



BC
RC
SC

UNEP/FAO/CHW/RC/POPS/JWG.2/2



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

Distr.: General
5 October 2007

English only



**Rotterdam Convention on the Prior
Informed Consent Procedure for
Certain Hazardous Chemicals and
Pesticides in International Trade**



**Stockholm Convention on
Persistent Organic Pollutants**

**Ad hoc joint working group on enhancing cooperation and
coordination among the Basel, Rotterdam and Stockholm conventions**

Second meeting

Vienna, 10–13 December 2007

Item 3 of the provisional agenda*

**Consideration of the intersessional work undertaken by the
members of the ad hoc joint working group and by the
Secretariats of the Basel, Rotterdam and Stockholm Convention**

Coordination for the national level

Note by the secretariats

Attached is the thought starter on “Coordination for the national level” prepared by Brazil, Czech Republic, Egypt, Republic of Moldova, Romania and Sri Lanka for consideration by the meeting. It is presented as received and has not been edited by the secretariats.

* UNEP/FAO/CHW/RC/POPS/JWG.2/1.

241007

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

COORDINATION FOR THE NATIONAL LEVEL

Lead: Brazil

20 September 2007

Participating AHJWG member: Czech Republic, Egypt, Moldova, Romania and Sri Lanka.

Introduction

Each Party has a sovereign right to decide on ways of national coordination and on the structure of authorities securing the coordination. Many countries have systems for coordination in place that function well, and in such countries there might not be much benefit to establish new systems. On the other hand, there are countries looking for ideas on how to improve their systems of national coordination. This thought starter offers some ideas on how to improve the coordination on the national level with respect to the three Conventions when there is such demand by the Party. However, the proposed structure should not be perceived as the only possible structure to ensure the necessary coordination and collaboration at the national level.

One of the objectives of the Strategic Approach to International Chemicals Management (SAICM) with regard to governance is to enhance cooperation on the sound management of chemicals between Governments, the private sector and civil society at the national, regional and global levels. The ideas proposed below may help countries to fulfill this goal.

1. Scope of obligations under the three conventions

The nature of the obligations under the Basel, Rotterdam and Stockholm Conventions requires close coordination among different governmental bodies. The fulfilment of the provisions of these instruments, as well as of the decisions of the Conferences of the Parties, require action by, or at least involvement of, a number of ministries, agencies and specialised institutions, such as the ministries of foreign affairs, environment, agriculture, health, foreign trade and industry, defence/interior, transport, environmental and health inspectorates, customs officers. The involvement of a great number of institutions for the fulfilment of an international obligation established by an MEA is a characteristic of the paradigm of "sustainable development". This poses, however, a great challenge for national coordination. The barriers for cooperation and coordination range from the overlapping or conflicting mandates to coordination disputes. As noted in the Report of the World Commission on Environment and Development "Our Common Future" (1987),

“institutions tend to be independent, fragmented, and working to relatively narrow mandates with closed decision processes”.

1.1 Basel Convention

One of the obligations provided for by the Basel Convention to its Parties is the designation of one “focal point” and one or more “competent authorities” responsible for the procedural obligations under the Convention. According to its Article 5, the Parties shall “designate or establish one or more competent authorities and one focal point”. The focal point is in accordance with Article 2, paragraph 7 responsible for receiving and submitting information as provided for in Articles 13 and 16. The competent authority is responsible 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, as provided for in Article 6.

Whereas the competent authority is in charge of the prior informed consent procedure under the Basel Convention, deciding on the concrete cases, the focal point is responsible for updating the Parties, through the Secretariat, with information regarding the applicability of the Convention in its territory, regarding domestic provisions.

1.2 Stockholm Convention

Article 9 of the Stockholm Convention establishes a clearing-house mechanism, facilitated by the Secretariat, for information exchange, among the Parties, on the reduction, elimination and alternatives to persistent organic pollutants. For this purpose, it provides for the establishment of “national focal points”. Since the text of the Convention restricts the role of the focal point to the performance of the provision of article 9, the Parties adopted, in COP 2, Decision 2/16, which invites the nomination of “official contact points” for the performance of administrative functions and all formal communications under the Convention.

1.3 Rotterdam Convention

The Rotterdam Convention has no provision on the official channel of communication between the Parties and the Secretariat. According to the report of the II Conference of the Parties (paragraph 106), the COP “requested the Secretariat to write to Governments asking them to provide contact details for their official contact points for the Rotterdam Convention”. The secretariat communicates with its Official Contact Points on official issues such as notices regarding participation in meetings of the Conference of the Parties, circulation of the reports of these meetings, proposals for the addition of chemicals

to Annex III of the Convention and inclusion in the PIC procedure, and the nominations of experts to subsidiary bodies such as the Chemical Review Committee.

The functions of Official Contact Points do not necessarily coincide with the ones of Designated National Authorities (DNAs). The DNAs are in charge of the prior informed consent procedure.

2. Brief overview of current status, challenges of the existing systems

The Basel and Stockholm Convention and the decision of the COP to the Rotterdam Convention define the role of the national focal point/official contact point in terms of their obligations regarding the secretariat/COP/other Parties. However, the role of the national focal point at the national level is fully left to the particular Party to define.

