

Comments to the Chair`s Text in preparation for INC5.2 with a focus on transparency and traceability of chemicals in plastics

This analysis examines Articles 3, 5, and 8 of the Chair's text¹, linking chemicals to plastic materials and products. Transparency and traceability of chemical identity and hazard information enable informed decisions on the characterization of plastic materials, design, and waste management considerations. In addition, we highlight a few important issues to consider for the preamble objective/principles/approaches, and Article 7.

Preamble

The preamble needs to clearly state that plastic pollution is a physical and chemical issue.

The paragraph with reference to the Rio Declaration on Environment and Development, as currently phrased with the example that all countries have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, may be exploited as justification by low-ambition oil/gas/coal producing countries to continue expanding the fossil industry feeding the plastics and chemicals industries. **To balance this, reference to Principle 16 on the internalization of environmental costs should also be made in this paragraph, along with Principle 15 on the precautionary approach, Principle 17 on the importance of environmental impact assessments for proposed activities and Principle 10 on the importance of citizen participation and access to information in environmental decision-making.**

While emphasizing the importance of considering national circumstances and capabilities, the preamble should also highlight the significance of globally harmonized requirements. International treaties are essential for global governance, as they establish legally binding agreements between sovereign states to address various issues such as trade, security, and environmental protection. The future plastic treaty should integrate both globally harmonized requirements and national circumstances, enabling countries to customize treaty obligations to their specific contexts while respecting their sovereignty and unique needs.

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https://wedocs.unep.org/bitstream/handle/20.500.11822/46710/Chairs_Text.pdf

Objective/Principles/Approaches

Article 1

The treaty's objective should be to protect health from physical and chemical pollution caused by plastic exposure.

Article 1bis repeats what is already stated in the preamble.

Article 2: Definitions

The definition of "plastic pollution" should explicitly indicate that plastic pollution encompasses both physical and chemical pollution.

Article 3: Plastic Products

Criteria for problematic plastic products

This article lists criteria for problematic plastic products that should not be allowed for manufacturing, importing, or exporting. The criteria encompass significant considerations, such as products that pose risks to health and the environment, contain hazardous chemicals, are not reusable or recyclable, and disrupt the circular economy.

However, the suggested criteria overlook other important criteria outlined in the "[Global criteria to address problematic, unnecessary and avoidable plastic products](#)"² prepared by the Nordic Council of Ministers. For example, problematic products lack transparency "to determine safety to the environment and human health across the full life cycle."

To ensure that the criteria on transparency for problematic products are well considered, the Article needs to retain sub-article 8 bis that obliges parties to "require producers, importers and exporters of plastic products to ensure adequate and reliable information on chemicals used in plastic products along the various value chains, and take appropriate measures to ensure the traceability of chemicals, including in plastic products and wastes, based on globally harmonized guidelines to be adopted by the Conference of parties."

Criteria for plastic chemicals

Moreover, Article 3 must include criteria for plastic chemicals, including monomers and polymers, of concern, not just criteria for the propensity of plastic types or products to litter. Or else the Plastic treaty will fail with its objective to effectively protect human health and the environment.

We suggest using the hazard-based criteria from the Chemicals in Products Programme³, agreed upon in 2014 by the SAICM stakeholders, as the basis for identification of plastic chemicals of concern. These criteria could be complemented also with criteria for mobility, and will have to be complemented with criteria developed for identification of polymers of concern.

² <https://www.norden.org/en/publication/global-criteria-address-problematic-unnecessary-and-avoidable-plastic-products>

³ <https://www.saicm.org/Portals/12/documents/meetings/ICCM4/doc/K1502319%20SAICM-ICCM4-10-e.pdf>

In implementing the criteria, a group approach is advisable, considering that evaluation of single chemicals one at a time is in-efficient given the share number of potential chemicals of concern illustrated, e.g., in the PlastChem Project report⁴.

Identified chemicals, and polymers, of concern should be in a living global negative list, in an annex to the treaty. The list of suggested chemicals currently in **Annex Y** of the Chair's text is way too short. For example, there are UV-stabilizers with endocrine disrupting qualities that should also be on the list.

If the INC decides to use the Chemicals in Products Programme criteria as the basis for identifying chemicals of concern, the Candidate List in the EU⁵, or its shadow list, the SIN List⁶, can be used to identify additional relevant plastic chemicals to populate the negative list. The criteria underlying these two lists correspond to the Chemicals in Products Programme criteria.

