



CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

Annotated Zero Draft of the Plastics Treaty

This analysis is meant to inform the reading of and discussion on the Zero Draft during the third session of the Intergovernmental Negotiating Committee (INC-3). It takes the form of an annotated copy of the Zero Draft text in order to facilitate understanding the implications and considerations of the different options while reading the document.

The Center for International Environmental Law (CIEL) considers the Zero Draft of the plastics treaty ([UNEP/PP/INC.3/4](#)), prepared by the Chair of the INC in consultation with the Secretariat, a good reflection of all the positions expressed during previous INCs and throughout intersessional submissions. As such it constitutes a very solid starting point for moving the negotiations forward.

Overarching Items to Address

Should/Shall

The difference between using should versus shall can make the provision legally binding or voluntary. “Shall” generally indicates that the provision creates a legal obligation, while “should” indicates a recommendation, or a voluntary action. It is therefore important to maintain the use of “shall” in obligations throughout the treaty. All substantive obligations should be legally binding. They should also be specific and measurable. The text of the instrument should further mandate that they be reported on. This will facilitate monitoring and evaluation of both compliance with the instrument and efficiency of the measures contained in the instrument.

Parties / Each Party

The use of “Parties” versus “Each Party” changes the nature of the obligation as well.¹ “Each Party” denotes an individual obligation, where each Party to the treaty is required to take measures to fulfil that obligation. “Parties,” however, refers to a collective obligation. In some cases, one might be more fitting than the other, depending on if it is realistic to require that each Party take an action.

1. Bodansky, D., “The Legal Character of the Paris Agreement,” *Review of European, Comparative, and International Environmental Law*, 25(2), 2016, pp. 145-146, accessible at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735252

In addition to the two overarching points above, our analyses identified a number of key missing elements from the Zero Draft that will be essential to include in the final text of the instrument to ensure both implementability and effectiveness of the instrument.

- Tasks for the governing body are largely missing. It is important to have a clear indication of what the role of the governing body will be, for example, what decisions it will need to adopt at its first and subsequent sessions, as well as clarify its precise role in the implementation of the instrument.
- Procedures for the amendment of the treaty and more specifically to amend and revise annexes are missing. This is key to ensure a successful “start and strengthen” approach. How easy or difficult the procedure for amending the annexes will determine the capacity of the treaty to be flexible (e.g., to incorporate new scientific knowledge to add specific chemicals or plastics for example). It is common practice in Multilateral Environmental Agreements (MEAs) to have simpler procedures to amend the annexes than those to amend the core text of the treaty.
- Human rights are not mentioned in the entire treaty text. The treaty should be underpinned by a human rights-based approach as plastics impact human rights at every stage of their life cycle. To that effect, the objective should identify the protection of human rights, and provisions should operationalize human rights principles throughout the text, including in relation to the protection of health of all impacted communities, transparency, access to information, and participation.



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**Intergovernmental negotiating committee to develop
an international legally binding instrument on plastic
pollution, including in the marine environment
Third session**

Nairobi, 13–19 November 2023^{1*}
Item 4 of the provisional agenda

**Preparation of an international legally binding instrument on
plastic pollution, including in the marine environment**

**Zero draft text of the international legally binding
instrument on plastic pollution, including in the marine
environment**

Note by the secretariat

1. United Nations Environment Assembly (UNEA) resolution 5/14 requested the Executive Director of the United Nations Environment Programme (UNEP) to convene an intergovernmental negotiating committee, to begin its work during the second half of 2022, with the ambition of completing its work by the end of 2024. The intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment, which could include both binding and voluntary approaches, based on a comprehensive approach that addresses the full life cycle of plastic, taking into account, among other things, the principles of the Rio Declaration on Environment and Development, as well as national circumstances and capabilities.
2. Furthermore, UNEA resolutions 1/6, 2/11, 3/7, 4/6, 4/7 and 4/9 have also affirmed the urgent need to strengthen global coordination, cooperation and governance to take immediate action towards the long-term elimination of plastic pollution in marine and other environments, and to avoid detriment from plastic pollution to ecosystems and the human activities dependent on them.
3. At its second session, the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment, requested the Chair, with the support of the secretariat, to prepare a Zero Draft of the international legally binding instrument called for by UNEA resolution 5/14, for consideration at its third session. The draft would be guided by the views expressed at the committee's first and second sessions. The full range of views could be indicated in the draft text through options.

^{1*} UNEP/PP/INC.3/1.

4. In response to that request, the Chair has prepared, with the support of the secretariat, the Zero Draft set out in the annex to the present note for the consideration of the committee.

Annex

Zero draft text of the international legally binding instrument on plastic pollution, including in the marine environment

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Chair's explanatory note

1. The Zero Draft text is proposed to facilitate and support the intergovernmental negotiating committee's (hereafter referred to as the committee) work towards the development of the international legally binding instrument on plastic pollution, including in the marine environment, called for by United Nations Environment Assembly (UNEA) resolution 5/14. It does not prejudice the committee's decisions on the content of the future instrument.
2. The elements presented reflect the objective and mandate of UNEA resolution 5/14, including through the provisions required under paragraphs 3 and 4 and taking into account the principles of the Rio Declaration on Environment and Development. Furthermore, the text is guided, as per the mandate received from the committee, by the views expressed at the committee's first and second sessions. The Zero Draft is developed based on the full range of views, including through the use of options, while ensuring coherence, logic and readability of the text.
3. The text considers the fact that not all matters to be covered in the legal instrument have yet been the subject of detailed submissions and discussion by Members. As mandated by the committee at its second session, certain sections are identified in the draft text as placeholders and will need to be elaborated in light of such submissions and discussions.
4. The order of the headings and sections in the Zero Draft does not indicate the final structure of the instrument and does not imply a particular order of priority in the discussions. It draws on the structure commonly found in multilateral environmental agreements.²
5. Throughout the Zero Draft, the legally binding instrument and its future governing body are referred to respectively as "*instrument**" and "*governing body**", without prejudice to their final designation by the committee.
6. The Zero Draft text includes footnotes to provide the committee, where appropriate, with relevant background information to assist its consideration of the relevant text. The comments and notes in footnotes (introduced by the annotation "Note:") throughout the text are not intended to form part of the language proposed for the legal instrument.
7. Some of the options presented propose obligations whose key features are set out in the instrument whereas others propose for these commitments to be determined at the national level. A combination of nationally and internationally determined approaches may provide the necessary flexibility in implementation of the instrument, considering the complexity of addressing plastic pollution across the life cycle of plastic.
8. The options presented underscore the importance of complementarity, coordination and cooperation within the international context, in particular with existing efforts that may cover some aspects related to plastic pollution. In that regard, the Zero Draft text includes a general provision related to international cooperation in part IV. Reference is also made to selected instruments or initiatives, either in the text or in footnotes, where this appeared relevant to support the development of the text and achieving the objective of this instrument. Members may wish to elaborate further on this issue.
9. In accordance with the mandate given by the committee at the second session, the Zero Draft text is intended to reflect possible ways to address issues raised by Members, whether through a single option or several options, and without prejudice as to whether and how the committee will ultimately decide to address them. Where appropriate, options are identified using headers ("Option 1", "Option 2" and "Option 3"). Members may wish to choose between or combine different options. In some cases, additional provisions relevant to all of the identified options have also been included. Such provisions could be included in combination with the different options relating to the same matter. This is indicated through a header ("Provisions common for the Options above"). The Zero Draft does not include specific options where Members have expressed their wish not to integrate certain types of measures. The committee may decide to include new provisions or remove certain existing proposed measures. It may also wish to discuss and decide upon the appropriate operative verb that applies to the different measures.
10. In some instances, further elaboration of the detailed contents of the relevant obligations or commitments, or associated processes and procedures, would be required to make the provision fully operational, for example through annexes. Where this is the case, this is indicated. Furthermore, a number of placeholders for possible annexes are proposed in the Zero Draft. Any annexes that the committee might agree upon

² See UNEP/PP/INC.1/5 and UNEP/PP/INC.2/4 for further reference.

would need to be further developed. The committee may also wish to consider, as part of its deliberations on final provisions, the procedure for amendment of annexes, including to provide for periodic review of some or all of the annexes.

11. Part I of the text covers the objectives of the instrument and leaves placeholders, as requested at the second session of the committee, for elements that Members may wish to include but were not discussed at the second session. The list of elements in part I is indicative and does not prejudice the way Members may wish to address or structure them. In this regard, the committee, at its second session, requested the secretariat to invite written submissions on elements not discussed at its second session and prepare a synthesis report of the submissions for consideration at the preparatory one-day meeting and at the third session of the committee.
12. In part II of the text, the elements are broadly structured around the life cycle of plastics and plastic products with the aim of addressing plastic pollution. Consistent with paragraph 3(b) of UNEA resolution 5/14, the options in part II aim to collectively promote the sustainable production and consumption of plastics through, among other things, product design and environmentally sound waste management, including through resource efficiency and circular economy approaches.
13. Parts III and IV outline different options of measures aimed at collectively addressing the implementation of the instrument, consistent with paragraphs 3(c) through (p) of UNEA resolution 5/14.

Commented [CIEL1]: This is key to ensure a 'start and strengthen' approach. How easy or difficult the procedure for amending the annexes will determine the capacity of the treaty to be flexible (e.g., to incorporate new scientific knowledge to add specific chemicals or plastics). It is common practice in MEAs to have simpler procedures to amend the annexes than those to amend the core text of the treaty.

Part I

1. Preamble (placeholder)

2. Objective

Option 1

1. The objective of this *instrument** is to end plastic pollution, including in the marine environment, and to protect human health and the environment.

Option 2

1. The objective of this *instrument** is to protect human health and the environment from plastic pollution, including in the marine environment, [.]

Option 2 sub-options that may be considered pertinent for the end of the paragraph: [

- 1.1 by ending plastic pollution.
- 1.2 based on a comprehensive approach that addresses the full life cycle of plastic.
- 1.3 through the prevention, progressive reduction and elimination of plastic pollution throughout the life cycle of plastic by 2040.
- 1.4 through, *inter alia*, managing both the utilization of plastics and plastic waste, while contributing to the achievement of sustainable development].

3. Definitions (placeholder)³

4. Principles (placeholder)

5. Scope (placeholder)

Commented [CIEL2]: The framing of this objective is good, as it prioritizes the protection of human health and the environment.

Commented [CIEL3]: Stating that the goal is to end plastic pollution is important, to make clear that it is not possible to protect human health and the environment without ending plastic pollution.

Commented [CIEL4]: It is important to state that this will be based on a full life cycle approach, which is aligned with the UNEA 5/14 mandate to negotiate this instrument.

Commented [CIEL5]: While setting clear ambitious objectives for the treaty is valuable, putting a date in the objective of the treaty could be problematic as the treaty would have to be amended if the goals are not being met. We recommend only including dates in the annexes, which should be amended via a simpler procedure (see comment above).

³ **Note:** Terms that may be relevant to the development of the international legally binding instrument on plastic pollution, including in the marine environment, are included in document UNEP/PP/INC.1/6, entitled 'Glossary of key terms' and document UNEP/PP/INC.1/7, entitled 'Plastics science'. While no specific language is proposed for definitions in the Zero Draft text, in some instances an indication of how specific terms are used is provided in a footnote to facilitate an understanding of the proposed text and of its potential scope.

Part II

1. Primary plastic polymers

1. Parties shall 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.

Option 1

2. Each Party shall not allow its level of production and supply of primary plastic polymers to exceed the reduction target specified in part I of annex A.⁴

Commented [CIEL6]: Missing: This section needs to include a provision to halt the expansion of production capacity through new and expanded infrastructure (production capacity freeze). Without such a provision, we will fail at meeting reduction targets because current expansion will lock in production for decades. (For more details, see CIEL's brief on reducing plastic production to achieve climate goals: <http://bit.ly/3PSeXoa>).

