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for a toxics-free future

November2023

IPEN QUICK VIEWS:

THIRD SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE (INC-3) TO DEVELOP AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON PLASTIC POLLUTION

Background

The ongoing negotiation and framing of the future Plastics Treaty is an opportunity to address and protect human health and the environment from the harmful effects of plastics throughout their life cycle. This will require strong, legally binding control provisions that call for the elimination of toxic chemicals throughout the life cycle of plastics and mandatory, publicly available, and accessible disclosure of information on chemicals used in plastics.

Plastics are a combination of chemicals and carbon. Thousands of those chemicals are known to be chemicals of concern and for most of the rest there is a remarkable lack of data. Moreover, for users and the waste management sector there is limited, or in most cases no data on the chemical composition of plastic materials and products. This lack of transparency, traceability, and available data means that there are no plastics that can be considered safe, since it is not possible to know if they contain toxic chemicals. These gaps are also key obstacles toward a safe circular economy.

During the INC-3 in Nairobi, delegates will be considering the Zero draft as a basis for discussion and negotiations. They will also decide on mandates for documents to be prepared between INC-3 and INC-4 as well as any other work that will be needed between the sessions.

IPEN Key Messages for INC-3

For the upcoming negotiations IPEN recommends that:

- The future Treaty should be centered on avoiding future plastic pollution throughout the life cycle by phasing down production and consumption of plastics and not promoting false solutions (recycling) that have failed to work for decades.
- Member States should acknowledge the Zero draft as a starting point for negotiations and engage in discussions on how to clarify the nature of obligations and improve the text.
- Member States should focus on further defining the control measures and means of implementation, rather than reopening discussions on the scope of the Treaty. The scope is already defined in UNEA Resolution 4/15 as encompassing the full life cycle and does not require further definition.
- Member States should retain the provisions covering chemicals, including monomers and polymers, in the Treaty and related provisions on emissions, trade, and transparency. The INC should mandate intersessional work to create an initial list of chemicals of concern, including monomers and polymers, to be listed in the Annexes of the Treaty, together with respective criteria for their selection.
- Member States should retain the Annexes and mandate intersessional work on their further development, as they are suitable mechanisms that provide flexibility to adapt to future knowledge, innovation, and challenges.
- The control measures should be focused on plastic production reduction and toxics-free design of plastics. Parts of the Zero draft are leaning towards recycling as a solution, which is unsuitable as this ignores the major adverse effects associated with recycling, including workers' exposures to toxic chemicals, the release of microplastics during recycling processes, and the wider spread of toxic chemicals through products made from recycled plastics.

Organizational Considerations

Rules of Procedure

The scenario note for INC-3 foresees that the Rules of Procedure will continue to be applied provisionally. No dedicated time for a final agreement on the Rules of Procedure has been allocated. However, it is unusual to carry out an entire negotiation without agreed rules of procedure and some Member States

have previously highlighted the importance of having agreed rules for the negotiations. Therefore, it is possible that the issue of rules of procedure could be raised at the beginning of the negotiations, and it will be important for all Member States to be prepared to ensure that this topic does not take away time from the content negotiations by not reopening topics that have been extensively discussed and agreed upon at the June 2022 OEWG meeting in Dakar, and in the previous INC meetings. Rules of Procedure from past INCs, that have been used to negotiate other multilateral environmental agreements (MEAs), should not be modified unless there is a clear reasoning to do so based on past negative outcomes.

Zero Draft

(UNEP/PP/INC.3/4)

The Zero draft is a balanced starting point for negotiations at INC-3 as it currently reflects a variety of views expressed at INC-2. However, the draft contains both positive and negative aspects, which need to be discussed and refined during the negotiations. Since plastics consist of chemicals and carbon, and many of the chemicals have been identified as chemicals of concern, it is appropriate that chemicals are referenced under several provisions in the draft. Member States should acknowledge the Zero draft as a starting point for negotiations and work toward agreeing on the control measures to include in the draft. The INC could give a mandate to the INC chair to create a first draft for INC-4 based on the Zero draft and the discussions during INC-3.

Part I

This part contains options for the objective. It also contains placeholders for Preamble, Definitions, Principles, and Scope.

