorities may disagree on whether a certain waste possesses any of the hazardous characteristics referred to in Annex III of the Convention.

19. In such cases, paragraph 5 of Article 6 must be consulted to see with respect to the particular movement which party or actor has the responsibility in the context of the particular transboundary movement.

20. In case of disagreement between States on the classification of the shipment as waste or non-waste, or on the classification of the waste as hazardous or not, the BC does not resolve this specific situation. However, paragraph 4 of Article 9 requires that where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the parties concerned or other Parties, as appropriate, shall ensure, through cooperation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate. Paragraph 5 of Article 9 requires parties to cooperate with a view to achieving the objects of the Article.

21. The European Union (EU) treats shipments involving the waste/non-waste or a disagreement about the hazardous nature of the waste by treating the shipment as if it was, respectively, waste, and hazardous or other wastes falling under the scope of the Basel Convention.²⁷

22. If, despite communication at different levels (operational and political), no agreement can be reached, the Secretariat of the Basel Convention may assist parties upon their request in their identification of cases of illegal traffic (paragraph 1(i) of Article 16).

²⁶ <http://www.basel.int/Countries/NationalDefinitions/tabid/1480/Default.aspx>; and <http://www.basel.int/Countries/ImportExportRestrictions/tabid/1481/Default.aspx>.

²⁷ See paragraphs 1 and 2, article 28 of the Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on Shipments of Waste: “1. If the competent authorities of dispatch and of destination cannot agree on the classification as regards the distinction between waste and non-waste, the subject matter shall be treated as if it were waste. This shall be without prejudice to the right of the country of destination to deal with the shipped material in accordance with its national legislation, following arrival of the shipped material and where such legislation is in accordance with Community or international law. 2. If the competent authorities of dispatch and of destination cannot agree on the classification of the notified waste as being listed in Annex III, IIIA, IIIB or IV, the waste shall be regarded as listed in Annex IV.”

2.2.1.2. Determination that there appears to be a case of illegal traffic

23. The Party must determine that at least one of the five conditions set out in paragraph 1 of Article 9, which defines “illegal traffic”, is fulfilled:

- (a) The lack of notification may be determined by the competent authority given its central role in the implementation of the control procedure;
- (b) The lack of consent may be determined by the competent authority given its central role in the implementation of the control procedure;
- (c) The determination that consent was obtained through misrepresentation, fraud or falsification may require that a more thorough investigation take place;
- (d) The lack of material conformity between documents (e.g. disposal contracts, business records, weighing slips, delivery documents, invoices and notification and movement documents) and the wastes may be established through visual inspection, but it may also require physical inspection, including sampling and analysis of the wastes; and finally,
- (e) Deliberate disposal of the wastes took place in contravention of the Convention and general principles of international law.

24. Existing guidance on the detection and determination of whether a shipment is deemed to be illegal traffic, including issues such as storage of the shipment and how to conduct an investigation, is available in the above mentioned Guidance Elements for the Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes, the Basel Convention Training Manual on Illegal Traffic for Customs and Enforcement Agencies, and the Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes.

2.2.1.3. Determination of whose conduct resulted in the illegal traffic

25. To activate the take-back provision under paragraph 2 of Article 9, the Parties concerned must determine:

- (a) Who is the generator or exporter of the waste;
- (b) Whether the illegal traffic is the result of conduct of the exporter or generator.

26. These determinations will need to be based on the gathering of evidence from the movement document or, if unavailable, from a more thorough investigation which may require international cooperation.

27. The guidance tools listed in paragraphs 4 and 5 above are equally relevant to assist parties in making this determination.

28. It is worth recalling that in paragraphs 3 and 4 of Article 9, the Convention also specifies the consequences and obligations of the relevant parties of instances in which a transboundary movement of hazardous or other wastes is deemed to be illegal traffic as a result of conduct on the part of the importer or disposer, as well as those instances in which the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer. In the former case, the party will need to determine who the importer or disposer is. In the latter case, the parties concerned or other parties, as appropriate, are required to ensure, through cooperation, that the wastes in question are disposed of in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

2.2.2. Actors involved in determining whether the take-back provision may be initiated**2.2.2.1. Actors at the national level**

29. The process of determining whether a transboundary movement of hazardous or other wastes falls within the scope of paragraph 2 of Article 9, i.e. that the movement is deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, may fall under the responsibility of a variety of entities having responsibilities at the national level for the detection and determination of an instance of illegal traffic. As proper information exchange and coordination of efforts is essential, it is recommended to use or establish a cooperation mechanism, e.g. an interagency task force. Cooperation with and awareness-raising among the private sector (e.g. generator, exporter, carrier, importer, disposer, brokers, shipping lines, agents storing wastes) may also facilitate the determination of whether there is an instance of illegal traffic that may lead to the take-back of the wastes.

30. Whatever the domestic institutional framework, it is important that each entity’s role and responsibility be clear and known. Given that the Basel Convention assigns to the competent authority the responsibility for receiving the notification of a transboundary movement of hazardous wastes or other

wastes, and any information related to it, and for responding to such a notification, it is important to ensure that the relevant competent authority be adequately involved in the national process of determining whether a transboundary movement of hazardous or other wastes falls within the scope of paragraph 2 of Article 9. In order to be able to request or demand an exporter/generator to take-back the shipment, an adequate legal basis at the domestic level needs to be in place.

2.2.2.2. Actors at the international level

31. The determination of a case of illegal traffic may also require cooperation between the State of transit or State of import and the State of export. Proper communication channels at the international level are thus equally important. As previously stated, given the responsibilities assigned to the competent authority under the Basel Convention, it is important to ensure that the relevant competent authority be adequately involved in the international process of determining whether a transboundary movement of hazardous or other wastes falls within the scope of paragraph 2 of Article 9.