The provisions of the three conventions result in two kinds of obligations for the State Parties: **procedural obligations and material obligations**. The similar procedural obligations of the Basel and Rotterdam Conventions refer to the prior informed consent for the transboundary movements of hazardous and other wastes and of chemicals, respectively. The material obligations refer, primarily, to the Stockholm Convention's provisions on the reduction and elimination of POPs. Under the Basel Convention, the provisions of Article 4, paragraphs 2-13, dealing with, *inter alia*, minimization of waste generation and transboundary movement, and availability of adequate disposal facilities, may be regarded as material obligations.

The procedural obligations under the conventions may warrant national coordination so as to deliver expeditiously what is expected from State Parties. Since the PIC procedure is similar for the Basel and Rotterdam Conventions, the Parties' response to the transboundary movements requests is likely to be more accelerated if the "competent authority" (Basel Convention) and the DNA (Rotterdam Convention) were the same institution. In some countries, however, the authority with the mandate for the PIC procedure regarding pesticides is different from the one regarding industrial chemicals. In this case both authorities can be a DNA to the Rotterdam Convention as the Convention allows designating more than one DNA.

The material obligations under the Stockholm Convention are implemented through a national implementation plan (NIP) taking into account the country's environmental policy as well as policy for chemicals. The elaboration of a NIP involves different governmental bodies and non-governmental stakeholders. The participation of the authorities in charge

of the Basel and the Rotterdam Conventions in this process would be of great benefit. At the moment, two chemicals (aldrin and chlordane) are listed both under the Stockholm and the Rotterdam Conventions. Two other chemicals (alpha hexachlorocyclohexane and beta hexachlorocyclohexane) are under review of a Stockholm Convention body and already listed in the Rotterdam Convention. Moreover, POPs wastes shall also be addressed by NIPs.

2.1 Difficulties and barriers:

- Lack of knowledge and capacity: The national focal points (NFP) may not have a clear view on tasks that should be performed at the national level to secure coordinated implementation of the convention
- Lack of human resources: The NFP may have other, more urgent priority tasks - lack of time and low priority of the convention's implementation at the national level
- Competence protection: Lack of communication between NFP/DNA and other stakeholders involved in the implementation of the convention – lack of willingness to communicate
- Technological barriers for regular operative communication (e.g. lack of facilities as regards communication techniques/tools)

2.2 Areas where coordination at the national level is of particular benefit:

- Customs: Combating illegal traffic/trade in hazardous chemical substances/wastes
- Protection of human health and of the environment in case of accidents
- Information flow
- Transfer of know-how
- Preparation of national positions for Conferences of the Parties

3. Issues to consider in preparing for AHJWG recommendations to the COPs

3.1 National Coordinator

The current list of DNAs (RC) and “competent authorities” (BC) – document BC-RC-SC/AHJWG 1/INF/1 – demonstrates that in many countries there are two or more authorities involved in the PIC procedures under the two conventions. Merging these functions into one authority may be desirable for some countries but may face legal barriers in the domestic law. This should not, however, prevent enhanced coordination at the national level for the implementation of the three Conventions.

One possibility to achieve this may be the nomination of a “**national coordinator**” for the three Conventions. He/she could enhance coordination and cooperation between these governmental bodies. It would be useful if such a “**national coordinator**” could be a higher official in the state administration. Selection among the current individual focal points could be another option. If there are different institutions responsible for convention’s implementation, the preference to appoint the national coordinator may be given to the institution responsible also for the coordination of the SAICM implementation. Its function of overseeing the implementation of the Conventions would include acting with the aim to solve capacity gaps and a shortage of coordination identified by the NFPs/official points of contacts/DNAs. The NFPs should report to the national coordinator regularly. Once weaknesses are identified, the “**national coordinator**” would have a clearer picture of its national needs in terms of capacity building and technology transfer for the implementation of the Convention. The “**national coordinator**” should be in a position of oversight, knowing its country’s available resources and its national policy for chemicals.

The “**national coordinator**” would still need to be assisted by a coordination mechanism to address common issues related to the three conventions. This new arrangement should also preserve the necessary flexibility to allow the implementation of the policies and strategies by the individual focal points, competent authorities and DNAs. Procedural obligations and related policies would still be handled by the individual focal points of the three conventions in collaboration with the competent authorities and the DNAs and other related institutions based on the country situation.

3.2 National Commission

The domestic implementation of the three Conventions on wastes and chemicals involves

a number of governmental bodies and, possibly, industry, academia and civil society in general. National plans should, therefore, result from a multi-stakeholder process of consultations. This process should be permanent, in order to review the results of the policies and measures adopted.

For this purpose, some countries have established, on a technical level, a multi-stakeholder forum of consultations on chemical safety. Such “**national commissions**” have the objectives of being an institutional liaison and of fostering the discussion on chemical safety. They may be composed of the Ministries of Foreign Affairs, Environment, Health, Agriculture, Labour, Industry, Energy, Science, Technology and specialized governmental agencies. Non-governmental organizations on chemical safety and representatives from the chemical industry, as well as from research institutions and universities, would also be key actors in consulting on the country’s plans of implementation of the conventions and their follow-up.