Objective

The objective of the instrument will be crucial in guiding its interpretation. The Zero draft contains two options for the objective of the Treaty. Although both options mention the protection of human health and the environment, the first option would provide stronger protection. However, it is not necessary to specifically mention the marine environment in the objective as that would already be encompassed in the term "environment."

Moreover, it would be suitable to clarify that the Treaty covers the full life cycle of plastics, as stated in the resolution, through combining Option 1 and sub-option 1.2, "based on a comprehensive approach that addresses the full life cycle of plastic." Additionally, the objective would benefit from referring to the precautionary principle, as is the case in the Stockholm Convention, as the precautionary principle could be an important factor in guiding the decisions by the INC and the governing body of the Treaty.

The objective could then read: "The objective of this instrument is to end plastic pollution and to protect human health and the environment throughout the full life cycle of plastic, taking into account the precautionary principle."

Scope

The scope of the Treaty is already defined in the UNEA Resolution 4/15 as encompassing the full life cycle of plastic and as such does not require further discussions. The scope will be further defined through the control measures in the Treaty, that should include control on chemicals at all relevant stages of the life cycle.

Principles

UNEA resolution 4/15 noted that the Rio Principles for Environment and Development should be taken into account. Among these, it is crucial to specifically include the precautionary principle, the polluter-pays principle, the prevention principle, and the principle of participation in environmental decision making. These principles should be implemented in the Treaty throughout its provisions. The Treaty should also be an instrument to implement the right to a healthy environment and should protect other relevant human rights, including other human rights threatened by plastics as stated in a recent report[1] by the UN Special Rapporteur on Toxics and Human Rights: the right to life, the right to the highest attainable standard of health, the right to housing, the right to water and sanitation, the right to adequate food, the right to equality and non-discrimination, the right to information, the right to participation, and the right to effective remedy. The Treaty should also aim at the protection of workers by upholding the fundamental principles and Rights at Work.[2] Countries should also agree on the principles and approach that they have agreed upon in the context of the recently adopted Global Chemicals Framework which include knowledge and information, transparency, human rights, groups in vulnerable situations, gender equality, preventive approaches, just transition, and collaboration and participation.

Part II

This part contains options and draft text for the proposed core obligations and control measures following the outcomes of the discussions in contact group 1 during INC-2. Several of the provisions are indirectly or directly related to chemicals and therefore serve as a suitable basis for discussing future provisions.

1. Primary Plastic Polymers

This provision requires Parties to take the necessary measures to prevent and mitigate the potential for adverse impacts on human health or the environment from the production of primary plastic polymers, including their feedstocks and precursors. As such, option one is preferred as it would provide better protection for human health and the environment.

Reducing plastic production is a necessary step toward achieving sustainable production and consumption. However, the framing of primary plastic polymers seems to suggest that reducing the use of primary plastic polymers and increasing the use of recycled materials would be beneficial, with a greater flow of plastics being cycled back into the economy as "secondary plastics." However, studies have repeatedly shown that recycled plastics contain toxic chemicals that harm human health and the environment.[3,4,5] It is therefore important that plastics and plastic materials are mentioned explicitly in the provision and that strategies to reduce plastic production prioritize reducing and eliminating plastics with toxic chemicals (including toxic monomers and polymers).

2. Chemicals and Polymers of Concern

This provision requires parties to not allow, to eliminate, minimize, or regulate (depending on the three options considered) the use of the chemicals, groups of chemicals, and polymers in a future Annex, for the production of plastic polymers, plastics, and plastic products.

Option one is preferred as it would provide the best protection for human health and the environment. It would also be the most flexible option as listing chemicals in Annexes that could be updated by the governing body of the Treaty will keep the future Plastics Treaty flexible for evolving scientific knowledge and needs. However, for paragraph one it would be suitable to use the wording from option two, "use and presence in," to encompass Non-Intentionally Added Substances (NIAS) as well as intentionally added substances.

The provisions on chemicals are connected to the creation of a list of chemicals and polymers, including groups of chemicals. It will be essential that the Annex contains suitable criteria to determine which chemicals to eliminate and phase out, as well as an initial list of problematic chemicals, including additives, monomers and polymers. The options listed in the Appendix Option one is therefore the most suitable option as it includes both an initial list and a set of criteria to determine chemicals to control when updating the Annexes. The reference to groups of chemicals in this option is well in line with scientific evidence and recommendations from past experiences.[6,7] We note that there is precedence for regulating groups of chemicals under the Stockholm Convention.