32. The list of competent authorities and their contact information is available on the website of the Convention at: <http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>. In the event a competent authority may not be contacted, it is possible to contact a State through its Ministry of Foreign Affairs, for instance its embassy or permanent mission.

33. In line with the Convention, and as previously mentioned, parties may also contact the Secretariat of the Basel Convention who has the mandate to assist parties upon request in their identification of cases of illegal traffic²⁸

34. Once the parties concerned conclude that there is a transboundary movement of hazardous wastes or hazardous wastes deemed to be illegal traffic as a result of the conduct on the part of the exporter or generator, the provision embedded in paragraph 2 of Article 9 may be activated.

3. The take-back of the wastes by the State of export

3.1. States and entities involved

3.1.1. States involved

3.1.1.1. States “concerned”

35. The Basel Convention provides that, when the conditions set out in paragraph 2 of Article 9 are met, the State of export shall ensure that the wastes in question are: (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable; and (b) are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree.

36. The State of export therefore has primary responsibility for complying with the take-back procedure, as set out in paragraph 2 of Article 9.

37. At least one other State, and possibly several other States, will be concerned by the take-back. The illegal shipment may be detected in a State of import or in a transit State. The Convention does not expressly specify the role of those States, besides the general obligation of all “States concerned”²⁹ to cooperate with one another. As a consequence, the party that is a State of import as well as any transit State, regardless of whether it is a party to the Convention or not, may have a role to play to achieve the take-back of the wastes.

38. In practical terms, one must emphasize that sending back illegally trafficked wastes without informing and/or without the involvement of the competent authorities of the State of export may lead to improper take-back or even lead to another (illegal) destination of the waste not being within the State of export – for example when the waste is illegally shipped further on to another State outside the view of the competent authorities. It is thus essential that any State of import or transit concerned by an illegal shipment make all efforts to ensure that the State of export is informed and actually takes on its responsibility for the take-back of the wastes. In this regard, paragraph 2 of Article 9 provides that the parties concerned shall not oppose, hinder or prevent the return of those wastes to the States of export.

²⁸ Paragraph 1 (i) of Article 16.

²⁹ See paragraph 13 of Article 2.

3.1.1.2. Non-party States

39. The Convention prohibits parties from permitting hazardous wastes or other wastes to be exported to a non-party or to be imported from a non-party³⁰ unless the party has entered into an agreement or arrangement with the non-Party pursuant to Article 11. However, because non-parties are not bound by the Convention, a State of export that is not a party to the Convention will not be under the obligation to take-back the wastes. In that case, it is advised that the relevant States cooperate with a view to finding a mutually convenient solution, bearing in mind that the States that are party to the Convention are bound by the Convention's provisions pertaining to the ESM of hazardous and other wastes.

40. In its Article 11, the Convention allows parties to permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party if such Parties enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes, and provided that such agreements or arrangements do not derogate from the ESM of hazardous wastes and other wastes as required by this Convention. A list of such agreements that have been notified to the Secretariat is available on the website of the Convention.³¹ Such agreements may provide for the non-party State of export to take on the responsibilities assigned to the State of export under paragraph 2 of Article 9, but in any case, all such agreements or arrangements should be based upon the need to manage such wastes in an environmentally sound manner.

3.1.2. Entities involved

41. The Basel Convention does not specify which entity within the States concerned will, in practice, implement the take-back procedure. It was noted above that the detection and investigation of a possible case of illegal traffic may involve a variety of entities at the national level (e.g. port authorities, customs, police, environmental institutions/organizations/agencies/authorities, justice and prosecutors' offices).

42. Because of the primary responsibility of competent authorities under the Convention for the implementation of the control procedure, it would seem that Competent Authorities in the States concerned should equally be given the primary responsibility for implementing the take-back procedure. As a consequence it is advised that the relevant competent authority of the State of export and the relevant competent authority of the Party that is a State of import or that of any transit State, in which the wastes are located be given the responsibility to operationalize the take-back provision in close cooperation with the entity that detected the illegally trafficked waste.

43. In addition, because the take-back procedure results from illegal trafficking is deemed to be as a result of the conduct of the exporter or generator, these actors, including their possible interactions with the importer, carrier or disposer, will, as appropriate, be involved.

3.2. The steps towards the take-back

44. The Basel Convention sets out a detailed control procedure that must be complied with for transboundary movements of hazardous wastes and other wastes to take place, a so-called prior informed consent (PIC) procedure. This procedure aims at ensuring, through a prior informed consent, that those States concerned by the transit of or the import of wastes agree to a proposed movement of such wastes and that the wastes are disposed of in an environmentally sound manner in the State of import. The notification and consent procedure, as well as the use of a movement document are specific tools that operationalize the control procedure. Although similar procedures are not provided for in the case of the take-back, some aspects of the control procedure as operationalized through the PIC procedure and the use of a movement document may contribute to achieving the objectives of the Convention, in particular the environmentally sound management (ESM) of the wastes taken back and the punishment of conduct in contravention of the Convention. Accordingly, this guidance proposes that relevant elements of the control procedure for transboundary movements be used when implementing the take-back provision, with certain necessary modifications. The use of standard procedures would harmonize parties' implementation of the take-back provision while achieving the objectives of the Convention.

45. In most cases, the illegal traffic concerns a transboundary movement of wastes for which there was no notification and no consent. To support a standard procedure of the take-back of the wastes in question it is suggested that two forms be used:³²

³⁰ Paragraph 5 of Article 4.

³¹ <http://www.basel.int/Countries/Agreements/tabid/1482/Default.aspx>.