This section, like several others in the document lacks a clear indication of what the governing body will do (e.g., adopt a decision with lists of feedstocks and plastic precursors, set dates and timeline for reduction and phase out for after reporting mechanisms have been put in place for them for example (see Part II.13)).

Commented [CIEL7]: In line with our above comment, we recommend tasking the governing body to develop and regularly revise a list of those necessary measures.

Commented [CIEL8]: Missing: human rights. Plastic production has severe impacts on human rights which should also be prevented and mitigated.

Commented [CIEL9]: Reduction in production of primary plastic polymers should include both fossil-based and bio-based feedstocks. This is important to ensure that fossil-based polymers are not replaced with bio-based ones, as this would have massive impacts on land use and the rights of Indigenous Peoples and other communities around the globe.

Commented [CIEL10]: This option is preferred as the starting point for this obligation, as it sets a legally binding obligation to reduce plastic production. To advance in the conversation, a global target will need to be considered as a point of reference, as well as a mechanism for each Party to comply with that target through globally agreed national targets for reduction.

In addition, the language of not exceeding a reduction target echoes the Montreal Protocol, which has been effective at achieving its goal.

Commented [CIEL11]: Not all parties will be producers or suppliers of primary plastic polymers. It may be more appropriate to use "Parties" instead of "each Party" here.

Commented [CIEL12]: Setting these targets and timeframes in an annex is the right approach, as it allows for a 'start and strengthen' approach that can incorporate the best and most recent science.

Intersessional work between INCs will be essential to define the components of this annex.

It will be essential that any baseline established in this annex is a past or present baseline, in order to prevent a surge in production prior to initiating the phasedown schedule, and to limit discrepancies arising from assumptions made for projecting a future baseline.

⁴ **Note:** Under this option, part I of annex A would contain a baseline, timeframe(s) and the target referred to in this paragraph. The common reduction target would be defined as, for example, a reduction of production and supply by a given percentage compared to an established baseline year, to be achieved within a defined period. Members may also wish to consider specific provision(s) for the update of annexes as needed.

Option 2

2. Parties shall manage and reduce the global production and supply of primary plastic polymers to achieve the global target set out in part I of annex A.⁵
3. Parties shall, in order to achieve the target referred to in paragraph 2, develop nationally determined targets and take the necessary measures to achieve them.
4. Parties shall reflect the measures taken to implement this provision in their respective national plans communicated pursuant to [part IV.1 on national plans], including their intended level of domestic supply of primary plastic polymers including, as relevant, domestic production, expressed in percentage terms in relation to the baseline set out in part I of annex A, for each reporting period specified in [part IV.3 on reporting on progress].

Commented [CIEL13]: This option is not preferred, as it relies on nationally determined targets. There is a target, but the fulfilment of that goal depends on nationally determined contributions, which have proven to be inefficient and challenging under the Paris Agreement. This style creates a lot of inconsistency in meeting treaty obligations, and it is challenging in terms of reporting and monitoring.

Commented [CIEL14]: This is already reflected under “provisions common for the Options above.” Any legally binding commitment should be included in national plans, as each country will have to state how they will achieve the obligation. This also should be included in reporting requirements.

Option 3

2. Parties shall take the necessary measures to manage and reduce the global production and supply of primary plastic polymers referred to in paragraph 1.
3. The measures taken to implement this provision shall be reflected in the national plans communicated pursuant to [part IV.1 on national plans] and shall include the intended level of domestic supply including, as relevant, domestic production, and the measures taken to manage and reduce it.

Commented [CIEL15]: This language is vague and doesn't set any legally binding obligation for Parties to reduce production. It should not be used as a basis for negotiation.

Provisions common for the Options above

- [3][5][4]. Each Party should take appropriate measures to reduce the demand for and production of primary plastic polymers, including:
- a. market- and price-based measures;
 - b. removal of subsidies and other fiscal incentives to the production of primary plastic polymers; and
 - c. the establishment, as applicable, of regulatory requirements for primary plastic polymer producers.

Commented [CIEL16]: Not all of the measures listed below will be relevant for all parties. It may be more appropriate to use “Parties” instead of “each Party” here.

Commented [CIEL17]: The use of the word “should” makes these requirements voluntary. It should be replaced with “shall” to ensure that these provisions are legally binding.

Commented [CIEL18]: This is a key element for the success of the future instrument. This provision should be strengthened and be a standalone legally binding provision. This new standalone provision should include transparency requirements to disclose and notify existing subsidies (including relating to recipients and amounts); require the inclusion of measurable subsidy elimination targets and practical phase out plans in National Plans and regular reporting; and be included under the scope of the compliance mechanism.

The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

In that respect, the instrument should adopt the definition of subsidies of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, which is agreed language for 164 countries.

⁵ **Note:** Under this option, part I of annex A would contain a baseline, timeframe(s) and the target referred to in this paragraph. The global target would be defined as, for example, a reduction of global production and supply by a given percentage compared to an established baseline year, to be achieved within a defined period. Members may also wish to consider specific provision(s) for the update of annexes as needed.

2. Chemicals and polymers of concern

Option 1

1. Each Party shall take the necessary measures to not allow and to eliminate, at the latest by the dates provided in part II of annex A, the use of the chemicals, groups of chemicals and polymers listed in part II of annex A⁶ in the production of plastic polymers, plastics and plastic products, except as provided in that annex.
2. Each Party shall take the necessary measures to not allow and to eliminate, at the latest by the dates provided in part II of annex A, the production, sale, distribution, import or export of plastic polymers, plastics and plastic products containing a chemical, group of chemicals, or polymer listed in part II of annex A, except as provided in that annex.

Option 2

1. Parties shall take the necessary measures, including those referred to in paragraph 2, to minimize, and as appropriate eliminate, the use and presence in plastic polymers, plastics and plastic products⁷ of chemicals, groups of chemicals and polymers with the potential for adverse impacts on human health or the environment at any stage of the plastic life cycle, or with properties that may hinder their safe and environmentally sound management, including their reusability, reparability, recyclability and disposal.
2. Each Party shall take the necessary measures to not allow, or to regulate, as appropriate, the use and presence in plastic polymers, plastics and plastic products of the chemicals, groups of chemicals and polymers identified in part II of annex A.⁸ The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

Option 3

1. Each Party shall take the necessary measures to not allow, or to regulate, the presence and use, in plastics and plastic products, of chemicals, groups of chemicals and polymers with the potential for adverse impacts on human health or the environment at any stage of the product life cycle, or with properties that may hinder their safe and environmentally sound management, including their reusability, reparability, recyclability and disposal, based on the criteria contained in annex A.⁹ The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

Provisions common for Options 1 and 2

⁶ Note: This language assumes that part II of annex A could contain: (i) criteria to determine chemicals, groups of chemicals and polymers of concern; (ii) specific chemicals, groups of chemicals and polymers of concern; and (iii) associated control measures and potential exclusions, including phase-out periods as relevant. In developing this part of the proposed annex, Members may wish to consider existing multilateral environmental agreements (MEAs) in which certain chemicals or substances used in the production of plastics and plastic products are addressed, including the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) and the Rotterdam Convention on the Prior Informed Consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention).

⁷ Note: The term “plastic products” is used throughout this text to refer to products, including packaging, made entirely of plastic, or containing plastic.

⁸ Note: This language assumes that specific chemicals, groups of chemicals and polymers would be identified in part II of annex A. In developing this part of the proposed annex, Members may wish to consider relevant existing MEAs in which certain chemicals or substances used in the production of plastics are addressed, including the Stockholm Convention and the Rotterdam Convention.

⁹ Note: This language assumes that modalities for the identification of chemicals and polymers of concern would be included in annex A. Chemicals in Plastics - A Technical Report (UNEP/PP/INC.2/INF/5) jointly developed by UNEP and the Secretariat of the Basel Convention, the Rotterdam Convention and the Stockholm Convention, 2023 - is available to Members as a reference.

Commented [CIEL19]: Missing: Monomers should be included in the scope of the obligations throughout this section.

It is also important to ensure the process to add chemicals to Annex A is clearly established. There should be a triggering mechanism to add new chemicals, for example in the in the Rotterdam Convention, where if Parties from two different Prior Informed Consent Regions notify a ban or severe restriction of a chemical, there is a trigger in the process for the consideration of that chemical.

Commented [CIEL20]: This option is preferred as the starting point for this negotiation, as it sets clear legally binding obligations, covering both the use of chemicals in production of plastics, and the chemicals/polymers contained in the plastics themselves. The use of “each Party” is also preferable to ensure that all Parties adopt appropriate and relevant measures. The use of “not allow” and “eliminate” is also stronger and more specific than the terms used in options 2 and 3.

Commented [CIEL21]: A grouping approach is essential to avoid “regrettable substitutions.” The replacement of chemicals of concerns with closely related substances which can be just as, or more harmful to human health and the environment. A grouping approach is identified as one of the key aspects of successfully managing chemicals of concern and recommended as one of the key measures by the BRS Global Governance of Plastics and Associated Chemicals report and UNEP’s Chemicals in Plastics - A Technical Report.

Commented [CIEL22]: Option 2 is weaker than Option 1 as “minimize” and “regulate” are both weaker than “eliminate.” The use of “as appropriate” is subjective and further weakens the overall obligation.

Commented [CIEL23]: Despite Option 2 being less ambitious than Option 1, this language on its own is protective of human health and the environment, which is in line with the objectives of the treaty. The inclusion of the word “potential” means it can cover the potential for adverse impacts, not just proven impacts. In addition, saying “human health or the environment” includes both cases of health and environmental impacts (whereas using “and” would mean they should happen together, which would be more restrictive).

Commented [CIEL24]: “Regulate” is weak and very unspecific. A regulation could simply list chemicals that are allowed or already present on the market, or must be labelled. It is much weaker that specifying that such problematic chemicals should be banned/eliminated. The use of “as appropriate” further weakens this provision.

Commented [CIEL25]: Similar to Option 2, this Option is weaker than Option 1 in that it uses vague terms such as “regulate” (versus a clear obligation to eliminate) and does not even include an obligation to minimize (such as in Option 2 and that is already weaker than option 1). Furthermore, it also rests on a weaker form of annex, in that it would only list criteria to identify chemicals and polymers of concerns but would not list them, which leaves the identification of chemicals to be regulated to each of the Parties. This could potentially create strong discrepancies between countries and limit the benefit of creating a level playing field for industries operating in several countries, increasing the risk of double standards and fragmented markets.

[3][2] Where production or use of a regulated chemical, group of chemicals or polymer listed in part II of annex A is permitted,¹⁰ each Party with such production or use shall:

- a. Take appropriate measures to ensure that any such production or use is carried out in a manner that prevents and minimizes human exposure or release into the environment throughout the life cycle of the chemical, polymer or product concerned¹¹ and fosters the safe and environmentally sound management, including the recyclability and disposal, of the polymers, plastics, and plastic products containing them;
- b. Take appropriate measures to ensure that all such chemicals, groups of chemicals and polymers, and products containing them, are used in a manner consistent with part II of annex A and managed in a safe and environmentally sound manner throughout their life cycle, including for their final disposal;
- c. Require producers and importers of such chemicals, groups of chemicals, polymers and products containing them to provide to government authorities, in addition to the information required under [part II.14 on transparency, tracking, monitoring and labelling], complete information about the hazards to human health or the environment associated with the relevant chemical, polymer or product, and related implications for their safe use, recyclability and disposal, based on the harmonized requirements contained in part II of annex A;¹² and
- d. Require producers and importers of the relevant chemicals, polymers or products to appropriately mark and label them based on the harmonized requirements contained in part II of annex A, to allow their safe and environmentally sound use and handling throughout their life cycle, including their final disposal.¹³

[4][3] Each Party is encouraged to include in its reporting pursuant to [part IV.3 on reporting on progress] any measures it has taken to not allow, or to restrict, the use in plastics and plastic products of chemicals, groups of chemicals and polymers not included in part II of annex A that have the potential for adverse impacts on human health or the environment at any stage of the product life cycle, or to hinder the environmentally sound management, including recyclability and disposal, of the final product.

