

April 2019

NORWEGIAN PROPOSAL TO AMEND THE ANNEXES TO THE BASEL CONVENTION

BACKGROUND

In 2014, the United Nations Environment Assembly (UNEA) initiated a study on marine plastic pollution, and followed it up two years later with an assessment on the effectiveness of various governance strategies and approaches.¹ Among other things, the assessment identified gaps and options for addressing them, which included initiatives that could be undertaken in the context of the Basel Convention.² In 2017, UNEA thereafter invited the Basel Convention “to increase their action to prevent and reduce marine litter and microplastics and their harmful effects” and established an Ad Hoc Open-Ended Expert Group, in which the BRS Secretariat was a participant.³ There, the BRS Secretariat presented a report titled *Possible Options under the Basel Convention to Further Address Marine Plastic Litter and Microplastics*, which reviewed options under the Basel Convention.⁴ Against this background, in June 2018, Norway proposed amendments to the annexes to the Basel Convention to more squarely bring problematic plastic waste streams within its scope and control.⁵

NORWEGIAN AMENDMENTS

In essence, the Norwegian amendments are designed to clean up international trade in plastic waste. This would have implications not only for the reduction of leakage of plastics into the marine environment but also on local communities. This would be achieved by dividing plastic waste into three general categories.

- **“Clean” Plastic Waste.** This category covers recyclable plastic waste that has been sorted prior to export (*i.e.* not mixed with other wastes or contaminated) and should be prepared to a specification and suitable for immediate recycling with only minimal further mechanical preparatory treatment processes, if any. This plastic waste is considered non-problematic, primarily because pre-sorting exports reduces the risk of mismanagement and the burden on importing countries, which otherwise tend to receive plastic waste that is mixed with non-recyclable material (*e.g.* nappies) or non-targeted material (*e.g.* plastic packaging included with plastic bottles) or is otherwise contaminated (*e.g.* dirt, stones, food-contaminated cardboard). This plastic waste is not subject to the control system of the Basel Convention.
- **“Other” Plastic Waste.** This category covers plastic waste that is mixed with each other or other wastes or is contaminated. This type of plastic waste is subject to the control system of the Basel Convention.
- **“Hazardous” Plastic Waste.** This category covers plastic waste that is hazardous, *i.e.* contaminated with (Annex I) constituents to an extent it exhibits (Annex III) hazardous characteristics. This type of plastic waste is subject to the control system of the Basel Convention.

NORWEGIAN AMENDMENTS: PROPOSED CATEGORIZATION	TYPE	TREATMENT UNDER THE BASEL CONVENTION
	“Clean” Plastic Waste	No controls
	“Other” Plastic Waste	Prior Informed Consent ⁶ Duty to Ensure Environmentally Sound Management ⁷ Duty to Re-import ⁸ Mandatory Measures to Combat Illegal Traffic ⁹ Prohibition on Disposal in Antarctica ¹⁰ Required Authorization for Traders ¹¹ Packaging and Labelling Requirements ¹² Information Reporting ¹³

The Norwegian amendments achieve the above categorization with amendments to Annexes II, VIII and IX.¹⁵

RECOMMENDATIONS ON NORWEGIAN AMENDMENTS

Given the considerable transboundary trade in plastic waste and the associated burden on developing countries, the Norwegian amendments are a welcome development. In the interests of further improving upon them, the following two recommendations are made for consideration by the Parties:

- **Exclude Fluorinated Polymer Wastes from the Category of Plastic Waste Considered “Clean”.** As proposed by Norway, the definition of plastic waste covers: (i) non-halogenated polymers; (ii) cured waste resins and condensation products; and (iii) fluorinated polymer wastes. While non-halogenated polymers and cured waste resins and condensation products can be considered non-hazardous (unless contaminated of course), the same cannot always be said about fluorinated polymer wastes, which are used in various applications such as cable insulation, pipe linings, electrical wirings and airplane interiors. Fluorinated polymers can release per- and polyfluoroalkyl substances (PFAS), including during open burning and other combustion processes. The persistence and toxicity of PFAS substances have raised concerns about them as a class and should disqualify these wastes from being considered “clean.”
- **Require “Clean” Plastic Waste Be Destined for Recycling under R3 of Annex IV.** As proposed by Norway, “clean” plastic waste should be prepared to a specification and suitable for immediate recycling with only minimal further mechanical preparatory treatment processes, if any. The proposal could be strengthened, however, by clarifying that the exported plastic waste must not only suitable for recycling but also explicitly destined for recycling by including this as a requirement via reference to R3 of Annex IV.