³² In the event not all the parties (through their CAs) involved in the take back agree on following the approach embedded in this guidance, including the use of the suggested forms, then the parties could use the standard procedure provided for

- (a) A form for the State in which the wastes are located to request the State of export to ensure the take-back of the wastes (see appendix 1, part I);
- (b) A form to be used by the State of export for the notification of the take-back, bearing in mind that the specific consent of the States concerned is not required (see appendix 1, part II).
46. A completed movement document should accompany the shipment back to the State of export.
47. However, in the event the illegal traffic concerns a transboundary movement of wastes for which a notification was issued in accordance with paragraph 1 of Article 6 but no consent has been given by the competent authority in the State of import, it is suggested to use the existing notification form that was used during the initial notification procedure for the take-back. Fields 20 and 21 of the notification form should be completed with the reason(s) for objecting to the movement³³. Also in this instance a movement document³⁴ under the Basel Convention should be used to accompany the shipment back to the State of export.
48. The paragraphs below provide a description of the take-back procedure in cases where the transboundary movement of wastes took place without any notification. A graphic illustration of the suggested take-back procedure is set out in appendix 2.

3.2.1. Request for take-back

3.2.1.1. Initial contact

49. Early contact between the State(s) concerned and the State of export is advised at the level of the Competent Authorities so as to facilitate a smooth take-back, to ensure that the wastes in question are disposed of in an environmentally sound manner and to increase the chances of success of assigning responsibility to, and taking any subsequent legal action against, those responsible for the illegal traffic.
50. Various scenarios may occur:
- (a) The State of export has become aware of a possible case of illegal traffic subsequent to the commencement of the transboundary movement of the shipment but prior to the shipment reaching a State of transit or State of import. As a general obligation of preventing conduct in contravention to the Convention, the party must ensure that the illegal shipment does not leave its territory. In the event the State of export has information about the route or destination of the wastes (or possible route and destination) the initial contact with the State(s) concerned should be initiated by the State of export.
- (b) The State of export has become aware of a possible case of illegal traffic subsequent to the commencement of the transboundary movement of the shipment and the shipment already left its territory. In this event, the State of export should make initial contact with the State(s) concerned.
- (c) The shipment deemed to be illegal has reached another State (State of transit or State of import). In that case, that State may have initiated contact with the State of export during the investigation stage.
51. This initial contact between the State(s) concerned and the State of export may be a telephone conversation. However, a written communication (most commonly through email, although fax may be used) between the competent authorities of the States concerned is advisable so as to ensure that all States concerned are properly informed through the appropriate channels. To overcome possible language difficulties, it is recommended to use all means available, i.e. through both oral and written communication channels.
52. Such initial contact between all States concerned should be made as soon as possible, meaning immediately following the detection of the possible case of illegal traffic.

3.2.1.2. Request for take-back

53. In this guidance document, the request for the take-back of the wastes deemed to constitute a case of illegal traffic amounts to the formal initiation of the take-back procedure by the State of transit or State of import in which the wastes are located. The competent authority of the party that is a State of import or that of any transit State in which the wastes are located will be responsible for requesting the State of export to take-back the wastes.

under Article 6 with the exception of paragraph 2 and paragraph 3 (a), namely there is no need for the State of import taking back the wastes to consent to the proposed movement.

³³ See paragraph 31 of the revised notification and movement documents for the control of transboundary movement of hazardous wastes and instructions for completing these documents.

³⁴ See footnote 33.

54. As noted above, it is expected that prior communications between the State of export and the State requesting the take-back will have taken place before the official request for wastes to be taken back is formulated. The request should be sent promptly to the State of export, which means that the steps to be taken to collect the information needed to make this request should also be taken in a timely manner. The Convention does not set any deadlines for these steps, but delayed action may lead to damage to human health and the environment in the event the containers are leaking, to tampering with evidence if the shipment is not safely stored, to an increase of the costs of storage of the shipment, as well as to hampering a smooth implementation of the take-back procedure, the environmentally sound disposal of the wastes and subsequent legal proceedings against those responsible for the illegal traffic. It is therefore suggested that the request for take-back be sent within 15 days following the detection of the illegal shipment.

55. Because the request is expected to lead to the take-back of the wastes, it should set out the information that will have led to the determination, by the State making the request, that there are grounds for this procedure to be implemented. Such information includes:

- (a) The reason(s) why the shipment amounts to a deemed case of illegal traffic;
- (b) The date and place of detection of the case of illegal traffic;
- (c) The entities involved (generator, exporter, States, other stakeholders), and information about the responsibility of each entity involved in the illegal traffic, including with respect to the costs associated with the take-back;
- (d) List of evidence available to support the information set out in the request;
- (e) The description of the wastes (nature and amount);
- (f) The copy of a contract between the exporter and importer/disposer/carrier, if available;³⁵
- (g) The location of the wastes from where they will be taken back;
- (h) Steps taken to ensure that the wastes are safely stored and cannot be tampered with;
- (i) Steps that may need to be taken to ensure that the wastes are properly packaged and labelled in- conformity with generally accepted and recognized international rules and standards;
- (j) Costs that are expected to be incurred since the request for take-back has been received by the State of export (storage, packaging, labeling).

56. Parties are advised to use part I – Request for the take-back - of the form attached in appendix 1.

57. When the request is sent to the competent authority of the State of export, it is advised to provide at that time some evidence that a case of illegal traffic is deemed to have taken place. Such evidence can be pictures of the waste, copies of documents (receipts, labels, contracts, shipping documents, notification document if available, movement document if available, written statements made during the investigation, record of visual inspection), or results of laboratory analyses of the content of the illegal shipment. These types of evidence are also considered useful during the initial contact; in other words, the step before completing and sending the form for the take-back request.

58. Competent authorities from the involved States should keep in mind that any evidence collected during the investigation could be used in court action(s) started up following the illegal traffic. Competent authorities are therefore strongly encouraged to ensure that robust evidence is prepared and documented and to collaborate in sharing their evidence within the existing legal frameworks (for example via mutual legal assistance procedures) upon request.