3. Problematic and avoidable plastic products,¹⁴ including short-lived and single-use plastic products and intentionally added microplastics

a. Problematic and avoidable plastic products, including short-lived and single-use plastic products

Option 1

1. Each Party shall not allow¹⁵ the production, sale, distribution, import or export of the plastic products, including short-lived and single-use plastic products, listed in part II of annex B¹⁶ after the dates specified for those products, and identified based on criteria set out in part I of annex B,¹⁷ except where the Party has a

Commented [CIEL26]: 'Prevents' is in line with human rights law — States are required to take active measures to prevent the exposure of individuals and communities to toxic substances. 'Minimizes' assumes that some level of exposure is ok. If retained, this word should be qualified with a clear indication that minimization should only be an option where elimination is impossible.

Commented [CIEL27]: It is essential to ensure that information relating to human health cannot be deemed 'confidential.' The instrument should follow existing precedents and use internationally agreed language such as Article 9.5 of the Stockholm Convention: "For the purposes of this Convention, information on health and safety of humans and the environment shall not be regarded as confidential."

Commented [CIEL28]: Missing: While this negative list approach appears as the appropriate one at this stage, it may be useful to leave open the possibility for a positive list in case the approach needs to be strengthened after assessing progress.

For example, the London Protocol was adopted to modernize and eventually replace the London Convention. It takes a precautionary approach and prohibits all forms of dumping, except those mentioned in the Protocol.

Commented [CIEL29]: Option 1 is preferred, as it has clear obligations that can be implemented, reported on, and complied with.

¹⁰ **Note:** This language assumes that the nature and extent of control measures might differ depending on the chemical or polymer at issue, such that some uses may be permitted, for example during a phase-out period or for specific purposes. The language in this provision may need to be further adapted in light of the specific nature and extent of the control measures to be associated with listed chemicals and polymers.

¹¹ **Note:** Adapted from the Stockholm Convention, Article 3.6.

¹² **Note:** Adapted from the Rotterdam Convention, Article 13.2.

¹³ **Note:** Adapted from the Rotterdam Convention, Article 13.3. In developing disclosure and labelling requirements for inclusion in part II of annex A, Members may wish to consider the classification and labelling rules developed under the Global Harmonized System for the Classification and Labelling of Hazardous Chemicals. See https://unece.org/sites/default/files/2021-09/GHS_Rev9E_0.pdf.

¹⁴ **Note:** A definition of "problematic and avoidable plastic products" may be needed.

¹⁵ **Note:** Adapted from the Minamata Convention.

¹⁶ **Note:** Sectoral approaches, based on levels of contribution to plastic pollution, could be considered. For a list of specific sectors and products identified in Member submissions to the committee's second session, see UNEP/PP/INC.2/INF/4, section II.A.

¹⁷ **Note:** The annex proposed in this provision could identify: (i) criteria for the determination of problematic and avoidable products or groups of products; (ii) specific products or groups of products determined to be problematic and avoidable and timeframes for their phase-down or phase-out; and (iii) potential exceptions as needed, for example for essential uses. The committee may also wish to consider an option under this paragraph for lists of products to be defined in future governing

registered exemption for the relevant product(s) under part II of annex B pursuant to [part II.4 on exemptions available to a Party upon request].

- Each Party shall reduce the production, sale, distribution, import or export of the plastic products listed in part III of annex B identified based on the criteria and within the timeframe set out in the same annex.¹⁸

Option 2

- Each Party should take the necessary measures to regulate and reduce and, as appropriate, not allow the production, sale, distribution, import or export of problematic and avoidable plastic products, including short-lived and single-use plastic products, identified based on the criteria contained in part I of annex B. The measures taken to implement this provision, including the appropriate nationally determined timeframes for reduction and phase-out, shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

b. Intentionally added microplastics

Option 1

- Each Party shall not allow the production, use in manufacturing, sale, distribution, import or export of plastics and products containing intentionally added microplastics, except where an exception is specified in part IV of annex B.

Option 2

- Each Party shall identify plastics and products containing intentionally added microplastics in accordance with the criteria contained in part V of annex B, and take the necessary measures to manage, restrict and, where appropriate, not allow, their production, use in manufacturing, sale, distribution, import or export.
- Each Party shall share information on the measures taken pursuant to paragraph 1 through the online registry established under [part IV.6 on information exchange] with the aim of promoting transparency.¹⁹

4. Exemptions available to a Party upon request

- Any Party may register, in accordance with the provisions of [part II.3 on problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics, Option 1] an exemption²⁰ from the phase-out dates listed in part II in annex B for specific products, hereafter referred to as an “exemption”, in accordance with the procedure [set out in ...].²¹
- All exemptions referred to in paragraph 1 shall expire [X] years after the relevant phase-out dates listed in part II of annex B, unless a Party, when registering an exemption, indicated a shorter expiration period, in which case the expiration date indicated by the Party shall apply.
- The governing body* may decide to extend an exemption for a period requested by the Party but not exceeding [X] years, in accordance with the procedure [set out in ...].²² An exemption may only be extended [X] times per entry per phase-out date.

body* decisions based on criteria set out in annex B. In such cases, a procedure for the governing body* to develop and adopt such decisions may need to be established in the instrument.

¹⁸ Note: For an example of phase-down measures see e.g. the [Kigali amendment](#) to the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁹ Note: The sharing of lists of plastics and products containing intentionally added microplastics through the online registry would also over time promote harmonization across Parties.

²⁰ Note: This proposed text is based on the experience of other MEAs. Members may wish to consider other alternatives as deemed necessary. Adapted from the Minamata Convention, as a possible complement to the control measures on problematic and avoidable plastic products. The specific conditions, timeframes and other details required for the registration of exemptions would need to be elaborated on by Members.

²¹ Note: The committee may wish to define where and how such procedure would be set out.

²² Note: The committee may wish to define where and how such procedure would be set out.

Commented [CIEL30]: This language is weaker than Option 1: It uses “should” instead of “shall” (the latter indicating a legal obligation while the former merely indicates a recommendation); the use of “as appropriate” further weakens the language and increases the risks of market fragmentation and double standards and defeats the purpose of an international instrument to create a level playing field.

Commented [CIEL31]: Option 2 appears weaker and more prone to interpretation than Option 1 potentially creating challenges in implementation and monitoring. It also increases the risk of market fragmentation and double standards, and defeats the purpose of an international instrument to create a level playing field. This is particularly problematic in that microplastics are an issue of global concern as they are particularly mobile in the global environment through air and marine currents, creating impacts way beyond their point source of emission.

Commented [CIEL32]: It is crucial that the INC outlines the procedure for granting exemptions, including the responsible decision-making authority and the prerequisites for seeking an exemption. As an example, the Minamata Convention requires that Parties provide a statement justifying their need as the procedure to consider such possibility.

Commented [CIEL33]: See comment above. As an example that could serve as a precedent, the Minamata Convention requires that requests for extensions include a justification and concrete steps to be implemented during the exception extension period to eliminate the need for such exception.

4. No Party may have an exemption in effect at any time after [X] years after the phase-out date for a plastic product listed in part II of annex B.

5. Product design, composition and performance

a. Product design and performance

1. Each Party shall take measures, including those referred to in paragraphs 2 and 3, to enhance the design of plastic products, including packaging, and improve the composition of plastics and plastic products, with a view to:

- a. Reducing demand for and use of primary plastic polymers, plastics and plastic products;
- b. Increasing the safety, durability, reusability, refillability, reparability and refurbishability of plastics and plastic products, as relevant, and their capacity to be repurposed, recycled and disposed of in a safe and environmentally sound manner upon becoming waste; and
- c. Minimizing releases and emissions from plastics and plastic products, including microplastics.

Option 1

2. Each Party shall require plastics and plastic products produced within its territory and those available on its market to comply with the minimum design and performance criteria and other related elements contained in part I of annex C, including, where relevant, sector- or product-specific criteria and elements, within the timeframe defined in that annex.²³

3. Each Party shall establish and maintain certification procedures and labelling requirements for plastics and plastic products produced within its territory and those available on its market, based on the design and performance criteria and other related elements contained in part I of annex C, including, where relevant, sector- or product-specific criteria and elements, and shall require plastics and plastic products to be appropriately labelled in accordance with these criteria and elements.

Option 2

2. Each Party should adopt design and performance criteria and regulatory schemes to:
- a. Reduce the use of plastics across the value chain, including in product packaging; and
 - b. Increase the safety, durability, reusability, refillability, reparability and refurbishability of plastics and plastic products, as relevant, and their capacity to be repurposed, recycled and disposed of in a safe and environmentally sound manner upon becoming waste;

in accordance with the elements contained in part I of annex C,²⁴ and taking into account relevant international standards and guidelines, including any relevant sector- or product-specific standards and guidelines. The measures adopted pursuant to this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

Commented [CIEL34]: Missing: The term downcycling is missing from this section, and it is important to specify that this is something to be avoided.

Commented [CIEL35]: The term “enhance” is vague and unclear. It would be more appropriate to require that states improve the design of plastic products to ensure they comply with the provisions of paragraphs 2 and 3.

Commented [CIEL36]: Packaging is included in the definition of plastic products in footnote 6.

Commented [CIEL37]: “Ensuring” instead of increasing seems more appropriate as safety, durability, reusability are objectives to be achieved.

Commented [CIEL38]: Option 1 is preferred, as it is legally binding and sets out design and performance criteria. These criteria are important to ensure a level playing field for businesses transitioning to better product design, and they also contribute to effective implementation and monitoring.

Commented [CIEL39]: This option is weaker than Option 1. The use of “shall” is preferred to the use of “should.” Product design and performance criteria, as well as transparency and labelling, are essential elements that must be globally legally binding to avoid creating challenges in implementation and monitoring. Option 2 formulation also increases the risk of market fragmentation and double standards, and defeats the purpose of an international instrument to create a level playing field.

²³ **Note:** This option assumes that general and/or sectoral design and performance criteria, and other related elements as relevant, would be included in part I of annex C. For a list of potential design and performance-related criteria and sectors and products identified in Member submissions to the committee’s second session, see UNEP/PP/INC.2/INF/4, section II.D. Members may wish to consider harmonization criteria among these elements. In the development of this part of the proposed annex, Members could work with relevant international organizations and standard-setting organizations, including on a sectoral basis. See, for example, the submission to the committee’s second session by the International Organization for Standardization (ISO) at https://resolutions.unep.org/resolutions/uploads/230106_international_organization_for_standardization_iso_0.pdf.

²⁴ **Note:** This option assumes that general and/or sectoral elements relating to the establishment of design and performance criteria would be included in part I of annex C. Members may wish to consider harmonization criteria among these elements.

3. Each Party should establish, in accordance with the elements contained in part I of annex C, transparency, labelling and certification procedures and requirements for plastics and plastic products that conform to the design and performance criteria established pursuant to paragraph 1.

Provision common for Options above

4. Parties are encouraged to work with relevant international organizations towards the development of standards and guidelines at the multilateral level, including on a sectoral basis as relevant, to reduce the use of plastics in products across the value chain, including in product packaging, and improve the design of plastic products to increase 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 waste.²⁵

Commented [CIEL40]: Add “including through import and export,” as plastic packaging is an important element of international trade.

b. Reduce, reuse, refill and repair of plastics and plastic products

Option 1

1. Each Party shall, based on guidance to be adopted by the *governing body** at its first session, take effective measures to promote the reduction, reuse, refill, repair, repurposing and refurbishment, as relevant, of plastics and plastic products produced within its territory and those available on its market, in particular through the implementation of reuse, refill and repair systems.²⁶
2. Each Party shall take the necessary measures to achieve the minimum reduction, reuse, refill and repair targets contained in part II of annex C within the timeframe identified in that annex, for plastics and plastic products produced within its territory and those available on its market.