The “**national commission**” could be chaired or assisted by the “**national coordinator**” of the Basel, Rotterdam and Stockholm conventions. The NFPs to the particular convention may prepare background information for the “**national coordinator**” to ensure effective and efficient conduct of the work of the “**national commission**”.

3.3 Definition of the role of the National Focal Point at the national level

For the coordinated implementation of each convention as well as of all three conventions it would be useful to define the role of NFP at the national level rather more accurately. One of the crucial tasks to be performed by the NFP is to secure a regular dialog and exchange of information among all stakeholders involved in the Convention’s implementation. The NFP should perform the procedural obligations or he/she should be informed about their performance by DNAs. The NFP should initiate broad actions aiming at the fulfilment of the material obligations. However, bearing in mind the nature of the material obligations, the NFP should not be fully responsible for their fulfilment. This should be the task of the national coordinator (higher rank officer) that would be in a better position to mobilize resources and coordinate efficient action focused on fulfilment of the material obligations.

4. National coordination and the guiding principles and national needs (document UNEP/FAO/CHW/RC/POPS/JWG. 1/4)

The establishment of a “**national coordinator**” which would act as a national overseer of its country’s implementation of the three conventions and be the official channel to

transmit the country's needs to the conventions' competent bodies is in line with the principles and national needs identified by the AHJWG. It strengthens the implementation of the conventions "on the ground", maximises the use of resources and enhances the provision of support to Parties. It also respects the legal autonomy of each convention, since the COPs remain the sovereign bodies of each instrument. A Party to one or two of the conventions will not be bound by decisions taken by governing bodies of other treaties. The establishment of a national oversight body is not subject to controversy. Unlike international law and international governance, the domestic administration is based on the principle of hierarchy. A national overseer will owe allegiance to its government and will follow the priorities of its national policy.

The establishment of a multi-stakeholder technical national commission on chemical safety would enhance coherent policy guidance (principle 2b), promote the implementation and enforcement of the three conventions at the national level (principle 3a), promote coherent and coordinated national decision-making (principle 3c) and assure that the coordination and cooperation among the three conventions are driven by Parties (principle 3e).

The nomination of a "**national coordinator**" for the three conventions and the establishment of the "**national commission**" may not necessarily represent additional bureaucratic layers. It is expected that the role of coordination is played by an officer on higher level in the domestic governmental hierarchy (e.g. head of section). He should be regularly briefed by focal points for the three conventions. It is also expected that such a commission does not need new administrative structures (such as a secretariat), but simply constitutes a forum which would periodically convene for the review of the implementation of the Conventions and the country's national policy for chemicals. The necessary administrative tasks may be performed by one of the NFPs.

These two functions would also meet the targets for the improvement of cooperation and coordination at the national level (national need 1).

ANNEX:**The experience of the Czech Republic regarding the issues described in part II:**

The Czech Republic has an advantage of having the NFPs/DNA for all three conventions under the auspices of one Ministry (Ministry of the Environment) and one section (section of technical protection of the environment). Despite this fact we had faced problems in securing coordinated implementation of the relevant conventions which would include participation of all stakeholders as described in the part I. This challenge brought us to formalize and define the role of the NFP at the national level.

We distinguish between NFP as an officially designated responsible institution/department (further used "NFP/department") and officially designated NFP responsible officer ("NFP/officer"). The NFP/department is responsible for implementation of obligations determined by the convention in general. The director of this department has to nominate a person having appropriate technical, language abilities to be appointed by the Minister performing the overseeing role for the particular convention as a NFP/officer. The NFP/officer is usually not the director of the NFP/department because the director of the department does not have enough capacity to carry out the factual day to day work necessary for coordinated implementation of the particular convention.

The director of the NFP/department:

- proposes the designation of the NFP/officer
- leads the NFP/officer and is responsible for the work of NFP/officer
- creates appropriate working conditions for the work of the NFP/officer.

The NFP/officer:

- is appointed by the Minister responsible for the implementation of the Convention to the Government
- based on the decisions taken at a particular COP the officer prepares and coordinates activities at the national level focused on the successful accomplishment of the relevant decision
- is in the day to day contact with partners involved in the factual implementation at relevant ministries/institutions/inspection authorities
- has to communicate regularly with NFP/officers of other conventions covering subjects

closely related with the subject of the particular convention - this secures that proposal made by a NFP/officer should reflect and take into account the views of other relevant NFP/officers

- indicates difficulties with implementation to be solved by the "high level" officer in the particular institution

The Czech Republic established in the framework of the preparation of the NIP to the Stockholm Convention the interministerial commission looking for and discussing ways how to implement the tasks identified in NIP in an efficient and cost effective way. The status of the commission was approved by the Minister responsible for the Stockholm Convention in the Government and the chairman of the commission is Deputy Minister/Director General. This secures necessary political attention and enough power to mobilize resources and attention across the ministries to the chemical issues.

The interministerial commission has a scientific advisory body.