59. It may be helpful to use the form for confirmed cases of illegal traffic³⁶ to accompany information or evidence. Such information will also facilitate the cooperation between the relevant competent authorities. This information could also be shared by the competent authority with the relevant enforcement entities (police, customs and prosecutors) within its country. It may also be that such evidence could be of use to the administrative or enforcement authorities in the State of export in order to conduct proceedings against those responsible for the illegal traffic and falling within the jurisdiction of that State.

³⁵ A contractual arrangement between the carrier (shipping/transport company) and the exporter or between the importer or disposer and the exporter may include information of relevance to the determination of a case of illegal traffic. It may also provide for an avenue for managing illegal shipments in addition to the take-back procedure. In particular, the contract with the carrier may provide for the illegal shipment to be covered by a financial guarantee which may be used to cover the costs of storage, the costs of transport, as well as the costs of recovery or disposal, including any necessary interim operation.

³⁶ This form is available at: <http://www.basel.int/Procedures/ReportingonIllegalTraffic/tabid/1544/Default.aspx>.

60. Following the reception of the request for the take-back, the competent authority of the State of export should promptly acknowledge receipt with the competent authority of the requesting State. This acknowledgement should be in writing (via email or other electronic correspondence, fax, letter) and its date included in the form requesting the take-back. After its competent authority has reviewed the request, the State of export should confirm its intention to ensure that the wastes are taken back, or if the request is not complete or unclear, seek for further information or clarification.

61. It is important to note that the Convention provides that, when operationalizing the take-back procedure, “the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export”³⁷. The 30-day deadline set out in paragraph 2 of Article 9 (or such other period of time as the States concerned may agree upon) for the wastes in question to be taken back runs from the date of receipt of this request by the State of export.

3.2.2. Notification of the take-back

62. Although the Basel Convention is silent on this point, best practice suggests that the request for take-back should be followed by a notification of the take-back of the wastes in question, unless all the involved competent authorities agree that this is not necessary, e.g. in case a duly motivated request is made by the competent authority of the initial State of export. Because the take-back is, ultimately, the responsibility of the State of export, it will be up to that State to organize the take-back and to notify, or to require the generator or exporter to notify, the State(s) concerned accordingly. It is advised that part II - Notification of take-back - of the form attached in appendix 1 be used, which is a modified version of the notification document for transboundary movements of hazardous wastes. The differences with the standard notification document are the:

- (a) Omission of box 20 (written consent of the movement);
- (b) Omission of box 21 (specific conditions on consenting to the movement document or reasons for objecting).

In box 3 the option for take-back has been added. It is noted that it may be possible that some boxes cannot be filled in, e.g. the waste generator may not be known.

63. After the State of export has acknowledged receipt of the request for take-back, arrangements for the take-back would follow. In addition to the information usually set out in the notification document for transboundary movements, the form should set out information on the timeline for the take-back. As noted above, the Convention provides for a 30 day deadline (or such other period of time as States concerned may agree) for the wastes in question to be taken back, and the suggestion is that this deadline will run upon receipt by the State of export of a completed request to take-back the wastes.

64. The following provisions of the Basel Convention should apply *mutatis mutandis* to the notification of the take-back:

- (a) Paragraph 1 of Article 6, pertaining to the notification by the State of export;
- (b) Paragraph 3 (b) of Article 6, pertaining to the confirmation of a contract specifying ESM of the wastes taken back.

65. Because the Convention provides in paragraph 2 of Article 9 that “the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export”, the suggestion is that all Parties have already agreed to consent that illegal shipments of wastes transit through them and that, accordingly, the specific consent of the State(s) concerned (State in which the wastes are located and State of transit if any) not be required before the transboundary movement commences.

66. The take-back should start after the competent authorities concerned have acknowledged the receipt of the notification.

67. A movement document should accompany the wastes and the provisions of paragraph 9 of Article 6 should apply *mutatis mutandis*. The responsibility for ensuring the completion of the movement document would be entrusted to the State of export, which would then send it to the State in which the wastes are located for further use during the take-back.

68. At any time, parties may, in line with paragraph 1 (i) of Article 16 of the Basel Convention, request the assistance of the Secretariat in their identification of cases of illegal traffic.

³⁷ Paragraph 2 of Article 9.

3.3. In case take-back is impracticable

69. Paragraph 2 (b) of Article 9 provides that in case the take-back of the illegal shipment is “impracticable”, the State of export shall ensure that the wastes in question are “otherwise disposed of in accordance with the provisions of the Basel Convention”.

70. Examples of situations where a take-back is impracticable include:

- (a) The State of export does not have an adequate facility to dispose of the wastes in question;
- (b) Risks of transport during take-back are high due to damaged or affected packaging, or due to the fact that the wastes have become unstable;
- (c) Cases where the state of import is a non-party and is unwilling to cooperate in the take-back.

71. The best outcomes may be for the State of export to cooperate with the State of import to ensure the wastes are disposed of in an environmentally sound manner within the State of import. Alternative arrangements for disposal of the wastes within another State would also be viable, as long as the waste is disposed of in an environmentally sound manner and all concerned States agree to the solution. In the latter, the PIC procedure, as described in Article 6 of the Convention, should be applied. As it is State of export’s responsibility to take all the steps necessary towards this goal, the State of export should take on the obligations of the State in which the wastes are located. A graphic illustration in case take-back of the wastes is considered impracticable is set out in appendix 3.

3.4. Costs related to the take-back

72. Paragraph 11 of Article 6 of the Convention provides that:

“Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or guarantee as may be required by the State of import or any State of transit which is a Party.”

73. In case the illegal shipment was covered by a financial guarantee,³⁸ this guarantee may be used to cover the costs of storage, the costs of transport, as well as the costs of recovery or disposal, including any necessary interim operation, depending on the provisions of the relevant national legal frameworks. However, for the most part, wastes are illegally trafficked without any form of notification to the involved competent authorities and thus no insurance, bond or other guarantee (hereafter referred to as financial guarantee) is in place.

