

## IPEN’s Initial Reflections on the INC Chair’s Non-paper in Preparation for INC-5

Ahead of the Plastics Treaty INC-5, the INC Chair released [a non-paper](#) outlining a potential basis for negotiations. Unfortunately, the Chair's non-paper resulted from a flawed process that allowed Member States to reopen discussions on the Treaty's provisions behind closed doors and with no accountability. As a result, the non-paper is a document without ambition and would lead to an instrument that would have very little impact on addressing the adverse effects of plastics.

If the INC decides to move into negotiations with the non-paper as a basis, it is crucial that several improvements are made and that critical gaps are addressed. For example:

- The non-paper focuses on voluntary, national actions instead of legally binding global controls, with statements such as “Each Party is encouraged to take measures....” We are facing a global plastics crisis with global plastic flows, so the solutions must be global. An approach based on national rules would make the Treaty largely ineffective. Global measures would instead create a level playing field for all countries and economic actors.
- There is no text suggested for the article on supply/production. Since overproduction is at the root of the crisis, the negotiations need to ensure that meaningful global mechanisms exist to reduce plastic production.
- The non-paper eliminated two critical articles: “chemicals and polymers of concern” and “transparency and tracking,” even though both were strongly supported throughout the negotiations. Chemicals must be addressed in a separate article addressing the entire life cycle. The approach in the non-paper of including chemicals only “as used in plastic products” would:
  - not provide sufficient protection for human health and the environment.
  - disregard the life-cycle approach.
  - be difficult, if not impossible, to implement for two reasons: one, due to the complex value chain of plastics, and two, it would shift the responsibility from the plastic manufacturer to the product manufacturers, who do not have information on chemical composition.
  - exclude chemicals generated at the end-of-life of plastics.

Below are notes on selected provisions under the Chair’s non-paper and what needs to be included if member states decide to use the non-paper as a basis for negotiations at INC-5.

### *Preamble*

**Comparison with a compilation of draft text:** The Chair’s non-paper excludes principles and scope and merges some of those aspects into the preamble.

**Note:** The approach of merging Principles and Scope into the Preamble would be acceptable if the preamble addresses the concerns below.

**Concerns:** The non-paper excludes several important parts of the Preamble that countries previously suggested in discussions on the Preamble, scope, and principles. Important parts that are missing in the non-paper include references to:

- recognizing adverse impacts on human health and the environment;
- the full life cycle;
- transparency;
- public participation;
- human rights protection; and
- protection of groups in vulnerable situations, including Indigenous populations of the Arctic and throughout the world, fenceline communities, women, children, workers.

**Necessary changes:** Should the non-paper be used for further negotiations on the Preamble, it is important to ensure that it references the full life cycle, impacts on human health and the environment, transparency, public participation, human rights protection, and protection of groups in vulnerable situations.

## *Article 1. Objectives*

**Comparison with draft text:** The Chair has suggested merging two options.

**Note:** It is suitable that the Chair's suggestion on objectives references protection of human health and the environment and "adverse effects of plastics."

**Concerns:** The non-paper refers to an "*ambition*" of ending plastic pollution. This is weaker than in the bracketed negotiated text where the objective is "*to end*" plastic pollution. There is also no reference to addressing the full life cycle.

**Necessary changes:** Reference to protection of human health and the environment and adverse effects of plastics should be retained. The objective should include "*to end*" plastic pollution and a reference to the full life cycle of plastics should be added.

## *Article 3. Plastic products and chemicals of concern as used in plastic products*

**Comparison with draft text:** The chair has suggested merging chemicals of concern and plastic products. This article has no suggested text, only suggestions on what to include.

**Note:** The non-paper foresees the creation of a scientific committee to review lists of chemicals and products and calls for an initial list.

**Concern:** In this approach, chemicals are only covered for their use in products, which excludes large parts of the life cycle, for example, the production phase and the waste and recycling phase. Regulating chemicals only in products shifts the responsibility to downstream users of plastics,

leaving the plastics industry and plastics-producing countries without accountability. See more in [IPEN's fact sheet](#) on why chemicals need to be addressed throughout their full life cycle.

Moreover, there is a claim that national circumstances would not allow global controls. This is contradicted by the fact that existing global instruments regulate some chemicals of concern (including, where relevant, in plastics). For example, the Stockholm Convention bans chemicals internationally and has 186 Parties. The global nature and complexity of the plastics value chain means global controls are necessary.

**Necessary changes:** Negotiations need to include global controls. A Treaty based on voluntary national commitments will be largely ineffective. The discussions also need to continue focusing on regulating chemicals throughout the life cycle rather than grouping them under products. Transparency and traceability requirements must cover the entire life cycle.

## *Article 4 Exemptions*

**Comparison with draft text:** The Chair has clarified some of the discussed aspects under this article.

**Note:** The non-paper includes timelines for phasing out the exemptions.

**Concern:** Exemptions will increase the stockpiles of toxic plastics, pollution, and impacts on human health and the environment. Any proposed exemptions should undergo a review process where exemptions granted should only be for narrow, time-limited, clearly defined applications that are necessary for the functioning of society. In order to ensure a suitable process, some notable gaps in the proposed text include:

- Criteria to assess the grounds for exemptions.
- Transparency (labelling) requirements for banned chemicals that continue to be used in exemptions.
- Prohibition to trade products to countries for which an exemption is not foreseen and to non-Parties.

