

# Initial Reactions to Chair of the Intergovernmental Negotiating Committee's Third Non-Paper

On October 29, 2024, the Chair of the intergovernmental negotiating committee tasked with developing the text of the future plastics treaty released the third 'non-paper' and distributed it to delegates. According to the document, the 'non-paper' "aims to assist our collective efforts to negotiate a legally binding instrument on plastic pollution" and is proposed as the basis of the upcoming negotiation at the fifth session of the intergovernmental negotiating committee (INC-5) in Busan, Republic of Korea. This document provides initial reactions to the third non-paper. While not exhaustive, it aims to guide Member States initial assessments and support early preparations for the INC-5 meeting in Busan.

## Overarching Remarks

The non-paper creates an adequate structure for negotiating the future treaty and, can, therefore serve as a basis for negotiations at INC-5. However, **significant improvements must be made to the current proposal**, including developing sections that do not have text. **In its current form, the text would deliver an ineffective and useless treaty and it would fail to adequately address the plastic crisis.**

**Member States should prioritize developing and releasing Conference Room Papers (CRP) for the articles that lack text (3, 6, 11).** CRPs should use legally binding language ("shall," "must") and establish clear obligations for Parties. Additionally, Member States should consider reincorporating certain measures, including those on trade, in different Articles of the treaty (3, 5, 6, 12, 15, 16), while considering reintroducing a dedicated provision to include cross-cutting issues.

The proposed text in the non-paper includes voluntary or non-specific measures in key articles essential for achieving the mandate of United Nations Environment Assembly (UNEA) Resolution 5/14. By employing language such as "encourage," "cooperate," and "promote," the non-paper lowers the starting point for negotiations.

The non-paper also includes suggested text that states that the rules of procedure of the Conference of the Parties (COP) should be adopted by consensus at COP1. Such a procedure would allow a few Parties to obstruct future decisions by bracketing COP voting rules, hampering the body's decision-making ability. **The INC should, instead, reintroduce language proposed during INC-4 (and not**

**included in the non-paper) to include clear and efficient decision-making processes into the text of the treaty to avoid paralysis by the least ambitious countries.**

## **Preamble**

While “Underlining the importance of managing production and consumption” levels is important, **preambular paragraphs should also include the recognition of the need to reduce the production and consumption of primary plastic polymers**, to align with existing high-level declarations. Indigenous Peoples, frontline, and fence line communities have cautioned that the frame of a “sustainable level of production” is inaccurate and problematic, given the disproportionate impacts of extraction and production facilities at any level of production. Instead, using language that refers to production and consumption levels that prevent environmental degradation and harm to human health is advised.

**Strengthening human rights language is essential**, including clear recognition of existing Parties’ obligations to protect human rights, in particular the right to a clean, healthy, and sustainable environment, and the right to science. There must also be a recognition of the disproportionate impact of plastics on some specific groups, Peoples, and persons. Preambular paragraphs should also **recognize the need to prioritize the protection of the environment, human health, and human rights over vested interests**.

Additional points that ought to be incorporated into the preamble include: the detrimental impact of subsidies for the production of primary plastics polymers, the exacerbation of plastic pollution through trade in plastics, and the need to avoid regrettable substitutes.

## **Article 1. Objective**

The Chair’s proposal is acceptable as a basis for negotiations. “Protect human health and the environment” should be retained, as well as the explicit mention of plastics’ adverse impacts. The “ambition” of ending plastic pollution should be replaced with the stronger, clearer language of “objective.”

## Article 3. Plastic Products and Chemicals of Concern as Used in Plastic Products

Chemicals of concern should be regulated through a dedicated provision. **Restricting the regulation of chemicals to their use in products disregards the life cycle approach.** It shifts the burden of implementation downstream, disproportionately affecting product manufacturing and importing countries (mainly developing countries) instead of holding producers of the material accountable. This approach also creates loopholes perpetuating the toxic exposure of workers throughout the plastic supply chain and frontline and fenceline communities.

**Measures should be global and legally binding. Voluntary and national approaches create trade challenges and hurdles that are detrimental to businesses around the world.** They are also inconsistent with existing precedents – for example, the Stockholm Convention successfully bans certain chemicals globally and has 186 Parties.

The references to controls on chemicals of concern are vague; Member States should prepare CRPs with a view to adopt text that:

- clearly establishes phase-outs of global obligations;
- includes a grouping approach to chemicals;
- creates separate annexes for chemicals of concern and for problematic and avoidable plastic products;
- includes clear trade restrictions and bans on listed chemicals and products, and
- limits trade with non-Parties to those who have adopted equivalent measures.

The interim work schedule must identify priority chemicals of concern for phase-out which would be adopted at the first COP and set clear criteria for future expansion of both annexes.

**Transparency and traceability should apply comprehensively throughout the plastics lifecycle rather than be limited to products.** Reporting requirements for the volumes of targeted products and chemicals of concern imported and exported will be key for monitoring and successful implementation.