Under the Treaty, only plastics that do not contain hazardous chemicals should be allowed to be recycled. We note that also under the Stockholm Convention, wastes that contain POPs cannot be recycled.

3. Problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics

This provision aims at prohibiting production, sale, distribution, import, or export of "problematic" plastic products, including short-lived and single-use plastic products, listed in an Annex. It will be essential that also plastic products containing toxic chemicals (including recycled plastics) are considered for listing under this Annex.

4. Exemptions available to a Party upon request

This provision is related to exemptions for problematic and avoidable plastic products, including short-lived and single-use plastic products, and intentionally added microplastics. If exemptions are considered, for chemicals or products, it is important that:

- Proposed exemptions undergo a review process where exemptions granted should only be for narrow, clearly defined applications that are necessary for the functioning of society.
- Industry should be required to provide data with full justification, proof of inability to substitute, and a time frame for removal from the market.
- No exemptions for production and/or use should be granted from the outset for more than five years upon listing of a chemical/chemical group in the Annex.
- An explicit decision should be adopted by the [governing body] to schedule an evaluation process of the need to extend any of the granted

exemptions beyond five years.
- Waste derived from exemptions should not be allowed to be exported during and after the time of exemptions.

5. Product design, composition and performance

This provision requires parties to improve the design of plastic products, including packaging, and the composition of plastics and plastic products. The goal is to reduce their demand while increasing their safety, durability, reusability, refillability, repairability, and refurbishability and their capacity to be repurposed, recycled, and disposed of in a safe and environmentally sound manner upon becoming wastes.

- In developing this provision, it is crucial that only plastics that are free of hazardous chemicals should be considered for reuse, refilling, repurposing, and recycling.
- Alternative plastics and plastic products should have the same safety standards as fossil fuel-based plastics, because bio-based plastics can also be toxic and contain hazardous chemicals.

Currently, hazardous chemicals are used in plastics with little to no control, transparency, or traceability. Mandating recycled or post-consumer plastic content in new products, without first addressing these issues, could therefore result in increased exposure to and emissions of toxic chemicals from plastics, as there is a likelihood that recycled plastics contain hazardous chemicals. In fact, the presence of chemicals of concern in recycled plastics, including substances that have been globally banned, has been documented both in peer-reviewed publications and in citizen-science reports.[8,9,10,11] Safe and environmentally sound recycled plastics should be defined by the absence of hazardous chemicals and by the ability to track the chemical content of these plastics.

6. Non-plastic substitutes

This provision aims at promoting innovation in non-plastic substitutes. However, the INC should ensure that innovation does not lead to the adoption of new products and services that may be equally detrimental to human health and the environment (e.g., PFAS-containing paper packaging to substitute plastics packaging).

7. Extended Producer Responsibility (EPR)

IPEN believes that the objective of this provision should be to increase of accountability for the producers, rather than to increase recycling. As such, the EPR systems should be developed to promote reduction, refill, and reuse and should ensure, through phaseouts and transparency obligations, that plastics containing toxic chemicals are not used.

In developing EPR systems for the Plastics Treaty it is important that the INC take into consideration the limitations of existing EPR schemes. Existing EPR schemes do not typically extend the responsibility of producers beyond national barriers, while it is important that the EPR under the Plastics Treaty specifically addresses products that are traded internationally. Additionally, governments should develop a relevant regulatory framework to support and enable EPR implementation.

8. Emissions and releases of plastic throughout its life cycle

This provision aims at preventing and eliminating the emissions and releases of plastic polymers, plastics, including microplastics, and plastic products across their life cycle, to the environment from the sources identified in an Annex to be developed. This Annex should ensure that the scope of the emissions to be controlled is as broad as possible and that it prevents emissions in all environments and throughout the life cycle of plastics and addresses:

- Releases of hazardous substances, including microplastics, to land, water, and ecosystems;
- Minimization of spills of chemicals and other toxic exposures during extraction and production of plastics, polymers, and chemicals used in plastics;
- Elimination of spills of plastic pellets, flakes, and powders in the pre-production phase;
- Minimization of microplastics generation and the generation of hazardous chemicals during the use and waste phases.