Option 2

1. Each Party shall, based on guidance to be provided by the *governing body** at the latest by its second session, take effective measures to promote the reuse, refill, repair, repurposing and refurbishment, as relevant, of plastics and plastic products produced within its territory and those available on its market, in particular through the implementation of reuse, refill and repair systems.²⁷
2. Each Party should adopt timebound targets in support of this objective.

Provision common for Options above

3. The measures taken to implement the provisions of this Article shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

²⁵ Note: See the submission to the committee’s second session by the International Organization for Standardization (ISO) at https://resolutions.unep.org/resolutions/uploads/230106_international_organization_for_standardization_iso_0.pdf.

²⁶ Measures taken pursuant to this provision could also include one or more of the following:

- i. Product take-back and right-to-repair requirements;
- ii. Product and service delivery systems;
- iii. Deposit refund schemes;
- iv. Supporting the development of skills and infrastructure for repair, repurposing and refurbishment of plastic products;
- v. Economic instruments such as fees, tax incentives, subsidies and subsidy reform, as appropriate;
- vi. Leveraging public procurement;
- vii. Actions to raise consumer awareness and incentivize changes in consumer behaviour.

²⁷ Measures taken pursuant to this provision could also include one or more of the following:

- i. Product take-back and right-to-repair requirements;
- ii. Product and service delivery systems;
- iii. Deposit refund schemes;
- iv. Supporting the development of skills and infrastructure for repair, repurposing and refurbishment of plastic products;
- v. Economic instruments such as fees, tax incentives, subsidies and subsidy reform, as appropriate;
- vi. Leveraging public procurement;
- vii. Actions to raise consumer awareness and incentivize changes in consumer behaviour.

c. Use of recycled plastic contents

Option 1

1. Each Party shall require plastics and plastic products produced within its territory and those available on its market to contain minimum percentages of safe and environmentally sound post-consumer recycled plastic,²⁸ as set out in part III of annex C,²⁹ within the timeframe specified in that annex.

Option 2

1. Each Party should take the necessary measures for plastics and plastic products produced within its territory and those available on its market to achieve minimum percentages of safe and environmentally sound post-consumer recycled plastic contents, based on the elements contained in part III of annex C. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

Provision common for Options above

2. Each Party shall take measures to ensure that, where needed, primary plastic in products is replaced by safe and environmentally sound recycled plastic content. The measures taken to implement this provision may include the use of regulatory and economic instruments,³⁰ public procurement, or incentivizing changes in the supply chain and in consumer behaviour and shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

d. Alternative plastics and plastic products^{31,32}

Option 1

1. Parties shall ensure that alternative plastics and plastic products are safe, environmentally sound and sustainable, taking into account their potential for environmental, economic, social and human health impacts, including food security.³³

Option 2

1. Parties should encourage the development and use of safe, environmentally sound and sustainable alternative plastics and plastic products, including through regulatory measures and economic instruments.³⁴
2. Parties, in implementing the above provision, shall ensure that alternative plastics and plastic products are safe, environmentally sound and sustainable, taking into account their potential for environmental, economic, social and human health impacts, including food security.³⁵

Commented [CIEL41]: The use of “safe and environmentally sound post-consumer recycled plastic content” should be clearly defined as meaning “entirely free of chemicals regulated under this instrument or other MEAs such as the Stockholm Convention.”

Commented [CIEL42]: Missing: provisions to ensure the protection of Indigenous Peoples’ rights (e.g., land rights) and systems of knowledge.

²⁸ Note: The term “safe and environmentally sound post-consumer recycled plastic” may require a definition.

²⁹ Note: Part III of annex C could contain general and sectoral targets, as needed.

³⁰ This may include fees, tax incentives or subsidies, as appropriate.

³¹ Note: The term “plastic alternatives” as used in this proposed text refers to plastics and plastic products with lower greenhouse gas (GHG) life cycle emissions and not hazardous for human, animal or plant life. This could include bioplastics or biodegradable plastics. See Plastic Pollution – The pressing case for natural and environmentally friendly substitutes to plastics, UNCTAD, 2023, accessible at <https://wedocs.unep.org/bitstream/handle/20.500.11822/42529/UNCTAD.pdf>. These definitions are without prejudice to how Members may ultimately choose to define these terms in the instrument, as needed.

³² Note: As plastics and plastic products, under the proposed definition, alternative plastics and plastic products would fall within the scope of other provisions in the instrument applicable to plastics and plastic products respectively.

³³ Note: Parties may wish to consider the establishment of a process to assess the safety and sustainability of potential plastic alternatives, including potential alternatives to chemicals and polymers addressed in part II.2.

³⁴ Measures taken pursuant to this provision could include, for example, fees, reduced tariffs, taxes or subsidies, including repurposed subsidies, as appropriate.

³⁵ Note: Parties may wish to consider the establishment of a process to assess the safety and sustainability of potential plastic alternatives, including potential alternatives to chemicals and polymers addressed in part II.2.

6. Non-plastic substitutes

1. Each Party shall take measures to foster innovation and incentivize and promote the development and use at scale of safe, environmentally sound, and sustainable non-plastic substitutes,³⁶ including products, technologies and services, taking into account their potential for environmental, economic, social and human health impacts.³⁷
2. Parties are encouraged to use regulatory and economic instruments, public procurement and incentives³⁸ to promote the development and use of safe, environmentally sound and sustainable non-plastic substitutes.

7. Extended producer responsibility

Option 1

1. Each Party shall establish and operate Extended Producer Responsibility (EPR) systems, including based on the modalities contained in annex D,³⁹ to incentivize increased recyclability, promote higher recycling rates, and enhance the accountability of producers and importers for safe and environmentally sound management, of plastics and plastic products throughout their life cycle and across international supply chains.
2. Parties shall, in implementing this provision, take into account how the measures taken would contribute to a just transition. These measures shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

Option 2

1. Each Party is encouraged to establish and operate Extended Producer Responsibility (EPR) systems, including, where relevant, on a sectoral basis, to incentivize increased recyclability, promote higher recycling rates, and enhance the accountability of producers and importers for safe and environmentally sound management, of plastics and plastic products throughout their life cycle and across international supply chains.
2. The governing body* shall, at its first session, adopt modalities to inform the establishment of national EPR systems and define their essential features, and to support their harmonization, taking into account the objective of ensuring a just transition.⁴⁰

8. Emissions and releases of plastic throughout its life cycle

1. Each Party shall prevent and eliminate 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 annex E by the dates identified therein. The emissions and releases covered under this provision should include:
 - a. Emissions of hazardous substances, including microplastics, to air;

Commented [CIEL43]: Missing: In both this provision and the one above (5.d Alternative plastics and plastic products), it is essential to avoid regrettable substitutions and burden shifting.

Article 195 of UNCLOS should be used as a model to craft adequate language to that effect:

“Duty not to transfer damage or hazards or transform one type of pollution into another:

In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.”

Commented [CIEL44]: The concept of replacement of products (goods) by services is very important, since this can follow the waste hierarchy. However, it is important to ensure that there is no loophole here for companies to argue they are not providing a product but a service.

Commented [CIEL45]: In order to avoid market disruption and align with trade obligations, it is important to include both producers and importers in those provisions.

Commented [CIEL46]: This is important. Can also add “including the involvement of informal waste workers.”

Commented [CIEL47]: This reflects a voluntary approach, weaker than language in Option 1, creating risks of market disruptions and double standards.

Commented [CIEL48]: EPR should be structured to go beyond mere recyclability and recycling and cover waste reduction, and redesign.

Commented [CIEL49]: Missing: The life cycle of plastics (and pollution and related emissions) does not start with polymers. The production of plastic precursors (monomers, polymers and chemical additives) is also an important source of plastic pollution and emissions with serious impacts on health and the environment. The term “polymers” should be replaced by the term “precursors” to align with the mandate of designing an instrument to end plastic pollution taking a full life cycle approach.

³⁶ Note: The term “substitutes” is used here with the meaning given to it in UNCTAD’s Report Plastic Pollution - The pressing case for natural and environmentally friendly substitutes to plastics referred to in UNEP/PP/INC.2/INF/9, accessible at <https://wedocs.unep.org/bitstream/handle/20.500.11822/42529/UNCTAD.pdf>.

³⁷ Note: Members may wish to consider the establishment of a process for the assessment of the safety and sustainability of potential substitutes to plastics and their suitability as substitutes, considering their potential impacts on human health and the environment, the waste hierarchy, and “reduce, reuse and recycle” approaches.

³⁸ Such instruments could include, for example, fees, reduced tariffs, taxes or subsidies, including repurposed subsidies, as appropriate.

³⁹ Note: The modalities in annex D would include elements for the establishment and operation of EPR systems based on common principles, including for sectoral approaches as relevant. For potential elements relating to modalities for EPR systems, as identified in Members’ submissions to the committee’s second session, see UNEP/PP/INC.2/INF/4, section III.A.

⁴⁰ Note: For potential elements relating to modalities for EPR systems, as identified in Members’ submissions to the committee’s second session, see UNEP/PP/INC.2/INF/4, section III.A.

- b. Releases to soil and water from the production, transportation and use of chemicals and polymers of concern, plastics and plastic products; and
 - c. Releases of chemicals and polymers of concern, plastics and plastic products, including microplastics, to air, soil, and water, and ecosystems.
2. Each Party shall prevent and eliminate emissions and releases of plastic pellets, flakes and powder from production, storage, handling and transport, taking into account, as appropriate, the relevant provisions and guidance agreed in the framework of international organizations such as the International Maritime Organization.
 3. The measures taken to implement the provisions of this Article shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].
 4. The governing body*, at its first session, shall adopt guidelines, including where relevant, sectoral guidelines, to facilitate implementation of the obligations set out in paragraph 1, including emission and effluent standards, sector-specific best available techniques and best environmental practices on preventing emissions and releases, and best available techniques and best environmental practices to capture and remove plastic pollution, including microplastics from freshwater bodies, the marine environment and ecosystems.
 5. Parties are encouraged to promote scientific and technical innovation to prevent and capture the releases of plastics and plastic products, including microplastics, into the marine environment.

Commented [CIEL50]: Missing: The term monomers is missing from this list.

Commented [CIEL51]: Missing: This list should include monomers.

9. Waste management⁴¹

a. Waste management

Option 1

1. Each Party shall take effective measures to ensure that plastic waste is managed in a safe and environmentally sound manner throughout its different stages, including handling, collection, transportation, storage, recycling and final disposal, taking into account the waste hierarchy.
2. Each Party shall meet the requirements, including where relevant through a sectoral approach, for minimum safe and environmentally sound collection, recycling and disposal rates, set out in part I of annex F,⁴² taking into account relevant provisions, guidance and guidelines in other international agreements, including those developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.
3. The governing body* shall, where necessary, adopt requirements, guidance and guidelines for the implementation of the provisions in paragraph 2, additional or complementary to the relevant guidance and guidelines developed under other international agreements mentioned above.

Commented [CIEL52]: There is no reason to limit this provision to the marine environment. Plastics can be found in all environmental compartments, including air, soil and all aquatic ecosystems. An appropriate approach aligned with the UNEA resolution 5/14 mandate should be phrased “into the environment, including the marine environment.”

Commented [CIEL53]: It is important to establish criteria to ensure that problematic and hazardous waste management practices such as chemical recycling, advanced recycling, waste to energy, and others, are not considered “safe and environmentally sound.”

The governing body of the future instrument should be clearly tasked with developing and adopting such criteria.

Commented [CIEL54]: The mention of the waste hierarchy is important to ensure that waste management prioritizes reduction. The measures of this provisions should be aligned with the waste hierarchy, rather than merely taking it into account.

Option 2

1. Each Party shall take effective measures on safe and environmentally sound waste management at its different stages, including handling, collection, transportation, storage, recycling and final disposal of plastic waste. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans], with an aim to achieving nationally determined targets and minimum requirements developed based on the harmonized indicators set out in part II of annex F.