## Article 4. Exemptions

The proposed **text should be strengthened to ensure that exemption processes for the first five years build on existing precedents**, such as the Stockholm Convention. They should include a demonstration of need, absence of an alternative, requirements of periodic review and assessment by the COP, and be limited to specific uses and purposes.

### Article 5. Product Design

Proposed text on **product design must be strengthened to be legally binding rather than relying on voluntary approaches, to both prevent fragmentation in regulations and implementation and to enable effective monitoring**. References to reducing the use of primary plastic polymers must be retained. References to regrettable substitutes and alternatives and their toxicity and safety should be included. The provision should include reference to legally binding criteria for product design, safety, and labeling (e.g., related to hazardous substances, transparency, and recyclability) and specific requirements for reuse, repair, and refill systems to be developed in the interim period. All trade in plastic products, including with non-Parties, should be limited to those that comply with these criteria.

## Article 6. Supply

A CRP should be developed with a view to **adopting text that includes legally binding measures to manage production levels**. The purpose of the article must not be limited to information gathering and recyclability concerns.

The article should incorporate a reference to a global reduction target to be developed during the interim period, including a list of initial measures Parties must (“shall”) take from the outset to manage production levels. Based on evidence and political recognition in the latest Ministerial conference in the margin of CBD COP16 in Cali, Colombia, that expanding polymer production is unsustainable, the article **must include at a minimum, a freeze on the buildout of new capacity for selected polymers from a specific date and neither granting nor maintaining subsidies for polymer production**.

Reporting requirements should include the import and export of primary and secondary plastic polymers.

Member States should also agree on interim tasks, such as defining the global target, reporting formats and requirements, polymers subject to the capacity freeze, and periodic review conditions for adoption at COP1.

## Trade (not currently included)

Member States should consider **reincorporating a standalone trade provision to address cross-cutting issues**. This article should include:

- a requirement to implement trade measures in a non-discriminatory manner;
- a requirement for importing Parties to obtain documentation for imports and exports involving non-Parties to ensure conformity with Treaty requirements;
- dispositions to ensure that trade measures do not facilitate the introduction of harmful alternatives or substitutes;
- provisions to explicitly discourage illicit trade, and
- the designation of national authorities to effectively monitor imports and exports under the Treaty.

## Article 7. Emissions and Releases

The proposed **text should be strengthened to include language not only to manage, reduce, and where possible, eliminate emissions and releases, but also to prevent them from the outset**. The obligation must cover all emissions and releases from production facilities to adequately protect frontline and fenceline communities and Indigenous Peoples' territories from the current disproportionate impacts they face.

## Article 10. Just Transition

The proposed text must be strengthened to include legally binding language replacing voluntary approaches. It **should also cover all workers throughout the plastics lifecycle, including those in production facilities, rather than focusing solely on informal workers**. Additionally, it should include mandatory reporting on these obligations.

## Article 11. Finance, Including the Establishment of a Financial Mechanism

It is critical that adequate text be proposed and adopted to establish a new dedicated finance mechanism. This mechanism should **not solely rely on concessional-based funding**. The mechanism should **prioritize programmatic over project-based approaches** to support strategic national initiatives. Alignment of financial flows should be mandated and contributions should be from **public and private sources**. Where relevant, **contributions from the private sector/industry should be mandatory and based on the polluter pays principle**. Inviting all Parties to contribute resources through the mechanism should be retained. A dedicated fund is the preferred way forward.

## Article 14. National Plans

The current text should be modified to make **national plans mandatory rather than optional**, as currently proposed. The newly introduced text must specify the deadline for Parties to submit national plans to the COP and to provide periodic reviews and updates. The **participation of rightsholders in the development, implementation, review, and update of the national plans (Art. 14.3) must be made mandatory**. Additionally, an explicit acknowledgment of the **need to consider the risk of influence from vested interests** in plastics must be included.

## Article 19. Health

A stand-alone article on health is welcome, but it should be a **cross-cutting element throughout the treaty text rather than limited to a single section**. The proposed text should be strengthened to

create effective, legally binding obligations on all Parties. **The article on health should explicitly reference exposure to chemicals of concern throughout the plastics lifecycle.**

## **Article 20. Conference of the Parties, including the Ability to Establish Subsidiary Groups**

The proposed text for the COP to adopt its rules of procedure by consensus at its first meeting will inevitably lead to paralysis in the implementation phase, similar to what is happening in the climate space, including in relation to mobilizing funding. It is critical to modify that proposed text to follow the approach adopted during the recent Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ) negotiation. **BBNJ includes text in the treaty that allows the COP to adopt decisions by a qualified majority vote when all attempts at consensus have been exhausted. Text to that effect was proposed during contact group discussions in INC-4 but has not been included in the chair's subsequent non-papers. It is of the utmost importance that this text be included in the final version of the treaty.**

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