9. Waste management

The focus of this provision is to ensure that plastic waste is managed in a safe and environmentally sound manner throughout its different stages, taking into account the waste hierarchy.

IPEN believes, in line with the waste hierarchy, that the focus of the provisions on waste management should be the reduction of plastic waste generation and the sound disposal of existing plastic materials. Delegates should include under this control measure a prohibition on all forms of reuse and recycling of plastics that contain hazardous chemi-

cals, similar to the Stockholm Convention's prohibition on the recycling of wastes containing Persistent Organic Pollutants. To prevent the production and releases of toxic emissions from plastics waste management, policies should be implemented to prevent dangerous practices such as open burning, incineration, co-firing in coal-fired power plants and waste-to-energy processes, co-processing in cement kilns, and chemical recycling.

10. Trade in listed chemicals, polymers and products, and in plastic waste

This provision aims at prohibiting the transboundary movement of regulated chemicals, polymers, and plastics as well as plastic wastes. As the treaty aims at controlling the adverse impacts of plastics, their chemical components and plastic waste, it is crucial to strictly regulate their transboundary movement and ensure transparency. IPEN believes that in addition to an export permit and prior informed consent procedure, tracking should include the types, volumes and destination of the export of chemicals, polymers and products, and as waste.

Additionally, non-party provisions will be necessary to ensure compliance with the provisions in the Treaty. Non-Party trade provisions ensure that what is applied between Parties is also applied in their relationships with non-Parties.

11. Existing plastic pollution, including in the marine environment

Delegates should include a mechanism to mobilise and collect funds to address legacy pollution, such as a "Plastic Pollution Legacy Fund" made up of contributions from sectors that produced the plastics and related materials that comprise legacy pollution. The Plastics Treaty can build on the example of the Stockholm Convention approach to addressing obsolete pesticide stockpiles, which engages the relevant sectors to fund activities to remediate pesticide-contaminated sites and hotspots. Techniques to address sites contaminated by plastics, including by chemicals and wastes, must follow Best Available Techniques (BAT) and Best Environmental Practices (BEP), such as non-combustion technologies.

12. Just transition

These provisions are aimed at promoting and facilitating a fair, equitable, and inclusive transition for affected populations, with special consideration for women and vulnerable groups, including children and youth, and Indigenous Peoples in the implementation of the Treaty.

IPEN believes that, in facilitating the transition it is important to ensure the protection of workers both in the formal and informal sector, including the application of work-related standards relating to the provision of information to workers on the chemicals they may be exposed to throughout the plastics life cycle, including waste, providing full information of the chemical composition of the plastics and products they may be exposed to and providing appropriate protective measures. These standards help ensure the realization of the fundamental right to a safe and healthy working environment as recognized by Resolution ILC.110 in 2022 by the International Labour Conference.

13. Transparency, tracking, monitoring and labelling

These provisions aim at ensuring greater transparency in the plastics supply chain. There is a marked lack of transparency in the production of plastics, the chemical content of plastics and the trade of plastics, including products, materials, and wastes. This part of the Treaty will be key to allow for implementation of the Treaty and to protect human health and the environment. To achieve a significant reduction of plastic production and trade, it is crucial that the Treaty includes legally binding provisions to track types and volumes of plastic polymers, precursors, and feedstocks manufactured, imported, and exported as well as the quantities and types of chemicals used in production, through transparency and reporting requirements.

It will therefore be important to maintain the proposed language on transparency measures necessary for identifying and phasing out chemicals throughout the value chain.

Transparency measures should be based on a globally harmonized approach and include the tracking of types and volumes of polymers and chemicals as well as provide full, publicly accessible information tracing of all chemical components throughout the value chains. The marking and labeling requirements would fit best in an Annex to ensure flexibility for future developments and innovation. In developing the requirements, it is important to ensure consistency with developments under other MEAs such as the Stockholm Convention and the Global Chemicals Framework (formerly SAICM).

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Part III

Financing

Parties shall provide the necessary resources for national activities intended to implement this Treaty.