74. Although the convention is silent on this point, costs related to the take-back (packaging and labeling, storage, transport and disposal) should be borne by the exporter or generator, based on their responsibility, or, if necessary, by the State of export. It would seem appropriate that costs of storage incurred from the date on which the State of export has been properly notified of the illegal shipment should also be borne by the exporter, generator or, if necessary, by the State of export. Responsibility for other costs generated by the illegal traffic (e.g. storage prior to notification, investigation) should be specified in the national legal framework of the States concerned and dealt with in the context of existing administrative, civil or criminal procedures to prevent and punish illegal traffic.

75. The involved competent authorities should decide and agree on whether the take-back of illegally trafficked waste is to be covered by a financial guarantee or not.

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

76. Communication between the relevant competent authorities of the States concerned should continue until it is confirmed that the wastes have been disposed of in an environmentally sound manner. The competent authorities of the State(s) concerned are advised to monitor the take-back of the wastes in question to ensure that they arrive in the State of export. The State of export, through its Competent Authority, should confirm to the States concerned reception of the wastes in its country.

77. It is also advisable that the States concerned also cooperate with regards to subsequent legal proceedings, so as to ensure that parties punish conduct in contravention of the Convention, as required by the

³⁸ This is the case in the EU. Article 6 of the Regulation (EC) No. 1013/2006 on the shipment of wastes provides that all shipments of waste for which a notification is required shall be subject to the requirement of a financial guarantee or equivalent insurance covering: (a) costs of transport; (b) costs of recovery or disposal, including any necessary interim operation; and (c) costs of storage for 90 days. The financial guarantee or equivalent insurance is intended to cover costs arising in the context of: (a) cases where the shipment or the recovery or disposal cannot be completed as intended; and (b) cases where a shipment or the recovery or disposal is illegal.

Convention. Guidance on the prosecution of cases of illegal traffic is set out in the *Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes*.³⁹

78. The competent authority is also invited to communicate to the Basel Convention Secretariat and with other parties and stakeholders its experiences and lessons learned. In due course, the form for confirmed cases of illegal traffic⁴⁰ should also be communicated to the Secretariat.

³⁹ Approved by decision BC-10/18 of the tenth meeting of the Conference of the Parties. The *Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes* is available at: <http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

⁴⁰ This form is available at: <http://www.basel.int/Procedures/ReportingonIllegalTraffic/tabid/1544/Default.aspx>.

Appendix 1: Form for the take-back of wastes deemed to be illegal traffic in accordance with paragraph 2 of Article 9 of the Basel Convention: request for take-back (Part I) and notification of take-back (Part II)

PART I: REQUEST FOR THE TAKE-BACK OF WASTES BY THE STATE OF EXPORT	
1. State requesting the take-back Name: Address: Contact person (CA): E-mail: Tel: Fax: Date of request: Stamp and/or signature	2. State of export to take-back the wastes Name: Address: Contact person (CA): E-mail: Tel: Fax: Request received on: Stamp and/or signature <i>(to confirm receipt of the request only)</i>
3. Other States concerned (specify why):	
4. Description and quantity of the wastes to be taken back	
Designation and composition of the waste:	
Physical characteristics:	
Number of shipments:	Total quantity in tonnes (Mg) or m ³ :
Waste identification <i>(fill in relevant codes)</i>	
(i) Basel Annex VIII (or IX if applicable):	(ii) OECD code (if different from (i)):
(iii) EC list of wastes:	(iv) National code in country of export:
(v) National code in country of import:	(vi) Other (specify):
(vii) Y-code:	(viii) H-code:
(ix) UN class:	(x) UN Number:
(xi) UN Shipping name:	(xii) Customs code(s) (HS):
5. Reason for requesting take-back	
(i) No notification of movement <input type="checkbox"/> (ii) No consent given to movement <input type="checkbox"/> (iii) Consent to movement obtained through falsification, misrepresentation or fraud <input type="checkbox"/> (iv) Movement does not conform in a material way with documents <input type="checkbox"/> (v) Movement resulted in deliberate disposal <input type="checkbox"/> (vi) Other reason provided by national legal framework:	
<input type="checkbox"/> National definition of hazardous wastes under Art 1(1)(b), Art 3 and Art 6(5) and import/transit/export prohibited under Art 4(1)(a) and 13	
<input type="checkbox"/> Intended disposer does not exist <input type="checkbox"/> Intended disposer does not hold necessary licence(s)	
<input type="checkbox"/> No contract between the exporter and disposer specifying environmentally sound management of the wastes in question	
<input type="checkbox"/> Import ban in the State of import <input type="checkbox"/> Export ban in the State of export <input type="checkbox"/> Transit ban in the State of transit	
<input type="checkbox"/> Other	
6. Information on the illegal shipment	
Detected place:	Detected date:
Detected by:	
Steps taken to safely store the wastes:	
Current location of the wastes:	
7. Entities involved in the illegal shipment	
Waste generator	Name:
	Address:
Contact person:	Email:
Tel:	Fax:
Waste exporter	Name:
	Address:
Contact person:	Email:
Tel:	Fax:
Other entity	Name:
	Address:
Contact person:	Email:
Tel:	Fax:

8. Evidence attached to the request

Evidence collected:

Evidence collected by:

9. Costs expected to be covered by the generator or exporter or State of exportCosts of storage Costs of packaging and labelling Costs of transport Costs of disposal/recovery Other costs Specify:

PART II: NOTIFICATION DOCUMENT FOR THE TAKE-BACK OF WASTES																									
1. Exporter - notifier Registration No: Name: Address: Contact person: Tel: _____ Fax: _____ E-mail: _____	3. Notification No: Notification concerning A.(i) Individual shipment: <input type="checkbox"/> (ii) Multiple shipments: <input type="checkbox"/> B.(i) Disposal (7): <input type="checkbox"/> (ii) Recovery : <input type="checkbox"/> C. Pre-consented recovery facility (2.3) Yes <input type="checkbox"/> No <input type="checkbox"/> D. Take-back of illegal traffic <input type="checkbox"/>																								
2. Importer - consignee Registration No: Name: Address: Contact person: Tel: _____ Fax: _____ E-mail: _____	4. Total intended number of shipments: 5. Total intended quantity (4): Tonnes (Mg): _____ m ³ : _____ 6. Intended period of time for shipment(s) (4): First departure: _____ Last departure: _____																								
8. Intended carrier(s) Registration No: Name (7): Address: Contact person: Tel: _____ Fax: _____ E-mail: _____ Means of transport (5):	7. Packaging type(s) (5): Special handling requirements (6): Yes: <input type="checkbox"/> No: <input type="checkbox"/> 11. Disposal / recovery operation(s) (2) D-code / R-code (5): _____ Technology employed (6): _____ Reason for export (7.6): _____																								
9. Waste generator(s) - producer(s) (1;7;8) Registration No: Name: Address: Contact person: Tel: _____ Fax: _____ E-mail: _____ Site and process of generation (6)	12. Designation and composition of the waste (6): 13. Physical characteristics (5): 14. Waste identification (fill in relevant codes) (i) Basel Annex VIII (or IX if applicable): (ii) OECD code (if different from (i)): (iii) EC list of wastes: (iv) National code in country of export: (v) National code in country of import: (vi) Other (specify): (vii) Y-code: (viii) H-code (5): (ix) UN class (5): (x) UN Number: (xi) UN Shipping name: (xii) Customs code(s) (HS):																								
10. Disposal facility (2): <input type="checkbox"/> or recovery facility (2): <input type="checkbox"/> Registration No: Name: Address: Contact person: Tel: _____ Fax: _____ E-mail: _____ Actual site of disposal/recovery:	15. (a) Countries/States concerned, (b) Code no. of competent authorities where applicable, (c) Specific points of exit or entry (border crossing or port) <table border="1" style="width:100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width:25%;">State of export - dispatch</th> <th colspan="4">State(s) of transit (entry and exit)</th> <th style="width:25%;">State of import - destination</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td></td><td></td><td></td><td></td> <td></td> </tr> <tr> <td>(b)</td> <td></td><td></td><td></td><td></td> <td></td> </tr> <tr> <td>(c)</td> <td></td><td></td><td></td><td></td> <td></td> </tr> </tbody> </table>	State of export - dispatch	State(s) of transit (entry and exit)				State of import - destination	(a)						(b)						(c)					
State of export - dispatch	State(s) of transit (entry and exit)				State of import - destination																				
(a)																									
(b)																									
(c)																									
16. Customs offices of entry and/or exit and/or export (European Community): Entry: _____ Exit: _____ Export: _____																									
17. Exporter's - notifier's / generator's - producer's (1) declaration: I certify that the information is complete and correct to my best knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that, <input type="checkbox"/> If requested by any of the involved Parties, that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement (please tick box if a form of financial guarantee is required and in force). Exporter's - notifier's name: _____ Date: _____ Signature: _____ Generator's - producer's name: _____ Date: _____ Signature: _____																									
FOR USE BY COMPETENT AUTHORITIES																									
19. Acknowledgement from the relevant competent authority of countries of import - destination / transit (1) / export - dispatch (9): Country: _____ Name of competent authority: _____ Notification received on: _____ Stamp and/or signature: _____ Acknowledgement sent on: _____																									
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:80%;"></td> <td style="width:20%; text-align: center; vertical-align: middle;">18. Number of annexes attached</td> </tr> </table>			18. Number of annexes attached																						
	18. Number of annexes attached																								

- (1) Required by the Basel Convention
- (2) In the case of an R12/R13 or D13-D15 operation, also attach corresponding information on any subsequent R12/R13 or D13-D15 facilities and on the subsequent R1-R11 or D1-D12 facility(ies) when required
- (3) To be completed for movements within the OECD area and only if B(ii) applies
- (4) Attach detailed list if multiple shipments

- (5) See list of abbreviations and codes on the next page
- (6) Attach details if necessary
- (7) Attach list if more than one
- (8) If required by national legislation
- (9) If applicable under the OECD Decision