⁴¹ Note: For the purposes of this text, the terms “waste”, “waste management” and “environmentally sound management” of plastic waste are used with the same meanings as under the Basel Convention, without prejudice to how Members may ultimately choose to define these terms as needed in the instrument.

⁴² Note: This obligation could cover plastic waste generated at the production, distribution, use and end-of-life stages.

2. The *governing body** shall adopt at its first session, and subsequently update as needed, guidelines on safe and environmentally sound management of plastic waste, taking into account the waste hierarchy⁴³ and other relevant international guidelines and guidance.

Provisions common for Options above

[4][3] Each Party shall not allow waste management practices listed in part III of annex F that may lead to the emissions and releases of hazardous substances, and shall regulate the other allowed waste management practices that may lead to the emissions and releases of the hazardous substances listed in part IV of annex F.

[5][4] Each Party shall take the necessary measures to prevent open dumping, ocean dumping, littering and open burning.⁴⁴

[6][5] Parties shall take additional measures to:

- a. invest in waste management systems and infrastructure that enable environmentally sound management of plastic waste;
- b. promote investment and mobilize resources from all sources to cover financing gaps for waste management systems and infrastructure that enable environmentally sound management of plastic waste and enhance waste management capacity, in light of current and expected waste generation levels; and
- c. incentivize behavioural changes throughout the value chain and raise consumer awareness on sustainable consumption.

[7][6] The measures taken to implement the provisions of this Article shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

b. Fishing gear⁴⁵

1. Each Party shall cooperate and take effective measures, including appropriate marking, tracing and reporting requirements, to prevent, reduce and eliminate, abandoned, lost or otherwise discarded fishing gear⁴⁶ containing plastic, taking into account internationally agreed rules, standards and recommended practices and procedures.⁴⁷ The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].
2. Parties shall promote synergy and complementarity with relevant initiatives and organizations in their respective actions towards safe disposal of fishing gear.

Commented [CIEL55]: Because fishing gear is not only a waste management issue but requires a holistic full life cycle approach, including redesign, it should not only appear in the waste management section but should rather be addressed through a sectoral approach.

⁴³ *Note:* The term “waste hierarchy” may require a definition.

⁴⁴ *Note:* The terms “open dumping”, “ocean dumping” and “littering” may require a definition.

⁴⁵ *Note:* Members may wish to include measures on other specific sectors as deemed necessary.

⁴⁶ *Note:* For the purposes of this text, the terms “fishing gear” and “abandoned”, “lost” and “discarded” fishing gear are used with the same meaning as under Article 16 of the 2019 Food and Agriculture Organization of the United Nations (FAO) Voluntary Guidelines on the Marking of Fishing Gear (accessible at <https://www.fao.org/3/ca3546t/ca3546t.pdf>), without prejudice to how Members may ultimately define these terms as needed in the instrument.

⁴⁷ *Note:* This might include rules, standards and recommended practices and procedures developed under the FAO (see the submission by FAO to the committee’s second session, accessible at https://resolutions.unep.org/resolutions/uploads/230106_food_and_agriculture_organization_of_the_united_nations_0.pdf), the International Maritime Organization, Regional Fisheries Management organizations and other relevant bodies (<https://www.fao.org/fishery/en/rfb>).

10. Trade in listed chemicals, polymers and products, and in plastic waste**a. Trade in listed chemicals, polymers and products⁴⁸**

1. Each Party shall not export:

- a. a chemical, group of chemicals or polymer referred to in [part II.2 on chemicals and polymers of concern], for use in plastic production or incorporation into a plastic product;
- b. a plastic product containing any such chemical or polymer; or
- c. a microplastic or product addressed in [part II.3 on problematic and avoidable plastic products, including short-lived and single-use product, and intentionally added microplastics];

except where the production and use of such chemical, polymer or product is permitted under this instrument⁴⁹ and with the prior informed consent⁵⁰ of the importing State.⁵¹

2. Each Party exporting a chemical, polymer or product referred to in paragraph 1 pursuant to this provision shall establish an export permit requirement for such exports, and obtain the prior informed consent of the importing State in writing, together with its assurances that the chemical, polymer, microplastic or product, once imported, will be used in a manner consistent with the conditions contained in part II of annex A or in Annex B, as relevant, and managed in a safe and environmentally sound manner throughout its life cycle, including for final disposal.⁵²

3. Each Party exporting pursuant to this provision a chemical or polymer listed in part II of annex A, a product containing any of these, or a microplastic or product listed in annex B, shall require the exporter to:

- a. provide to the importing State and the importer complete harmonized information about the composition of the exported polymer, chemical or product and the associated hazards to human health or the environment, based on the harmonized disclosure requirements contained in annex A, including safety data sheets, as relevant;⁵³
- b. mark and label the exported chemical, polymer or product in accordance with relevant harmonized labelling requirements contained in annex A, as relevant; and
- c. comply with the relevant generally accepted and recognized international rules, standards and practices for packaging, labelling and transport.⁵⁴

⁴⁸ **Note:** This section is intended to be read in conjunction with those options in which a list of substances or products subject to control measures would be contained in an annex, under parts II.2 and II.3. References to annexes A and B in this section are to the annexes proposed under those options.

⁴⁹ **Note:** This language assumes that under the relevant annex, some uses may be permitted, for example during a phase-out period or for specific purposes. Where relevant, permitted use might also arise from an exemption. The language in this provision may need to be adapted to the nature and extent of the specific control measures associated with listed substances or products under the relevant annex.

⁵⁰ **Note:** The prior informed consent procedure proposed pursuant to this provision could be facilitated and made operational through the establishment of detailed harmonized procedures, and through the online registry proposed to be established under "Information exchange" (see part IV.6).

⁵¹ **Note:** Additional language may be required with a view to promoting coherence and avoiding duplication of procedures if a chemical or polymer listed in part II of annex A is also subject to requirements under another MEA, such as the Stockholm Convention or the Rotterdam Convention.

⁵² **Note:** The committee may wish to develop, or provide for the governing body to develop, standardized processes and documentation to facilitate the operation of this procedure.

⁵³ **Note:** Adapted from the Rotterdam Convention, Article 13.2.

⁵⁴ **Note:** Adapted from the Minamata Convention, Article 11.

Commented [CIEL56]: Missing: Provision on trade with States that are not a Party to the instrument (Non-Party Provision).

Non-Party trade provisions are essential for compliance. Without an explicit reference, it creates an ambiguous situation open to various interpretations, ultimately resulting in the absence of a Non-Party Trade Provision.

Non-Party Trade provisions give a mechanism to ensure that what is applied between Parties, is also applied in their relationship with non-Parties — thus requiring permits and certificates that demonstrates that the import/export with non-Parties complies with the MEA. CITES is a very comprehensive model. At minimum, such provision should: i) Recall that any export, re-export, or import measures and obligations relating to products and materials covered by the plastics treaty shall apply also between Parties and non-Parties, on a non-discriminatory basis. ii) Require that in the case of export or import from a non-Party to a Party, the obligation for the non-Party to provide comparable documentation issued by the competent authorities that substantially conforms with the requirements of the plastics treaty.

(For more details, see CIEL's brief on Non-Party Trade Provisions: <https://bit.ly/3Qlg3rp>).

Commented [CIEL57]: Instead of relying on a PIC procedure, this provision should rely on a permit system. Import and export permits allows States to say no and retain control over what is imported, while export permits place some responsibility on the exporting State to ensure that (i) the shipment is correctly classified, (ii) meets any requirements, (iii) is in conformity with their supply and demand reduction commitments, and (iv) that the importing State is able to manage plastic feedstocks, polymers, additives, or the plastic product.

PIC procedures are weaker than permits. The level of scrutiny by States when granting consent for transboundary movements of products under PIC procedure can vary due to differences in capacity, resources, regulatory frameworks, commitment, geopolitical factors, and international cooperation. To the contrary, permits aim to verify whether criteria, conditions, and exceptions of materials and products allowed for import and export are genuinely met.

A good model for the design of this provision would be Articles III to VI of CITES.

4. Where a customs code under the Harmonized Commodity Description and Coding System is available for a chemical, polymer, microplastic or product listed in annex A or B, each Party shall require its shipping document to bear that code when exported.⁵⁵
5. Each Party shall not import:
- a chemical, group of chemicals or polymer referred to in [part II.2 on chemicals and polymers of concern];
 - a plastic product containing any such chemical or polymer; or
 - a microplastic or product addressed in [part II.3 on problematic and avoidable plastic products, including short-lived and single-use product, and intentionally added microplastics];
- except for the purposes of use permitted under this *instrument**, or for the purpose of their safe and environmentally sound disposal in accordance with the requirements of [part II.9 on waste management].⁵⁶
- b. Transboundary movement of plastic waste**
- Each Party shall not allow transboundary movement of plastic waste,⁵⁷ except for the purpose of its safe and environmentally sound management,⁵⁸ with the prior informed consent of the importing State, and in a manner consistent with obligations under this *instrument**.
 - Each Party exporting plastic waste pursuant to this provision shall establish and implement an export permit requirement for such exports and track the types, volumes and destination of all its exports of plastic waste.
 - Where transboundary movement of plastic waste is permitted pursuant to paragraph 1, each exporting Party shall:
 - not allow the transboundary movement to commence until it has received the written consent of the importing State, which shall include that State's assurances that the exported plastic waste will be managed in an environmentally sound manner;⁵⁹
 - require the exporter to:
 - provide to the importing State and the importer complete information about the composition of the exported waste, including its contents in polymers, chemicals and plastics, and any associated hazards to human health or the environment, based on the relevant harmonized disclosure requirements contained in annex A, including safety data sheets, as relevant;⁶⁰

⁵⁵ Note: Adapted from the Rotterdam Convention, Article 13.1. The committee may wish to consider establishing a framework for cooperation with the World Customs Organization as appropriate to facilitate the monitoring of plastic trade flows under the instrument, including for the assignment, as relevant, of specific Harmonized System customs codes to chemicals, polymers or products listed in annexes and subject to control measures under the instrument.

⁵⁶ Note: This language assumes that under the relevant annex, some uses may be permitted, for example during a phase-out period or for specific purposes. Where relevant, permitted use might also arise from an exemption. The language in this provision may need to be adapted to the nature and extent of the specific control measures associated with listed substances or products under the relevant annex. Adapted from Stockholm Convention, Article 3.2.b.

⁵⁷ Note: For the purposes of this text, the term "transboundary movement of plastic waste" is used to refer to any movement of plastic waste from an area under the national jurisdiction of one Party to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement (adapted from Article 3.3 of the Basel Convention). This definition is used without prejudice to how Members may define this term as needed in the instrument.

⁵⁸ The reference to "environmentally sound management" of plastic waste in this provision shall be understood to refer to plastic waste management, including final disposal, consistent with the requirements of [part II.9 on waste management].

Note: The language of this provision may need to be adapted to the exact scope and content of the relevant requirements to be adopted in respect of plastic waste management under part II.9.

⁵⁹ The reference to "environmentally sound management" of plastic waste in this provision shall be understood to refer to plastic waste management, including final disposal, consistent with the requirements of [part II.9 on waste management].

Note: The exact language of this provision may need to be adapted to the exact scope and content of the relevant requirements to be adopted in respect of plastic waste management in the instrument.

⁶⁰ Note: Adapted from the Rotterdam Convention, Article 13.

- ii. mark and label the exported waste in accordance with the relevant harmonized labelling requirements contained in annex A, as relevant; and
 - iii. comply with generally accepted and recognized international rules, standards and practices for packaging, labelling and transport.⁶¹
4. The *governing body** shall, at its first session, adopt guidance for the implementation of the provision set out in paragraph 3, taking into account as appropriate relevant arrangements under other multilateral environmental agreements.⁶²
 5. Each Party shall prevent and eliminate illegal trade⁶³ in plastic waste.
 6. Parties shall promote synergy and complementarity with relevant organizations and intergovernmental bodies and cooperate towards the adoption and implementation of effective measures to prevent and eliminate illegal exports and dumping of plastic waste.