IPEN believes it is important to establish a dedicated plastics multilateral fund or funds through the new instrument, with Member States and other funding sources contributing funds for support. The chemicals and waste cluster is severely underfunded and despite a substantial GEF replenishment for the period 2022-2026, funding is insufficient to cover the implementation of existing MEAs. In order to ensure that the implementation of the Plastics Treaty is duly funded, it is urgent to create a multilateral fund that has sufficient and predictable funding for the Plastics Treaty. Although pollution is recognized as a planetary crisis, unlike climate and biodiversity, it does not have its own funding to implement necessary measures.

The provision on financing also prescribes the creation of a plastic pollution fee, to be paid by plastic polymer producers within its jurisdiction to implement the polluter pays principle. The Treaty should ensure that these funds collected through the fee are used for the implementation of the Treaty. Robust implementation will need financially supported enabling activities that are required to implement the obligations under the Treaty. These enabling activities would require financial support for, for example, awareness raising, capacity building, monitoring, reporting, and stakeholder participation.

Intersessional work

The INC should plan on country-led intersessional work including creating working groups that discuss criteria for identifying a list of chemicals of concern used in plastics to be annexed to the Treaty, take up the issue of sufficient and predictable funding for implementation of the Treaty, and propose tools to operationalize the "polluter pays principle" for holding companies responsible for plastic pollution.

Both the work during the INCs and intersessional work should focus on legally binding measures. Possible voluntary approaches should be left for future discussions or for discussions in other fora.

Additional information

- IPEN's plastics website: StopPoisonPlastics.org
- IPEN 2023, Troubling Toxics: Eliminating Harmful Plastic Chemicals Through the Plastics Treaty
- IPEN 2022, Enhancing controls to protect human health from plastics
- UNEP Third Session (INC-3) website: https://www.unep.org/inc-plastic-pollution/session-3
- BRS (2023). Global governance of plastics and associated chemicals. Secretariat of the Basel, Rotterdam and Stockholm conventions, United Nations Environment Programme, Geneva. Karen Raubenheimer, Niko Urho.
- UNEP (2023) Chemicals in Plastics - A Technical Report
- Zero draft text of the international legally binding instrument on plastic pollution, including in the marine environment (UNEP/PP/INC.3/4)

Notes

[1] A/76/207: The stages of the plastics cycle and their impacts on human rights - Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.
[2] https://www.ilo.org/declaration/thedeclaration/lang--en/index.htm
[3] Chaine, C., Hursthouse, A. S., McLean, B., McLellan, I., McMahon, B., McNulty, J., ... & Viza, E. (2022). Recycling plastics from WEEE: a review of the environmental and human health challenges associated with brominated flame retardants. International journal of environmental research and public health, 19(2), 766.
[4] Gerassimidou, S., Lanska, P., Hahladakis, J. N., Lovat, E., Vanzetto, S., Geueke, B., ... & Iacovidou, E. (2022). Unpacking the complexity of the PET drink bottles value chain: A chemicals perspective. Journal of Hazardous Materials, 430, 128410.
[5] Brosché, S., Strakova, J., Bell, L., & Karlsson, T. (2021). Widespread chemical contamination of recycled plastic pellets globally. International Pollutants Elimination Network (IPEN).
[6] United Nations Environment Programme and Secretariat of the Basel, Rotterdam and Stockholm Conventions (2023). Chemicals in plastics: a technical report. Geneva.
[7] BRS (2023). Global governance of plastics and associated chemicals. Secretariat of the Basel, Rotterdam and Stockholm Conventions, United Nations Environment Programme, Geneva. Karen Raubenheimer, Niko Urho.
[8] https://ipen.org/sites/default/files/documents/ipen-bfr-2021-v1_6aq-en.pdf
[9] https://ipen.org/news/chemical-health-hazards-found-plastic-products-11-african-and-arabic-countries
[10] A. Turner and M. Filella. (2021). Hazardous metal additives in plastics and their environmental impacts. Environment International 2021 Vol. 156 Pages 106622. DOI: https://doi.org/10.1016/j.envint.2021.106622
[11] Hennebert. (2022). Hazardous properties of plasticisers that may hinder the recycling of plastics. Detritus 2022 Issue 21 Pages 35-44. DOI: 10.31025/2611-4135/2022.17227