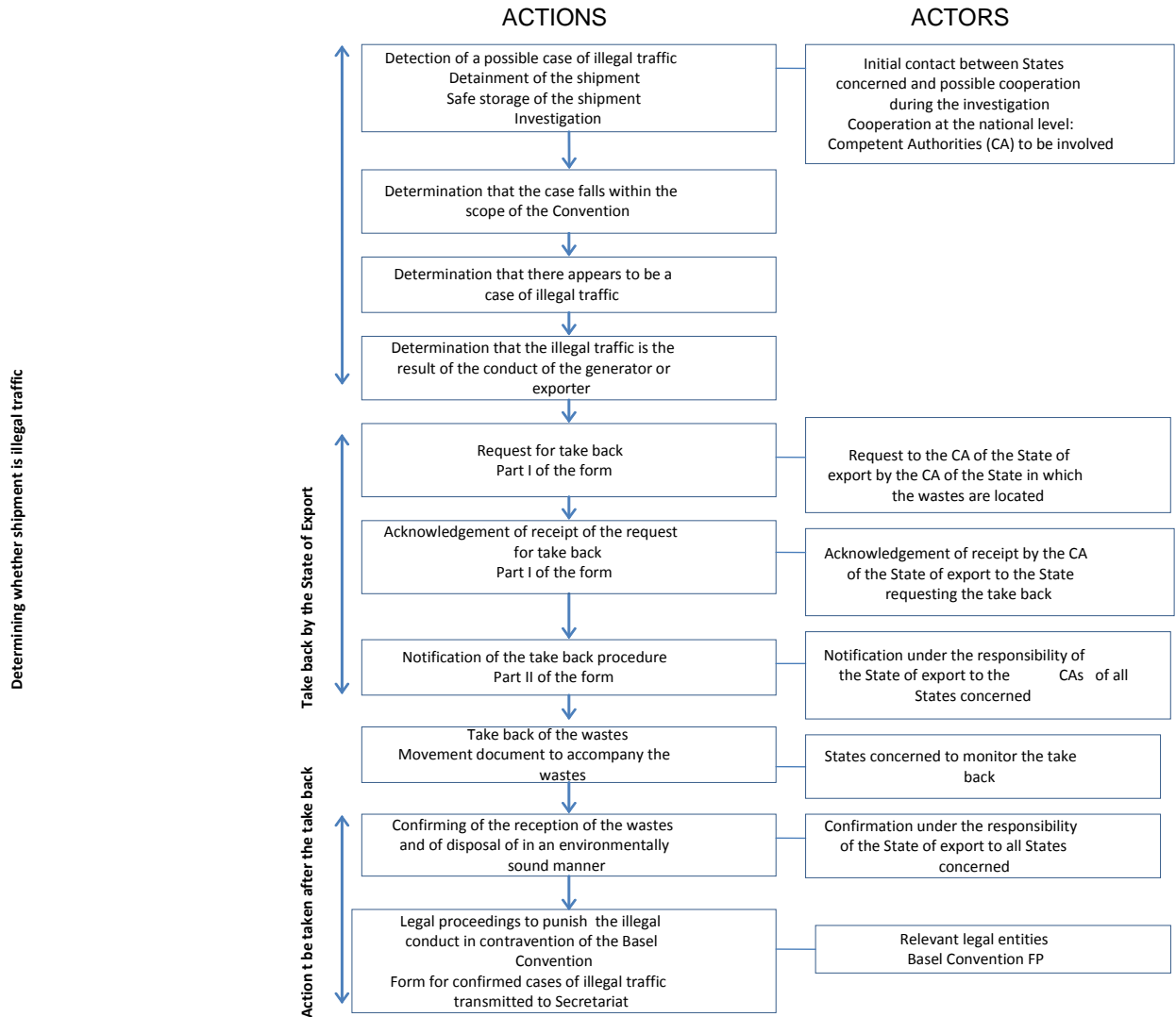
List of abbreviations and codes used in the notification document

<p>DISPOSAL OPERATIONS (block 11)</p> <p>D1 Deposit into or onto land, (e.g., landfill, etc.) D2 Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.) D3 Deep injection, (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.) D4 Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.) D5 Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.) D6 Release into a water body except seas/oceans D7 Release into seas/oceans including sea-bed insertion D8 Biological treatment not specified elsewhere in this list which results in final compounds or mixtures which are discarded by means of any of the operations in this list D9 Physico-chemical treatment not specified elsewhere in this list which results in final compounds or mixtures which are discarded by means of any of the operations in this list (e.g., evaporation, drying, calcination, etc.) D10 Incineration on land D11 Incineration at sea D12 Permanent storage, (e.g., emplacement of containers in a mine, etc.) D13 Blending or mixing prior to submission to any of the operations in this list D14 Repackaging prior to submission to any of the operations in this list D15 Storage pending any of the operations in this list</p>																																												
<p>RECOVERY OPERATIONS (block 11)</p> <p>R1 Use as a fuel (other than in direct incineration) or other means to generate energy (Basel/OECD) - Use principally as a fuel or other means to generate energy (EU) R2 Solvent reclamation/regeneration R3 Recycling/reclamation of organic substances which are not used as solvents R4 Recycling/reclamation of metals and metal compounds R5 Recycling/reclamation of other inorganic materials R6 Regeneration of acids or bases R7 Recovery of components used for pollution abatement R8 Recovery of components from catalysts R9 Used oil re-refining or other reuses of previously used oil R10 Land treatment resulting in benefit to agriculture or ecological improvement R11 Uses of residual materials obtained from any of the operations numbered R1-R10 R12 Exchange of wastes for submission to any of the operations numbered R1-R11 R13 Accumulation of material intended for any operation in this list.</p>																																												
<p>PACKAGING TYPES (block 7)</p> <p>1. Drum 2. Wooden barrel 3. Jerrican 4. Box 5. Bag 6. Composite packaging 7. Pressure receptacle 8. Bulk 9. Other (specify)</p>	<p>H-CODE AND UN CLASS (block 14)</p> <table border="1"> <thead> <tr> <th>UN Class</th> <th>H-code</th> <th>Characteristics</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>H1</td> <td>Explosive</td> </tr> <tr> <td>3</td> <td>H3</td> <td>Flammable liquids</td> </tr> <tr> <td>4.1</td> <td>H4.1</td> <td>Flammable solids</td> </tr> <tr> <td>4.2</td> <td>H4.2</td> <td>Substances or wastes liable to spontaneous combustion</td> </tr> <tr> <td>4.3</td> <td>H4.3</td> <td>Substances or wastes which, in contact with water, emit flammable gases</td> </tr> <tr> <td>5.1</td> <td>H5.1</td> <td>Oxidizing</td> </tr> <tr> <td>5.2</td> <td>H5.2</td> <td>Organic peroxides</td> </tr> <tr> <td>6.1</td> <td>H6.1</td> <td>Poisonous (acute)</td> </tr> <tr> <td>6.2</td> <td>H6.2</td> <td>Infectious substances</td> </tr> <tr> <td>8</td> <td>H8</td> <td>Corrosives</td> </tr> <tr> <td>9</td> <td>H10</td> <td>Liberation of toxic gases in contact with air or water</td> </tr> <tr> <td>9</td> <td>H11</td> <td>Toxic (delayed or chronic)</td> </tr> <tr> <td>9</td> <td>H12</td> <td>Ecotoxic</td> </tr> </tbody> </table>		UN Class	H-code	Characteristics	1	H1	Explosive	3	H3	Flammable liquids	4.1	H4.1	Flammable solids	4.2	H4.2	Substances or wastes liable to spontaneous combustion	4.3	H4.3	Substances or wastes which, in contact with water, emit flammable gases	5.1	H5.1	Oxidizing	5.2	H5.2	Organic peroxides	6.1	H6.1	Poisonous (acute)	6.2	H6.2	Infectious substances	8	H8	Corrosives	9	H10	Liberation of toxic gases in contact with air or water	9	H11	Toxic (delayed or chronic)	9	H12	Ecotoxic
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<p>MEANS OF TRANSPORT (block 8)</p> <p>R = Road T = Train/rail S = Sea A = Air W = Inland waterways</p>																																												