**Necessary changes:** During the upcoming negotiations, it is important to include text in this article that allows for assessing the need for the exemption and text on transparency requirements and trade prohibitions.

## *Article 5 Plastic product design*

**Comparison with draft text:** The Chair has attempted to streamline some of the discussions that have happened during negotiations.

**Note:** We agree with the decision in the non-paper to omit a requirement for recycled content. This is important because there are several challenges to safe and sustainable plastic recycling, including the presence of toxic chemicals in plastics. For more information see [IPEN's brief on](#)

[recycling](#). We support the provision's approach in encouraging the promotion of transparency of chemical ingredients, as this can prompt the use of safer substitutes for hazardous chemicals and better product design.

**Concern:** The provision is voluntary and therefore will have limited impact.

**Necessary changes:** During the upcoming negotiations of this text, it is important to ensure that the controls are global and that at least the transparency and traceability requirements are legally binding.

## *Article 6 Supply*

**Comparison with draft text:** The Chair deleted the article on "primary plastic production" and instead inserted an article on "supply." The non-paper does not suggest any draft text for this article.

**Concern:** No controls are foreseen, only voluntary measures

**Necessary changes:** Global legally binding controls must be included in the Treaty text on supply. Transparency requirements are needed regarding production volumes.

## *Article 7 Emissions and releases*

**Comparison with draft text:** The Chair has attempted to streamline some of the discussions that have happened during negotiations.

**Concern:** In the non-paper, only chemicals listed for restriction in products would be controlled under this article. However, emissions of chemicals happen at every stage of the plastics life cycle and are much broader than the list of chemicals that are used in plastic products. These emissions include precursors of plastics as well as a broad range of unintended chemicals formed throughout use and in the end-of-life stage of plastics (for example, dioxins). Moreover, the provision does not include the wide range of emissions both of chemicals and of microplastics that have been documented in the recycling and end of life phase.

**Necessary changes:** The article needs to address chemical releases throughout the full life cycle.

## *Article 8 Plastic waste management*

**Comparison with draft text:** The Chair has attempted to streamline some of the discussions that have happened during negotiations.

**Note:** This expands the protection from the Basel Convention for countries importing waste, as it requires consent for the import of all plastic wastes and requires the provision of information about the composition of the waste proposed to be exported.

**Concern:** The article fails to prohibit the recycling of chemicals listed under article 3 in the non-paper. The consequences of recycling of listed chemicals is foreseen under the Stockholm Convention where it is prohibited.

**Necessary changes:** The article should retain reference to consent for imports of plastic waste and provide information about the composition of waste from the exporting country. Text on the prohibition of recycling of listed chemicals should be included.

## *Article 11 Finance, including the establishment of a financial mechanism*

**Comparison with compilation draft:** There is no text suggested for this article in the Chair's non-paper, only some suggestions on what to include.

**Note:** It is suitable that the non-paper recognizes that “the ability of some Parties to implement some legal obligations effectively under this Convention will depend on the availability of capacity-building and technical and adequate financial assistance.”

**Concern:** The non-paper fails to explicitly recognize the financial responsibility of polluters and plastics producers. In the compilation draft, a global plastic pollution fee to be paid by plastic polymer producers within its jurisdiction is considered to implement the polluter pays principle. This would be suitable, since it would allow the Treaty to ensure that plastics producers bear the cost of harm caused by plastics through the implementation of the polluter pays principle.

**Necessary changes:** It is important that there is an adequate, predictable, and sustainable financing mechanism that includes a dedicated multilateral fund. The future Treaty must be able to mobilize sufficient and appropriate funding to the challenges of transition (change of model) and support the most vulnerable Parties (developing countries). In particular, the financial mechanism should prioritize implementing legally binding measures upstream. The negotiations on financing should also consider methods based on the polluter pays principle and ensure that the costs of the impacts of plastics are internalized by the producers.

## *Article 14 National Plans*

**Concern:** In the non-paper, this reads as a completely voluntary article. This undermines the effectiveness of the instrument.

**Necessary changes:** National Implementation plans should be mandated and funded. The provision should mandate the participation of stakeholders, rights holders, and workers in the development, implementation, and review of the plans.

## *Article 17 Information exchange*

**Concern:** It is concerning that this article in its current form would allow for confidentiality of all types of shared information. The text needs to include reference to "For the purposes of this

Convention, information on health and safety of humans and the environment shall not be regarded as confidential,” as is the case under the Stockholm Convention. It is also important to have robust conflict of interest policies in place.

**Necessary changes:** This article should promote the exchange of information on the safety of chemicals used in plastics and specify that any information on health and environmental safety cannot be claimed as confidential. Submitters should be required to provide a conflict of interest declaration.

## *Article 19 Health*

**Concern:** As a completely voluntary provision, this article will do very little to improve health. It is important that health protective provisions are included under global meaningful control measures throughout the full life cycle of plastics, recognizing the harm to health associated with exposures to chemicals in plastics, including chemicals that have endocrine-disrupting properties, cause neurodevelopmental and reproductive harm, carcinogenicity, and immune system effects, among other serious health concerns.

**Necessary changes:** Health-protective provisions must be integrated in the control measures including on production, chemicals, and ensuring plastics do not harm communities in the end-of-life stages.