Existing multilateral agreements, such as the Stockholm and Basel Conventions or the Global Framework, fail to capture the necessary scope or sufficiently regulate plastic chemicals, contrary to claims made by some countries. This fact was unequivocally demonstrated by the scientific community, as seen in the UNEP report on Chemicals in Plastics⁷ and the PlastChem Project Report⁸.

The necessity of harmonizing criteria

Unless the criteria for identifying problematic plastics—concerning their chemical composition, littering potential, intentionally added microplastics, or propensity to form such—are harmonized, and the provisions to restrict production, use, and export based on these criteria are binding, the Plastic Treaty will fail to meet its objective of effectively protecting human health and the environment from plastic pollution. Global harmonization is strongly preferred over regional and, at the very least, over national standards to ensure the most stringent and effective approach to addressing plastic pollution. **This is well articulated in sub-article 8 bis.**

Globally harmonized criteria ensure that all parties and stakeholders share the same understanding of what chemicals are of concern and what properties of plastics are problematic regarding littering.

Globally harmonized and binding criteria create a level playing field for all countries and companies, thereby facilitating trade. This guarantees that the implementation of the Plastic Treaty complies with WTO rules and addresses concerns from various countries that restrictions or bans could result in unfair trade barriers or favour domestic industries.

⁴ State of the science on plastic chemicals – identifying and addressing chemicals and polymers of concern (https://zenodo.org/records/10701706/files/PlastChem_State_of_the_Science_on_Plastic_Chemicals_Report.pdf?download=1)

⁵ Candidate List of the European Union Chemicals Agency (<https://echa.europa.eu/candidate-list-table>).

⁶ SIN List (<https://sinlist.chemsec.org/>).

⁷ Chemicals in plastics – a technical report (<https://wedocs.unep.org/bitstream/handle/20.500.11822/42366/Chemicals-in-Plastics.pdf?sequence=1&isAllowed=y>).

⁸ State of the science on plastic chemicals – identifying and addressing chemicals and polymers of concern (https://zenodo.org/records/10701706/files/PlastChem_State_of_the_Science_on_Plastic_Chemicals_Report.pdf?download=1)

Globally harmonized criteria eliminate multiple and double standards, which is what the industry calls for. Different standards in various jurisdictions, industry sectors, or individual companies—especially in low- and middle-income countries—from participating in supply chains. Double standards also burden customs services and other responsible authorities in low- and middle-income countries, which have limited resources to verify product compliance with national and global provisions. **Harmonized and binding criteria can ensure an equal and minimum level of security for the environment and human health, regardless of jurisdiction.**

The practicability of tracking chemicals in individual plastic items

As long as chemicals and polymers in the global negative list are not phased out, for example, only restricted or exempted, they should be disclosed and tracked at the level of individual plastic items, or else the Plastic Treaty will fail with its objective to effectively protect human health and the environment. Such information is crucial to support informed decision-making for all life stages of the plastics, including design considerations (**Article 5**) and waste management, reuse and recycling (**Article 8**).

Two elements will have to be developed: 1) A globally harmonized disclosure standard, by adding disclosure thresholds to the chemicals and polymers on the global negative list, and 2) a globally harmonized approach for labelling and sharing disclosed chemical composition information in an inter-operable format. Consequently, it must be secured via a properly formulated sub-article to Article 3 to develop these elements further.

Several delegations asked how tracking chemicals in individual plastic items can work in practice. In response, we outlined how we envision this in one of our INC4 information papers⁹. Now our suggested approach is also supported by the UN Transparency Protocol (UNTP) for Digital Product Passports (DPPs)¹⁰. To establish a link between the physical item and its DPP, it must be marked/labelled with a suitable data carrier, for example, a watermark¹¹. More details are in our INC5.2 information paper¹². The EU is in the process of establishing legally binding requirements for DPPs, which shows that the approach is technically doable.

The database called for in sub-article 5 of Article 3 should be a publicly available database with DPPs for all plastic items meeting the criteria for chemicals and polymers of concern and plastic products prone to littering. Instead of setting up national databases, which is costly and may be technically unfeasible for low- and middle-income countries, and come with language barriers, the Parties of the treaty may wish to consider a global database to which all contribute, hosted by the Secretariate or an inter-governmental platform, such as the IOMC. That may be most cost-efficient solution.

The review committee tasked with developing criteria and guidelines should also have seats for civil society representatives, including academia, and the nominations of representatives must be based on clear no conflict-of-interest criteria.

⁹ Transparency and traceability systems for plastics – design and practicability considerations (<https://www.globalchemicaltransparency.org/wp-content/uploads/2024/04/INC4-Transparency-Information-paper.pdf>).