PHYSICAL CHARACTERISTICS (block 13) 1. Powdery/powder 2. Solid 3. Viscous/paste 4. Sludgy 5. Liquid 6. Gaseous 7. Other (specify)	9 H13	Capable, by any means, after disposal of yielding another material, e. g., leachate, which possesses any of the characteristics listed above
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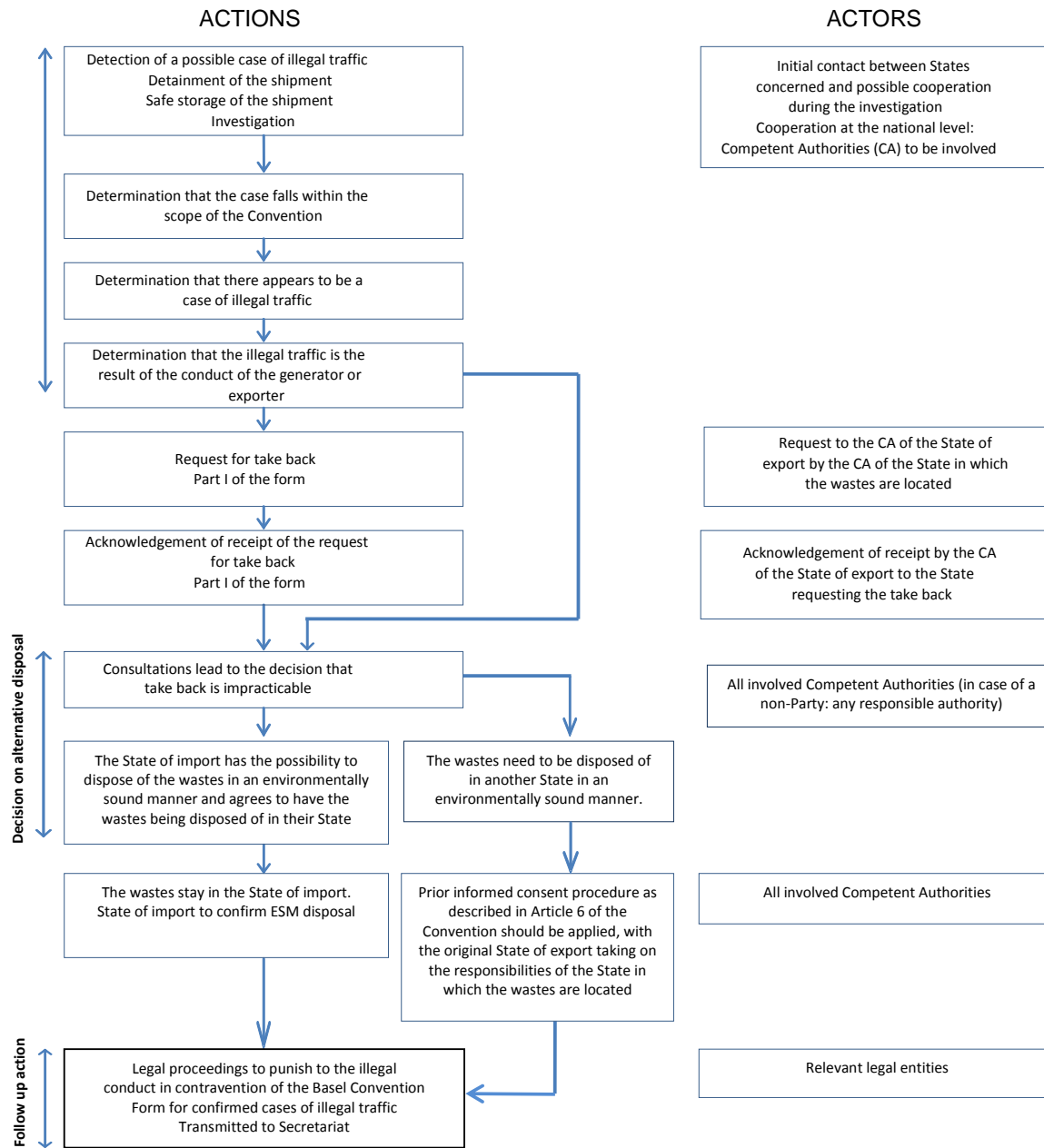
Further information, in particular related to waste identification (block 14), i.e. on Basel Annexes VIII and IX codes, OECD codes and Y-codes, can be found in a Guidance/Instruction Manual available from the OECD and the Secretariat of the Basel Convention

Appendix 2: Graphic illustration of the suggested take-back procedure as described in paragraph 3.2 of this guidance



Appendix 3: Graphic illustration in case take-back of the wastes is considered impracticable, as described in paragraph 3.3 of this guidance

Determining whether shipment is illegal traffic



Appendix 4: Implementation of the take-back procedure in a case study

The diagram shown below is of the take-back procedures as implemented during an export case from the United Kingdom of Great Britain and Northern Ireland to Indonesia in January 2012. Scrap metals exported to Indonesia were detained after it was detected that the movement contained wastes prohibited from import into Indonesia.

