

Structure and obligations of the Convention

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The Convention rests on a few core principles. Transboundary movements of hazardous wastes and other wastes shall be reduced to the minimum consistent with their environmentally sound management. Wastes shall be disposed of as close as possible to their source of generation. States have the sovereign right to prohibit the import of hazardous wastes into their territory. Where movements take place, they must follow a procedure of prior informed consent, under which the state of export notifies the states of import and transit and may authorise the movement only after receiving their written consent.¹

The definitions of the Convention are technical. Hazardous wastes are defined in Article 1 by reference to Annex I, which lists categories of waste streams and constituents, and Annex III, which lists hazardous characteristics such as explosive, flammable, toxic or ecotoxic properties. Annex II covers "other wastes", originally household waste and residues from the incineration of household waste, to which plastic waste was later added. Annexes VIII and IX, added in 1998, provide lists of wastes presumed to be hazardous and wastes presumed not to be hazardous. States may also define further wastes as hazardous under their domestic law, with the consequence that other parties must respect these national definitions. In practice, the classification of a particular consignment is often the decisive and most disputed question.²

Article 4 of the Convention contains its central obligations. Parties must not permit the export of hazardous wastes to parties that have prohibited their import, nor to non-parties, unless a separate agreement under Article 11 ensures equivalent standards. They must take measures to ensure that the generation of hazardous waste is reduced to a minimum and that adequate disposal facilities are available. Article 9 defines illegal traffic, which includes movements without notification or consent, movements with consent obtained through falsification or fraud, and deliberate

disposal in contravention of the Convention. Under Article 4(3), parties consider illegal traffic in hazardous wastes to be criminal, and under Article 9(5) they must introduce appropriate national legislation to prevent and punish it. Where illegal traffic results from the conduct of the exporter, the state of export must ensure that the wastes are taken back.³

The institutional machinery is light. The Conference of the Parties meets every two years and takes decisions on amendments, technical guidelines and the budget. An Open-ended Working Group prepares its work, and an Implementation and Compliance Committee, established in 2002, reviews difficulties of parties in meeting their obligations. A network of Basel Convention Regional and Coordinating Centres in Africa, Asia, Latin America, the Arab region and Eastern Europe supports capacity building. A Protocol on Liability and Compensation for Damage resulting from transboundary movements was adopted in 1999 but has not entered into force for lack of ratifications.⁴

The Convention has an almost universal membership. According to the Secretariat, it counts around 190 parties, which include the European Union and almost every member state of the United Nations. The most notable exception is the United States, which signed the Convention in 1990 but has never ratified it. American exports of hazardous waste to other OECD countries are governed instead by an OECD Council Decision on the control of transboundary movements of wastes destined for recovery operations, which the Convention accepts as an agreement under Article 11. The American position has consequences for trade, because parties may not trade in Basel-controlled wastes with a non-party in the absence of such an agreement.⁵

Switzerland ratified the Convention in 1990 and was among its early parties. Its domestic implementation rests on the Federal Act on the Protection of the Environment and on the Ordinance on Movements of Waste of 22 June 2005, which governs both domestic movements and the export and import of waste. The Federal Office for the Environment acts as the competent authority for notifications and consents, while the Federal Office for Customs and Border Security controls consignments at the border. For Basel, with its Rhine ports, its rail freight terminals and its chemical industry, these rules have practical significance. Part H returns to customs, export control and border enforcement in the trinational region.⁶

1 Notes

1. On the core principles of the Basel Convention (minimisation of transboundary movements, proximity principle, sovereign right to

prohibit imports, prior informed consent), see the Preamble and Articles 4 and 6 of the Basel Convention, 1673 UNTS 57. To be verified.



2. On the definition of hazardous wastes under Article 1 and Annexes I, III, VIII and IX of the Basel Convention, the category of "other wastes" in Annex II and national definitions under Article 3, see the text of the Convention and the technical guidelines adopted by the Conference of the Parties. To be verified. 
3. On the general obligations of the parties (Article 4), agreements with non-parties (Article 11), the definition of illegal traffic and the duty to re-import (Article 9) and the duty to criminalise illegal traffic (Articles 4(3) and 9(5)), see the text of the Basel Convention. To be verified. 
4. On the Conference of the Parties, the Open-ended Working Group, the Implementation and Compliance Committee (established by decision VI/12 in 2002), the Basel Convention Regional and Coordinating Centres and the Basel Protocol on Liability and Compensation of 1999 (not in force), see the documents of the Secretariat of the Basel Convention. Status to be verified. 
5. On the number of parties to the Basel Convention (about 190 according to the Secretariat), the signature but non-ratification by the United States and the OECD Council Decision C(2001)107/FINAL as an Article 11 arrangement, see the status table of the United Nations Treaty Collection and the documents of the OECD. Figures and status to be verified. 
6. On the Swiss ratification of the Basel Convention (SR 0.814.05), the Environmental Protection Act (SR 814.01) and the Ordinance on Movements of Waste (VeVA, SR 814.610) of 22 June 2005, and the competences of the Federal Office for the Environment and the Federal Office for Customs and Border Security, see the Systematic Compilation of Federal Law. Date of ratification to be verified. 

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