¹⁰ Draft recommendation no. 49: Transparency at scale (<https://unece.org/trade/documents/2024/07/session-documents/draft-recommendation-no-49-transparency-scale#:~:text=Among%20the%20deliverables%20of%20this,Protocol%20for%20Digital%20Product%20Passports>).

¹¹ Holy Grail 2.0 (<https://www.digitalwatermarks.eu/>).

¹² Towards a Safer Future: Integrating Chemical Transparency and Traceability in the Global Plastics Treaty <https://www.globalchemicaltransparency.org/work/plastic-treaty-transparency-requirement-for-chemicals-constituents-in-plastic-is-a-must/>

Moreover, all ambiguities now present in the draft sub-paragraphs to this article must be removed. One example is the word “appropriate”.

Article 5: Plastic Product Design

Because Article 5 is intimately linked to Article 3, the countries of the INC may wish to consider merging the two articles.

Chemicals are not mentioned in **sub-article a of Article 1. This gap must be addressed.** It is not only crucial to ensure that hazardous chemicals are not recirculated within a circular economy, but also important for raising awareness. Many countries and stakeholders still do not understand why chemicals must be regulated alongside the material cycles they are part of.

For example, sub-article 1 a could be formulated like this:

“contribute to sustainable production and consumption of plastics by increasing reuse and recycling of plastics free from harmful chemicals including, as appropriate, through reuse and recycled content.”

It is strongly advised not to allow adjustments in the implementation of this key article based on national circumstances. **Rules should be globally harmonized to create a minimum set of requirements.** This would ensure a fundamental level of safety for both people and the environment, support the circular economy, and facilitate trade. **If the interpretation of paragraph 1 is left to national circumstances, the instrument will not succeed.**

Establishing globally harmonized and binding rules in Article 5 ensures that the implementation of the Plastic Treaty adheres to WTO regulations, levels the playing field for nations and industries, and facilitates trade. Consequently, paragraph 4 of Article 5 in the Chair’s paper is redundant.

All ambiguities currently present in the draft paragraphs of this article must be eliminated. One example is the terms “appropriate” and “encouraged,” which indicate unclear levels of ambition.

Article 7: Releases and leakages

While this article addresses the releases and leakages of plastics, including microplastics, into the environment, it completely overlooks the emissions and releases of plastic chemicals that occur during plastic production, manufacturing of plastic products and recycling. This oversight of plastic chemical emissions leaves frontline communities vulnerable, denying them crucial information about exposure to toxic chemicals.

Legally binding provisions of this Chapter should include globally harmonized, effective, and transparent reporting on plastic pollution through pollutant release and transfer registers (PRTR) for plastic emissions and releases, in line with UNECE recommendations¹³.

¹³ Supporting effective and transparent reporting on plastic pollution through promoting use of pollutant release and transfer registers in an international legally binding instrument on plastic pollution, including in the marine environment (https://apps1.unep.org/resolutions/uploads/221223_united_nations_economic_commission_for_europe_unece.pdf).

Article 8: Plastic waste management

Paragraph 2 of Article 8 stipulates that countries “shall” establish recycling systems and waste-to-energy systems, yet it does not mention reuse and Extended Producer Responsibility (EPR) systems, which are also key strategies for enhancing circularity. This paragraph fails to accurately represent the circumstances in many developing countries, which lack robust environmental legislation and enforcement necessary to ensure that the proposed recycling systems do not pose health and environmental risks.

For example, in Small Island Developing States (SIDS), it is not advisable to establish advanced recycling units. These islands may not have sufficient volumes of plastics to make recycling operations viable, they are far from major markets, and introducing advanced technologies to remote island locations can be very costly. The local technical skills necessary for their proper operation may be lacking. Instead, Extended Producer Responsibility (EPR) systems with take-back programs, such as back-hauling with transports that deliver imported goods to areas where materials can be properly recycled, are far more effective. **Similarly, plastic waste-to-energy conversions in SIDS should take the same limitations into account.**

Reuse systems should be clearly mentioned in the article. **However, reuse and recycling can only be encouraged if transparency and traceability of the chemical composition can be ensured.** This will ensure that the Plastic Treaty honours §8 of the Bonn Declaration¹⁴.

Ambiguities currently present in the draft sub-paragraphs of this article must be eliminated. For instance, terms like “appropriate” and “encouraged” are examples of this. While the provision states that recycling “shall” be established by all, Parties, and may it may not actually be advisable in every context; EPR systems are merely “encouraged”. **This inconsistency must be addressed in this article.**

14 Bonn Declaration (<https://www.chemicalsframework.org/bonndeclaration>).

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