

Annex to decision OEWG-VI/15

A non-exhaustive list of possible elements for a draft decision to reach an agreed interpretation of paragraph 5 of Article 17 of the Basel Convention for consideration by the Conference of the Parties at its ninth meeting

[The Conference of the Parties

1. *[Desiring to clarify the requirements for the entry into force of amendments to the Convention in paragraph 5 of Article 17 of the Basel Convention to facilitate their entry into force;]*

2. *[[Agrees] [affirms] that matters of substance relating to interpretation of treaties should be resolved in accordance with established practices of international law, including Article 31 of the Vienna Convention on the Law of Treaties;]*

3. *[Agrees that paragraph 5 of Article 17 of the Basel Convention [may] present[s] some ambiguities as to the requirements for the entry into force of amendments to the Convention [to some Parties];]*

4. *[Emphasizes that the Parties to the Convention have the ultimate power to agree on the interpretation [and application] of the Convention;]*

5. *[Agrees that any decision adopted by a Conference of the Parties would need to be adopted*

Alternative 1: *[in accordance with rule 40 of the rules of procedure of the Basel Convention*

Alternative 2: *[by consensus*]*

Alternative 3: *[without opposition*]*

in order to validly serve as an aid to the interpretation of the paragraph 5 of Article 17 of the Basel Convention;]

6. *[Option 1: Resolves that the conditions for entry into force of an amendment to the Convention, as set out in paragraph 5 of Article 17 of the Basel Convention, shall be deemed to have been satisfied upon the ninetieth day after the receipt by the Depository of the instrument of ratification, approval, formal confirmation or acceptance from:*

Alternative 1: *[at least three-fourths of the current Parties to the Convention]*

Alternative 2: *[at least three-fourths of the States and political and/or economic integration organizations that were party to the Convention on the date upon which the amendment was adopted]*

Alternative 3: *[a number of Parties equivalent to at least three-fourths of the number States and political and/or economic integration organizations that were party to the Convention on the date upon which the amendment was adopted]]]*

7. *[Option 2: Agrees that in the application of paragraph 5 of Article 17 of the Basel Convention, three fourth of the Parties shall be calculated on the basis of those States and political and/or economic integration organizations that were Party to the Convention on the date upon which the amendment was adopted;]*

8. *[Option 3: Agrees that in the application of paragraph 5 of Article 17 of the Basel Convention, three fourths of the Parties shall be calculated on the basis of the number of Parties at the time of deposit of each instrument of ratification, approval, formal confirmation or acceptance of amendments;]*

9. *[Determines that this decision shall constitute a subsequent agreement in the sense used in Article 31, paragraph 3 (a), of the Vienna Convention on the Law of Treaties;]*

10. *[Resolves that this subsequent agreement shall enter into force ... [Parties may wish to consider how and when such a subsequent agreement might enter into force]]]*

* The intersession open-ended working group will need to consider these alternatives and their definitions further.