11. Existing plastic pollution, including in the marine environment

1. Parties shall cooperate to:
 - a. assess, identify and prioritize accumulation zones,⁶⁴ hotspots⁶⁵ and sectors:
 - i. most affected by existing plastic pollution,⁶⁶ including in the marine environment; and
 - ii. where quantities and types of litter pose a threat to species or habitats taking into account the full life cycle of plastics.
 - b. take effective mitigation and remediation measures, including clean-up activities for the accumulation zones, hotspots and sectors identified, taking into account the provisions in existing international agreements including those relevant to the conservation and sustainable use of marine biological diversity, including in areas beyond national jurisdiction;⁶⁷ and
 - c. promote engagement of the local population and citizens in safe and environmentally sound remediation activities.
2. Each Party should **make publicly available information** on common plastic pollution types and practices and behaviours that lead to plastic pollution, to raise awareness and prevent further plastic pollution, including littering in coastal and freshwater areas.
3. The measures taken to implement the provisions of this Article shall be reflected in the national plan communicated pursuant to *[part IV.1 on national plans]*.
4. The *governing body** shall, at its first session, adopt:

Commented [CIEL58]: Reporting and implementation measures could play an important role in that regard. Each Party should report this information to the Secretariat who would compile and make publicly available reports based on that information.

⁶¹ Note: Adapted from Minamata Convention, Article 11.

⁶² Note: The specific modalities for the application of this provision, including the operation of the prior informed consent (PIC) procedure, could be further elaborated in an annex or the governing body, taking into account in particular relevant provisions under the Basel Convention. See, for example, Article 11.3.c. of the Minamata Convention, addressing transboundary movement of mercury waste for Parties to the Basel Convention. On the treatment of plastic waste under the Basel Convention, see <https://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/FAQs/tabid/8427/Default.aspx>.

⁶³ Note: The term “illegal trade” is used in this text to refer to importation or exportation that would violate domestic legislation of the exporting Party or of the importing State. This is without prejudice to how Members may define this term as needed in the instrument.

⁶⁴ Note: Definitions of the terms “accumulation zones” and “hotspots” may be required.

⁶⁵ Note: Definitions of the terms “accumulation zones” and “hotspots” may be required.

⁶⁶ Note: A definition of the term “existing plastic waste and pollution” may be required.

⁶⁷ Note: The text of the agreement of BBNJ under UNCLOS is available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/177/28/PDF/N2317728.pdf?OpenElement>.

- a. indicators to identify accumulation zones, hotspots and sectors; and
- b. guidance on best available techniques and best environmental practices, developed on the basis of best available science, to address existing plastic pollution, with a view to ensuring the clean-up activities do not have potential for negative impacts on the environment, biodiversity and human health.

12. Just transition

1. Each Party shall promote and facilitate a fair, equitable and inclusive transition for affected populations, with special consideration for women and vulnerable groups, including children and youth, in the implementation of this *instrument**. This may include:
 - a. Designating a national coordinating body for engagement with relevant stakeholders, including public authorities, non-governmental organizations and local communities;
 - b. Enabling policies and conditions to improve income, opportunities and livelihoods for impacted communities, including workforce training, development and social programmes, according to their needs and priorities;
 - c. Incentivizing the development of skills and job opportunities across the plastic value chain, including for the development of reuse, repair, waste collection and sorting;
 - d. Promoting a clean, healthy and sustainable environment for communities and workers across the value chain, including workers in the waste management sector;
 - e. Improving working conditions for workers in the waste management sector, including by providing legal recognition and protection to workers in informal and cooperative settings and facilitating the formalization of their associations or cooperatives;
 - f. Integrating workers in informal and cooperative settings into a **safe plastics value chain**, including by requiring plastic product producers, recycling and waste management companies to integrate plastics collected and sorted by them into their operation schemes; and
 - g. Requiring a portion of the fees collected through EPR schemes to be used to improve infrastructure and improve the livelihoods and opportunities for, and develop the skills of, workers in the waste sector, including waste workers in informal and cooperative settings.
2. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [part IV.1 on national plans].

13. Transparency, tracking, monitoring and labelling⁶⁸

1. Each Party shall:
 - a. require producers and importers to **disclose harmonized information** on the chemical composition of all plastics and plastic products throughout their life cycle;
 - b. take appropriate measures to ensure the traceability of chemicals, polymers and the plastic contents of products throughout the life cycle of plastics and plastic products, based on guidelines to be adopted by the *governing body** at its first session, in particular for the purposes of their safe and environmentally sound use, **recycling and disposal**; and
 - c. establish **marking and labelling requirements** based on guidance to be adopted by the *governing body** at its first session, in particular for the purposes of the safe and environmentally sound use, recycling and disposal of plastics and plastic products.

Commented [CIEL59]: Missing: Just transition is not only relevant at the waste stage but throughout the whole life cycle of plastic and in particular for workers and communities affected in the upstream stages of the plastics life cycle. Language specifically addressing a just transition for such workers and communities should be added in this section.

Similarly, this section should include elements referring to legacy pollution site remediation for impacted communities and consideration of historical and long-term health impacts.

Commented [CIEL60]: This is vague and unclear. It will be important to define what is meant by “safe plastic value chain,” including consideration of health and work safety.

Commented [CIEL61]: Text should specify that this harmonized information should be made publicly available. This information is particularly relevant for regulating authorities, impacted fence-line communities, workers, scientists and the general public.

Commented [CIEL62]: This language should match the language of the Bonn Declaration: “recycling free from harmful chemicals.”

Commented [CIEL63]: Guidelines for such marking and labelling requirements could be included in annex updated regularly to reflect best available science.

⁶⁸ This provision complements, and contains requirements additional to, specific requirements relating to transparency, tracking, monitoring and labelling contained in other provisions of this *instrument**.

2. Each Party shall monitor and track the types and volumes of its production, imports and exports of chemicals and polymers used in the production of plastic polymers, plastics and plastic products, and regulated plastic products across their life cycle.⁶⁹
3. Each Party shall report the information collected pursuant to paragraph 2, together with information on the recycling facilities functioning within its territory, in a standardized format to the *governing body**.

Commented [CIEL64]: This provision should also refer to the monitoring and tracking of monomers and specify that this should include: volumes per chemical (including monomers, polymers, additives and processing agents), uses per sector, imports and exports, and use (understood as production minus imports plus exports).

Part III

1. Financing

1. Parties shall provide the necessary resources for national activities intended to implement this *instrument**. Such resources may include domestic and international funding, as well as facilitation of private sector financing, including voluntary contributions.⁷⁰
2. Parties should, and multilateral organizations, agencies and funds are encouraged to, increase their support, including through finance, capacity-building and technology transfer, for the implementation of this *instrument** by developing country Parties.
3. Parties shall, and other stakeholders are encouraged to, in implementing paragraph 2 of this Article, take into account of the specific needs and special circumstances of Parties that are Small Island Developing States (SIDS) or least developed countries.
4. A Mechanism for the provision of predictable, sustainable, adequate, accessible and timely financial resources is hereby established to support the implementation of this *instrument** by developing country Parties, particularly SIDS and least developed countries. The Mechanism shall include financial resources from all sources, domestic and international, public, and private.
5. The Mechanism shall operate under the guidance of and be accountable to the *governing body**.⁷¹

Commented [CIEL65]: Finance, capacity building and technology transfer should be addressed separately. There is already a section on capacity building and technology transfer (section 2 below), so the issues should be kept separate.

Option 1

6. The Mechanism shall consist of *newly established dedicated Fund(s)*⁷²
7. The *governing body** shall, at its first session, adopt the arrangements for the operation of the newly established dedicated fund(s).

Commented [CIEL66]: Option 1 appears more appropriate as it identifies the creation of new dedicated fund(s) which appears necessary to implement the new instrument.

Option 2

6. The Mechanism shall consist of *dedicated Fund within an existing financial arrangement**⁷³
7. The *governing body** shall, at the latest at its first session, conclude arrangements with the *governing body** of the *existing financial arrangement** for the operation of the Mechanism.

⁶⁹ **Note:** The term “regulated plastic products” in this provision refers to products subject to control measures, including prohibitions or restrictions, under part II.2 (chemicals and polymers of concern) or part II.3 (problematic and avoidable products, including microplastics and short-lived and single-use plastic products).

⁷⁰ **Note:** For a list of possible sources of financing beyond traditional sources, see paragraph 24(e) of document UNEP/PP/INC.2/4.

⁷¹ **Note:** The two options below paragraph 5 could be considered individually or together.

⁷² **Note:** The fund(s) could be dedicated to specific purposes, such as addressing legacy plastic waste or innovation.

⁷³ **Note:** The fund could be established within an ‘existing fund’, such as the Global Environment Facility (GEF) (<https://www.thegef.org/who-we-are/organization>).

Provisions common for Options above

8. The *governing body** shall review on a regular basis the level of funding, the guidance provided by the *governing body** to operationalize the Mechanism established under this Article and its effectiveness, as well as its ability to address the changing needs of developing country Parties. It shall, based on such review, take relevant action to improve the effectiveness of the Mechanism.⁷⁴
9. Each Party shall establish a plastic pollution fee, to be paid by plastic polymer producers within its jurisdiction, and adopt the necessary legislative, regulatory and administrative measures for its collection. The *governing body**, at its first session, shall adopt modalities and procedures for the implementation of the global plastic pollution fee, including on the contribution of the fee to the financial Mechanism established in paragraph 4.⁷⁵
10. Each Party shall take measures to:
- decrease financial flows from all domestic and international, public, and private sources, towards projects that result in emissions and releases to the environment from plastics and plastic products across the life cycle, including microplastics; and
 - increase financial flows from all domestic and international, public, and private sources, towards projects that prevent or reduce emissions and releases to the environment of plastics and plastic products across the life cycle, including microplastics, including for the development of adequate waste management infrastructure.

2. Capacity-building, technical assistance and technology transfer

- Parties shall cooperate to enable, within their respective capabilities, the provision of timely, sustainable, comprehensive and adequate capacity-building and technical assistance^{76,77} to developing countries, in particular, to least developed countries and SIDS, to assist them in implementing their obligations under this *instrument** and to retain such capacity once built.
- The *governing body** shall keep under review capacity-building and technical assistance to support the implementation of this *instrument** and promote cooperation and coordination with other multilateral environmental agreements and other relevant initiatives to increase the effectiveness of capacity-building and technical assistance.
- Parties shall promote and facilitate the development, transfer on mutually agreed terms, diffusion of and access to up-to-date environmentally sound technologies to address plastic pollution, including through safe and sustainable alternatives and non-plastic substitutes. In implementing this provision, Parties shall promote and facilitate innovation and investment in pursuit of new technologies and innovative solutions, and shall facilitate access to essential technologies, including with respect to financial resources and proprietary rights.

⁷⁴ Note: Adapted from Minamata Convention, Article 13.11.

⁷⁵ Note: Modalities for the Global Plastic Pollution Fee could be established by the governing body. This Fee could hold polymer producers accountable for the pollution costs of all of their plastics, irrespective of the country in which the plastics end their useful life, and of whether the plastics are ultimately destined for recycling or disposal. It could generate revenue to finance environmentally sound waste management and clean-up initiatives.

⁷⁶ Note: Members may wish to include a definition of “technology transfer on mutually agreed terms” either in the provision on ‘definitions’ or in the provision on ‘technology transfer on mutually agreed terms’. The glossary of terms prepared for the committee’s first session, UNEP/PP/INC.1/6, refers to the following definition: “Technology transfer means the transmission of know-how, equipment and products to governments, organizations or other stakeholders. It usually also implies adaptation for use in a specific cultural, social, economic and environmental context”. (UNEP, Glossary of Terms for Negotiators of Multilateral Environmental Agreements (Nairobi, 2007), p. 91.)

⁷⁷ Note: Particular focus areas for capacity-building, technical assistance or technology transfer may need to be further defined and elaborated when there is a better understanding of the substantive obligations under this *instrument**.