PARTNERSHIP ON PLASTIC WASTES

The Parties will also be considering the creation of a Partnership on Plastic Wastes, which creates a working group to explore ways to improve and promote the environmentally sound management of plastic wastes at the national level.¹⁶ In March 2019, at its fourth session, UNEA adopted a resolution extending the mandate of the Ad Hoc Open-Ended Expert Group through its fifth session in February 2021, which included in its mandate to “[e]ncourage partnerships as well as increased cooperation in relations to the prevention of marine litter... that undertake activities, such as development of source inventories, improvement of waste management, awareness raising, and promotion of innovation.”¹⁷ Importantly, the Ad Hoc Open-Ended Expert Group will also consider governance for a new global architecture to address plastics and plastic pollution, including a new legally binding international instrument, which many accept as the only viable longer-term solution to the plastic-pollution crisis.¹⁸

As a result, the terms of reference of the Partnership on Plastic Wastes should be modified in light of the UNEA resolution. In particular, the Partnership on Plastic Wastes should be modified in three ways. **First**, make clear that the Partnership on Plastic Wastes is complementary to the work being undertaken by the Ad Hoc Open-Ended Expert Group and is no substitute for—and should operate without prejudice to discussions on—a new legally binding international instrument. **Second**, ensure the timing of the meetings of the working group and its outputs feed into the deliberations of the Ad Hoc Open-Ended Expert Group and inform the consideration of next steps at the fifth session of UNEA in February 2021. **Third**, make recommendations on national measures that could be included in “national action plans” submitted as part of any new global architecture to address plastics and plastic pollution.

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References

- ¹ UN Environment Assembly, Resolution 1/6: Marine Plastic Debris and Microplastics, paras. 14-15; UN Environment Assembly, Resolution 2/11: Marine Plastic Litter and Microplastics, para. 21; *see also* UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/AHEG/2018/INF/3.
- ² *See generally* UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/AHEG/2018/INF/3.
- ³ UN Environment Assembly, Resolution 3/7: Marine Litter and Microplastics, paras. 8 and 10; *see also* UN Environment Assembly, Resolution 4/7: Marine Plastic Litter and Microplastics, para. 7.
- ⁴ UN Environment, *Possible Options under the Basel Convention to Further Address Marine Plastic Litter and Microplastics* (Nairobi, 29-31 May 2018), UNEP/AHEG/2018/1/INF/5.
- ⁵ *See* Basel Convention, Eleventh Meeting of the Open-Ended Working Group of the Basel Convention (OEWG.11), *available at* [http://www.basel.int/TheConvention/OpenendedWorkingGroup\(OEWG\)/Meetings/OEWG11/Overview/tabid/6258/Default.aspx](http://www.basel.int/TheConvention/OpenendedWorkingGroup(OEWG)/Meetings/OEWG11/Overview/tabid/6258/Default.aspx)
- ⁶ Basel Convention, Articles 4(1)(c) and 6.
- ⁷ Basel Convention, Articles 4(2) and (8)-(10).
- ⁸ Basel Convention, Article 8.
- ⁹ Basel Convention, Articles 4(3)-(4) and 9.
- ¹⁰ Basel Convention, Article 4(6).
- ¹¹ Basel Convention, Article 4(7)(a)
- ¹² Basel Convention, Article 4(7)(b)
- ¹³ Basel Convention, Article 13.
- ¹⁴ Note: Once in legal force, the “Ban Amendment” also provides for the prohibition by each Party included in the proposed new Annex VII (Parties and other States which are members of the OECD, EC, Liechtenstein) of all transboundary movements to States not included in Annex VII of hazardous substances covered by the Basel Convention that are intended for final disposal, and of all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1(a) of Article 1 of the Basel Convention that are destined for reuse, recycling or recovery operations.
- ¹⁵ *See* Proposals to Amend Annexes II, VIII and IX to the Basel Convention, UNEP/CHW.14/27 (17 December 2018).
- ¹⁶ Draft Terms of Reference for the Basel Convention Partnership on Plastic Wastes and Draft Workplan for the Working Group of the Partnership on Plastic Wastes for the Biennium 2020-2021, UNEP/CHW.14/INF/16.
- ¹⁷ UN Environment Assembly, Resolution 4/7: Marine Plastic Litter and Microplastics, para. 7.
- ¹⁸ UN Environment Assembly, Resolution 4/7: Marine Plastic Litter and Microplastics, para. 7; *see also* UN Environment Assembly, Resolution 3/7: Marine Litter and Microplastics, para. 10(d).