Commented [CIEL67]: Not all Parties have polymer producers in their jurisdiction, this provision should therefore refer to “Parties.” This provision should further specify that the plastic pollution fee should be globally coordinated or harmonized globally to avoid market distortions

Commented [CIEL68]: Missing: This section should include specific provisions for the phasing out of subsidies to plastic production. (see comment under part II, art 1.3][5][4].b relating to subsidies).

Part IV

1. National plans

1. Each Party shall develop and implement a national plan⁷⁸ to fulfil its obligations under this *instrument** and to achieve its objective(s). The national plans shall be based on the format in annex G and shall include at least relevant elements related to⁷⁹:
 - a. Primary plastic polymers;
 - b. Chemicals and polymers of concern;
 - c. Problematic and avoidable plastic products;
 - d. Product design and performance;
 - e. Reduce, reuse, refill and repair of plastics and plastic products;
 - f. Use of recycled plastic contents;
 - g. Extended Producer Responsibility;
 - h. Emissions and releases of plastic through its life cycle;
 - i. Waste management;
 - j. Fishing gear;
 - k. Existing plastic pollution, including in the marine environment; and
 - l. Just transition.
2. Each Party shall communicate its initial national plan to the *governing body** within [X] year[s] of the date on which this *instrument** enters into force for it through the secretariat.
3. Each Party shall be guided by the modalities referred to in paragraph 1 when preparing and submitting their national plans.
4. A Party may at any time adjust its national plan with a view to enhancing its level of ambition, in accordance with guidance adopted by the *governing body**.
5. Parties are encouraged to coordinate on the establishment and implementation of regional plans to facilitate implementation of this *instrument**, as appropriate.
6. Parties shall review, update and communicate to the *governing body** their national plans every [X] year[s], and in a manner to be specified by a decision of the governing body*, with each update representing a progression compared to the Party's previous national plan.
7. Each Party shall include information on the implementation of its national plan towards achieving the objective of this *instrument** in its national reports pursuant to [part IV.3 on reporting on progress].

Commented [CIEL69]: Missing: This section should include a provision specifying that Parties shall, where appropriate, cooperate directly or through global, regional and subregional organizations, and consult their national stakeholders and groups involved in plastic pollution, in order to facilitate the development, implementation and updating of their implementation plans.

Commented [CIEL70]: Implementation provisions in treaties are designed to ensure effectiveness of the treaty and generally require the adoption of national measures in order to fulfil the obligations laid out in a treaty instrument (e.g., regulation, procedural measures, and economic measures). This provision has all the key elements necessary for its effectiveness, including the fact that Each Party shall i) develop and implement a national plan for the implementation of its obligations under the convention; ii) transmit its implementation and reviews to the Governing Body, iii) review and update their plans, or iv) adjust it at any time with the view to enhancing its level of ambition.

Commented [CIEL71]: This is aligned with the principle of non-regression, which is important to not allow for any backsliding or weakening of the existing environmental laws or standards related to plastic pollution at the national, regional or global level.

⁷⁸ **Note:** The term 'national plans' is used without prejudging how Members may ultimately choose to refer to the plans. Other options include 'national action plans' or 'national implementation plans'.

⁷⁹ **Note:** This potential list of actions to be included in national plans reflects references to such plans in the options presented. It is presented for ease of reference and without prejudice to how Members may choose to address this item in the *instrument**. The exact contents of any national plans will depend on the contents and structure of commitments and obligations under the *instrument**.

2. Implementation and compliance

1. A mechanism to facilitate implementation of, and promote compliance with, the provisions of this *instrument**, including a committee, is hereby established.
2. The mechanism referred to in paragraph 1 shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.⁸⁰
3. The mechanism shall operate under the modalities and procedures adopted by the *governing body** at its first session and shall report to the *governing body**.
4. The committee referred to in paragraph 1 shall examine both individual and systemic implementation and compliance issues and make recommendations to the *governing body**, as appropriate.⁸¹ The committee shall consist of 17 members with recognized competence in fields relevant to this *instrument** to be elected by the *governing body** striving to reflect a balance of expertise and on the basis of equitable geographical representation, with three members each from the five regional groups of the United Nations and two members from the SIDS, taking into account the goal of gender balance.
5. Members shall be elected to the committee to serve for a period of [X] years and for a maximum of two consecutive terms. The *governing body**, at its first session, shall elect nine members to the committee for an initial term of [X] years and eight members for a term of [half of X] years. Thereafter, the *governing body** shall elect at its relevant regular sessions nine members for a term of [X] years. The members and alternate members shall remain in office until their successors are elected.
6. The committee may consider issues on the basis of:
 - a. Written submissions from any Party with respect to its own compliance;

Additional options

- b. Written submission from any Party regarding another Party's compliance;
- c. Requests from the *governing body**;
- d. Information provided by the secretariat with respect to the status of submission of information under [part IV.3 on reporting on progress].
7. The committee referred to in this Article shall elaborate its rules of procedure,⁸² which shall be subject to endorsement by the *governing body** at its second session. The *governing body** may adopt further terms of reference for the committee.

3. Reporting on progress

Option 1

1. Each Party shall report to the *governing body** on the measures taken to implement the provisions of this *instrument** and on the effectiveness of such measures according to the timeline to be agreed by the *governing body** at its first session.
2. Each Party shall submit its report referred to in paragraph 1 of this Article to the secretariat⁸³ on the measures it has taken to implement the provisions of this *instrument** and on the effectiveness of such measures and

Commented [CIEL72]: For more detailed information and suggestions on this section, see CIEL's brief "Implementation, Compliance, and Reporting: Key Elements to Consider in the Context of a Treaty to End Plastic Pollution": <https://bit.ly/3MyY3ZD>

Commented [CIEL73]: It may be appropriate to use existing agreed language here (such as for example from the Montreal Protocol): "The Parties, at the first meeting of the governing body, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Treaty and for treatment of Parties found to be in non-compliance."

Commented [CIEL74]: The exact mandate could be considered and adopted by the governing body at its first session (see comment above). In considering the future mandate of the compliance committee, it should at a minimum state that the committee may determine non-compliance and actions to take with respect to non-compliance. Again, language agreed in the context of the Montreal protocol would address this issue in a more elegant and effective manner

Commented [CIEL75]: These elements belong in the ROP of the committee, to be developed and adopted by the governing body at its first session, rather than in the treaty text, so that they can be modified based on needs and experience of the committee, without having to amend the convention.

Commented [CIEL76]: To ensure transparency and accountability, the governing body should elaborate the ROP, not the Committee itself.

Commented [CIEL77]: Parties should be required to report on all substantive obligations from Part II. Anything binding, with a target, dates, etc should be included.

Commented [CIEL78]: This should take the form of two separate reports: One report is more frequent (every 1-2 years), which is reporting on the measures taken to implement the treaty. The other report is less frequent, which is reporting on the effectiveness of the implementation, including its impacts and challenges.

⁸⁰ **Note:** Adapted from the Minamata Convention, Article 15.

⁸¹ **Note:** Adapted from the Minamata Convention, Article 15.

⁸² **Note:** The rules of procedure may include provisions for non-compliance.

⁸³ **Note:** The secretariat could be mandated to maintain a registry, i.e., a central data exchange where information reported by the parties could be made available.

the possible challenges in meeting the objective of the *instrument**. The secretariat shall make national reports submitted by the Parties under this Article publicly available.

3. Each Party shall include, in its reporting, information provided in accordance with [part II.14 on transparency, tracking, monitoring and labelling, paragraphs 2 and 3], including statistical data on types and volumes of its production, imports and exports of plastic polymers and products.⁸⁴
4. The *governing body** shall, at its first session, adopt the modalities and format for the reporting referred to in paragraph 1 of this Article, which shall take into consideration the full life cycle of plastics and plastic products, while ensuring complementarity with relevant international instruments and organizations, as appropriate.
5. The *governing body** shall, at its first session, adopt the modalities and procedures for review of information communicated in accordance with this Article. The secretariat shall keep under review and regularly communicate to the *governing body** the status of submissions by Parties of information in accordance with paragraphs 1, 2 and 3 of this Article.
6. Each Party shall take measures to ensure mandatory disclosures from businesses, including the financial sector on their activities and financial flows from all sources related to plastic pollution and related sustainable finance practices.

Option 2

1. Each Party shall report to the *governing body**, through the secretariat, on the measures it has taken to implement the provisions of this *instrument** and on the effectiveness of such measures and the possible challenges in meeting the objective of the *instrument**.
 2. Each Party shall include in its reporting the information called for in Articles [X,X]⁸⁵ of this *instrument**.
 3. The *governing body** shall, at its first session, decide upon the timing and format of the reporting to be followed by the Parties, taking into account the desirability of coordinating reporting with relevant international instruments and organizations, as appropriate.
- 4. Periodic assessment and monitoring of the progress of implementation of the instrument* and effectiveness evaluation**
- a. Effectiveness evaluation**
1. The *governing body** shall periodically evaluate the effectiveness of this *instrument** and determine any measures required to advance in achieving the objective. The *governing body** shall undertake its first evaluation of effectiveness of the *instrument** no later than [X] years after the date of entry into force of the *instrument** and thereafter at least every [X] years.
 2. The *governing body** shall, at its first session, adopt the modalities for the evaluation of effectiveness of the *instrument** in accordance with the provisions of this Article.
 3. The evaluation shall be conducted on the basis of available scientific, environmental, technical, financial and economic information, including:
 - a. National reporting pursuant to [part IV.3 on reporting on progress];
 - b. National plans submitted by Parties pursuant to [part IV.1 on national plans];
 - c. Scientific and socioeconomic assessments pursuant to [part V.2 on subsidiary body],⁸⁶

Commented [CIEL79]: It is key to ensure that all relevant actors (including from the private and public financial sectors) provide this data to countries to contribute to their national report, in order to get a full picture of the measures being taken.

Commented [CIEL80]: As indicated above, Parties should be required to report on all substantive obligations from Part II in order to effectively monitor implementation and effectiveness of the treaty.

Commented [CIEL81]: Missing: This article needs to clearly recognize the need to actively engage stakeholders, right holders and observers in the collection and compilation of information used for the evaluation.

⁸⁴ **Note:** Adapted from the Minamata Convention, Article 21.2.

⁸⁵ **Note:** The list of relevant Articles to be defined.

⁸⁶ **Note:** This language assumes that a scientific and/or technical body or review mechanism would be mandated to carry out scientific and socioeconomic assessments.

- d. Best available scientific and technical knowledge, including scientific literature and other relevant sources;
 - e. Information and recommendations provided by the committee referred to in [part IV.2 on implementation and compliance mechanism];
 - f. Reports and other relevant information on the alignment of financial flows from all sources with the *instrument**'s objective and targets, operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this *instrument**; and
 - g. Other information the *governing body** deems relevant.
4. The *governing body** shall take into account the outcomes of the evaluation of effectiveness of the *instrument** when determining measures required to enhance the effectiveness of the *instrument**.

b. Review of chemicals and polymers of concern, microplastics and problematic and avoidable products

1. The *governing body** shall conduct, commencing [X] years after entry into force and at least every [X] years thereafter, a review of chemicals and polymers of concern used in plastic production, intentionally added microplastics and avoidable plastic products⁸⁷, with a view to assessing the state of knowledge with respect to their identification, production and use by Parties, and their impact on human health and the environment.
2. The review referred to in paragraph 1 shall be based on a report by [the expert review body or panel].⁸⁸ This report may contain recommendations to the *governing body**, including with respect to possible amendments to annexes A and B.
3. In the conduct of its work under this provision, the [the expert review body or panel]⁸⁹ may prioritize substances, products or sectors with high volumes or the greatest likelihood of giving rise to plastic pollution.
4. The *governing body** shall consider, in light of the report provided by [the expert review body or panel]⁹⁰ pursuant to paragraph 2, whether amendments to annexes A and B are warranted.

5. International cooperation

1. Parties shall cooperate with each other on a global basis and, as appropriate, on a regional basis, and with relevant intergovernmental organizations and other entities, including relevant scientific organizations and bodies, to support the effective implementation of this *instrument** and the achievement of its objective, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks, as well as global, regional, subregional and sectoral bodies.
2. Parties shall promote the objective of this *instrument** when participating in decision-making under other relevant legal instruments, frameworks or global, regional, subregional or sectoral bodies.⁹¹
3. Parties shall promote international cooperation in support of the objective of this *instrument** through:

Commented [CIEL82]: And sub-regional

⁸⁷ *Note*: This proposed text assumes the adoption of annexes A and B as set out in some of the options under part II.2 (chemicals and polymers of concern) and part II.3 (avoidable plastic products, including short-lived and single-use products, and intentionally added microplastics).

⁸⁸ *Note*: This language assumes that a scientific and/or technical body or review mechanism would be mandated to carry out this function and any related functions.

⁸⁹ *Note*: This language assumes that a scientific and/or technical body or review mechanism would be mandated to carry out this function.

⁹⁰ *Note*: This language assumes that a scientific and/or technical body or review mechanism would be mandated to carry out this function.

⁹¹ *Note*: Adapted from the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Article 8.

- a. The development, transfer, diffusion of and access to technology on mutually agreed terms and technical innovation, consistent with [part III.2 on capacity-building, technical assistance and technology transfer];
 - b. The development of research and exchange of information to improve the understanding of plastic pollution and advance technological innovation, consistent with [part IV.6 on information exchange and part IV.7 on awareness-raising, education and research];
 - c. The promotion of technical and scientific cooperation, including regional platforms or databases, technical-scientific cooperation projects, and networks of technical centres;
 - d. The implementation of the monitoring obligations;
 - e. The use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.
4. The *governing body** will invite, as appropriate, input from relevant scientific and technical bodies, including the Science Policy Panel to be established in accordance with UNEA resolution 5/8, the Intergovernmental Panel on Climate Change or the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, and other relevant bodies on matters relevant to the fulfilment of its mandate.⁹² The *governing body** may also consider relevant outcomes from the work of the above mentioned scientific and technical bodies.
5. The *governing body** shall cooperate and collaborate with relevant international instruments and organizations, as appropriate, including with a view to ensuring the greatest level of consistency among relevant international instruments and organizations.⁹³
- 6. Information exchange**
1. Each Party shall facilitate and undertake exchange of information relevant to the implementation of the *instrument**, including on:
 - a. Best practices and policies on sustainable consumption and production;
 - b. Research and technologies;
 - c. Knowledge, including Indigenous knowledge, *inter alia*, on environmentally sound waste management, sources of plastic pollution, human and fauna and flora exposure to plastic pollution and the associated risk management and reduction options.
 2. Parties may exchange the information referred to in paragraph 1 directly, through an online registry to be maintained by the secretariat or in cooperation with other relevant international instruments and organizations, as appropriate.
 3. Each Party shall designate a national focal point for the exchange of information under this *instrument**, including with regard to the prior informed consent of importing States under [Part II.11 on trade in plastics and plastic products].

⁹² Note: Pursuant to UNEA resolution 5/8, the Science Policy Panel (SPP) could support “relevant multilateral agreements, other international instruments and intergovernmental bodies, the private sector and other relevant stakeholders in their work”. The exact wording of the proposed language would need to be finalized considering the outcomes of the work of the OEWG established by resolution 5/8 towards the establishment of the future SPP.

⁹³ Note: Adapted from United Nations General Assembly resolution 73/333. The relevant international instruments and organizations would include, among others, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter London Convention and its 1996 Protocol, the International Convention for the Prevention of Pollution from Ships, the World Customs Organization, the Food and Agriculture Organization of the United Nations, and the International Labour Organization.

4. Parties are encouraged to learn from and build on existing ongoing processes, initiatives and networks to share knowledge, highlight successes, replicate and scale sustainable solutions.

5. Parties exchanging information pursuant to this *instrument** shall protect any confidential information as mutually agreed.

7. Awareness-raising, education and research

1. Parties, individually, jointly or through relevant regional or international bodies or networks, should cooperate to promote awareness on plastic pollution and the objective of this *instrument** and to incentivize behavioural change, capacity-building and the sharing of information, including on Indigenous, traditional and local knowledge systems.

2. Each Party shall take relevant measures to raise awareness on plastic pollution and the objective of this *instrument**. This may include measures such as:

- a. Developing a communication and education strategy on the objective of the *instrument**, involving all stakeholders, including educational and awareness-raising programmes and citizen campaigns;
- b. Promoting public participation and public access to information;
- c. Providing training at the national, regional and international levels, including exchange visits and specific dedicated training;
- d. Including issues related to plastic pollution across curricula and practices in educational institutions at all levels and in all forms of education; and
- e. Developing communication materials regarding the health risks of plastic pollution, potential alternatives and the importance of behavioural change.

3. Parties shall, within their capabilities, at the national, regional and international levels, cooperate in promoting and/or undertake relevant research, development, exchange of information and cooperation to improve understanding of the impacts of plastic pollution and advance scientific knowledge and promote technological innovation to reduce plastic pollution, including in the marine environment.

8. Stakeholder engagement

1. A multi-stakeholder action agenda⁹⁴ that promotes inclusive, representative and transparent actions and leverages efforts through existing bodies, partnerships and other initiatives is hereby established. The *governing body**, at its first session, shall adopt the modalities for the action agenda.⁹⁵

2. The purpose of the multi-stakeholder action agenda is to, among other things:

- a. Promote active and meaningful participation of all relevant stakeholders in the development and implementation of the *instrument** and to accelerate ambitious action;
- b. Provide a space for relevant stakeholders who wish to do so to report on action taken in support of the achievement of the objective of this *instrument**;
- c. Promote ambitious action and cooperation at the local, national, regional and global levels;
- d. In coordination with Parties in their implementation of the *instrument**, mobilize financial and technical resources from stakeholders, including public and private finance stakeholders;

Commented [CIEL83]: There is a potential discrepancy here with Obligation 13 on Transparency (13.1.a, requiring producers and importers to disclose information). It's important to complement this, either using Stockholm formulation "For the purposes of this Convention, information on health and safety of humans and the environment shall not be regarded as confidential" or Rotterdam, which has a specific listing approach in Article 14 on what should not be considered as confidential.

Commented [CIEL84]: Missing: The governing body will ensure and adopt safeguards to prevent conflict of interest. It is imperative to ensure that actors with vested interests in the expansion of plastic production and use are not able to influence the effectiveness of the treaty.

⁹⁴ **Note:** The multi-stakeholder agenda could alternatively be launched through a decision of the committee as early as the committee's third session outside of this *instrument*.

⁹⁵ **Note:** Modalities of the agenda could be established by the governing body at its first session or alternatively be included in an annex to this *instrument*.*

- e. Share knowledge and highlight successes to replicate and scale sustainable solutions, including in high-impact sectors and key thematic areas.
3. Each Party shall incentivize an all-of-society approach to report through the multi-stakeholder action agenda on measures taken towards the objective and targets of the *instrument**

Part V [Institutional arrangements (placeholder)]

1. **Governing body (placeholder)**
2. **Subsidiary bodies (placeholder)**
3. **Secretariat (placeholder)**

Part VI [Final provisions (placeholder)]

Commented [CIEL85]: It is critical that the instrument includes clear procedures for the amendment of the instrument as well as specific simplified procedures to amend existing annexes or create new ones. This is key to ensure a start and strengthen approach. How easy or difficult the procedure for amending the annexes will determine the capacity of the treaty to be flexible (e.g., to incorporate new scientific knowledge to add specific chemicals or plastics). It is common practice in MEAs to have simpler procedures to amend the annexes, rather than to amend the core text of the treaty.

Appendix: Possible annexes to the instrument⁹⁶

Annex A Primary plastic polymers, and chemicals and polymers of concern

Part I Primary plastic polymers

Option 1

Global baseline, timeframe(s) and reduction target

Option 2

Global baseline, timeframe(s) and global target

Part II Chemicals and polymers of concern

Option 1

Criteria for the determination of chemicals and polymers of concern⁹⁷

List of chemicals and polymers subject to prohibition or restrictions and applicable control measures (including exclusions and phase-out dates as relevant)

Harmonized information disclosure, marking and labelling requirements

Option 2

List of chemicals and polymers to be prohibited or restricted

Harmonized information disclosure, marking and labelling requirements

Option 3

Criteria for the determination of chemicals and polymers with potential for adverse impacts on human health or the environment

Annex B Problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics

a. Problematic and avoidable plastic products, including short-lived and single-use plastic products

Option 1

Part I Criteria for the determination of plastic products

Part II List of plastic products subject to phase-out measures (including a timeframe)⁹⁸

Part III List of plastic products subject to reduction measures (including a timeframe)

Option 2

Part I Criteria for the determination of plastic products

b. Intentionally added microplastics

Option 1

Part IV List of allowed uses of microplastics

Option 2

Part V Global criteria for the national determination of the list of plastics and products containing intentionally added microplastics

Commented [CIEL86]: Annexes will be a key part of the text and their design and content needs to be further developed in intersessional work.

⁹⁶ This is an indicative list of annexes only. It is intended to guide the reader.

⁹⁷ See UNEP/PP/INC.2/INF/4, II.B for potential criteria to determine polymers and chemicals of concern identified in Member submissions to the committee's second session.

⁹⁸ See UNEP/PP/INC.2/INF/4 section II.A for potential criteria for the determination of problematic and avoidable plastic products identified in Member submissions to the committee's second session.

Annex C Product design, composition and performance

Part I Design and performance criteria

Option 1

Minimum design and performance criteria for plastics and plastic products

General design and performance criteria⁹⁹

Sectoral design and performance criteria¹⁰⁰

Other related elements, including in relation to certification and labelling as relevant

Option 2

General and/or sectoral elements relating to the establishment of design and performance criteria, including in relation to certification and labelling, as relevant

Part II Targets for reduction, reuse, refill and repair

Option 1

Minimum targets for reduction, reuse, refill and repair of plastics and plastic products

General targets

Sectoral targets

Part III Use of safe post-consumer recycled plastics

Option 1

Minimum percentages of safe and environmentally sound post-consumer recycled plastic

General targets, including timeframe for their achievement

Sectoral targets, including timeframe for their achievement

Option 2

General and/or sectoral elements relating to the establishment of minimum recycled content requirements and targets

Annex D Modalities for the establishment and operation of EPR systems based on common principles

For **Option 1** only.¹⁰¹

Annex E Emissions and releases of plastic through its life cycle

Sources of emissions and releases of plastic polymers, plastics, including microplastics, and plastic products, including a timeline¹⁰²

Annex F Waste management

Option 1

⁹⁹ See UNEP/PP/INC.2/INF/4 section II.D for potential general criteria for design and production of plastic products and packaging across the life cycle identified in Member submissions to the committee's second session.

¹⁰⁰ See UNEP/PP/INC.2/INF/4 section II.D for potential products or sectors in respect of which specific criteria could be developed identified in Member submissions to the committee's second session.

¹⁰¹ See UNEP/PP/INC.2/INF/4, section III.A, for potential elements relating to EPR systems identified in Member submissions to the Committee's second session.

¹⁰² See UNEP/PP/INC.2/INF/4, section II.F, for potential sources and general and sectoral measures to reduce and, where feasible, eliminate releases of plastics to water, soil and air identified in Member submissions to the committee's second session.

Part I Minimum safe and environmentally sound collection, recycling and disposal rates for plastic waste

Option 2

Part II Harmonized indicators for development of nationally determined targets and minimum requirements

Measures common to options 1 and 2

Part III List of waste management practices that may lead to the emissions and releases of hazardous substances

Part IV List of hazardous emissions and releases to be regulated from plastic waste management

Annex G Format for national plans

Content of the national plan, including suggested steps and suggested table of contents

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