

Flexibility Mechanisms in the Global Plastics Treaty

Negotiations for the Global Plastics Treaty will continue at the resumed fifth session of the Intergovernmental Negotiating Committee (INC-5.2) this August.

To finalise an effective instrument, negotiators must find convergence among divergent views on scope and ambition. One possible solution is to include flexibility mechanisms based on a country's capacity and readiness, which have been employed in other multilateral environmental agreements (MEAs) to maintain global commitments. These approaches ensure "no country behind is left behind" while ensuring that "all other countries are not held back."

This briefing looks at how other MEAs have built in flexibility mechanisms, including the International Convention for the Prevention of Pollution from Ships (MARPOL), the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol and the Kigali Amendment.

Drawing lessons from these agreements, it explores how similar mechanisms could be applied in the Global Plastics Treaty to ensure meaningful participation and implementation across countries with varying capacities and levels of ambition, while noting that these approaches are not without pitfalls that must be carefully considered.

Flexibility mechanisms in MEAs

1. Optional measures

MARPOL and CITES both illustrate how international agreements provide Parties with flexibility to implement obligations in line with national capacities while still advancing global objectives to protect the environment. MARPOL uses an opt-out model for annexes at ratification and CITES allows Parties to opt-out through reservations on specific species listings in Appendices.

MARPOL is the international convention for preventing operational or accidental pollution of the marine environment by ships.¹ Originally adopted by the International Maritime Organization (IMO) in 1973 following the Torrey Canyon disaster, it was significantly revised through a 1978 Protocol after another major spill.^{2,3} As the original 1973 Convention had not yet entered into force, the 1978 Protocol absorbed and amended it, with the combined text entering into force in 1983. MARPOL remains dynamic, evolving regularly through additional protocols and amendments to respond to emerging environmental concerns and technological advancements.

MARPOL consists of a core treaty and six technical annexes targeting specific pollution sources. Annexes I (oil) and II (noxious liquid substances in bulk) are mandatory for all Parties, while Annexes III to VI – covering packaged harmful substances, sewage, garbage and air emissions – are optional under an opt-out model.⁴ This structure reflects the varying levels of international consensus and urgency attributed to different pollution sources at the time of drafting.

Annex I entered into force immediately as industry was ready to implement its measures, while Annex II was given a three-year transition period to allow time for infrastructure, ship design and operational adjustments.^{5,6}

In contrast, Annexes III to V were not prioritised during the drafting of the 1978 Protocol and left as "optional annexes." Member states could opt-out of these annexes during MARPOL ratification and agree to be bound to these annexes, later resulting in staggered adoption: Annex V in 1988, Annex III in 1992 and Annex IV in 2003.^{7,8} Annex VI, covering air pollution, was added in 2005 under the Convention's amendment process.

While this flexible structure has encouraged broad participation, more than 150 parties and coverage of nearly all the global fleet, it has also led to significant delays and uneven implementation of key environmental protections.⁹

Using an alternative mechanism, CITES, which regulates trade in endangered species, provides flexibility through

reservations. While not reservations in the traditional treaty sense that it modifies a core obligation, these allow Parties to formally opt out of specific Appendix listings within 90 days of their adoption, similar to the opt-out procedures for annex amendments in other MEAs, which have timelines ranging from 90 days to one year.^{10,11}

However, CITES includes a strong non-party trade provision, meaning that while a reservation is in effect, the reserving Party is treated as a non-Party concerning trade in that species.¹² Thus the non-party trade provision will apply to the reserving Party trade in the species with another Party and the Party can still seek comparable documentation from the competent authorities of the reserving Party, to conform with the usual requirements of CITES for trade in the species.

While this approach offers flexibility, it has weakened protections for certain endangered species when key countries invoke reservations without justification or time limits. Implementing a sunset clause to set an expiration date for reservations and requiring parties to justify its continuation or allow it to lapse after a specified period, could help address these issues. The absence of such clauses enables long-term exemptions from conservation measures, which can undermine the treaty's effectiveness, for example, when Norway and Japan both took reservations on minke whale, which has enabled trade between the countries.^{13,14}

2. Mandatory measures with differentiated timelines

The Kigali Amendment to the Montreal Protocol binds nations to phase down hydrofluorocarbons (HFCs) – greenhouse gases widely used as refrigerants that are hundreds to thousands of times more potent than carbon dioxide (CO₂) in global warming potential.¹⁵

Adopted in 2016 and entering into force in 2019, the Amendment built on the success of the Montreal Protocol, which has phased out 98 per cent of ozone-depleting substances (ODS) and set the ozone layer on a path to recovery.¹⁶ It represents a recent successful evolution in international environmental governance, linking ozone protection with climate change mitigation.¹⁷

The Kigali Amendment establishes an HFC phase-down which, similar to the ODS phase-outs, sets out differentiated timelines for developed and developing countries. Countries are grouped into different categories based on economic and developmental considerations, each with its own timeline:¹⁸

Non-Article 5 (developed countries)¹⁹	These countries, including the US and EU, began reducing HFCs in 2019 with a 10 per cent reduction. By 2036, they aim to achieve an 85 per cent reduction compared to their 2011-13 baseline levels.
Article 5, Group 1 (developing countries)	This group of countries, which includes China, Brazil and Mexico, will freeze HFC growth in 2024 based on their 2020-22 levels, followed by a 10 per cent reduction by 2029 and an 80 per cent reduction by 2045.
Article 5, Group 2 (developing countries)	This group of countries, which includes Bahrain, India, Iran, Iraq, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia and the United Arab Emirates, will freeze HFC growth in 2028 based on their 2024-26 levels, with the first reduction step occurring in 2032 and an 85 per cent reduction by 2047.
Special Allowances	The non-Article 5 countries of Belarus, Kazakhstan, Russia, Tajikistan and Uzbekistan were given a different schedule in their reduction of five per cent in 2020 and 35 per cent by 2025 before meeting other non-Article 5 countries in the third step of 70 per cent by 2029.

The Kigali Amendment operationalises the balance of ambition with pragmatism by integrating flexibility within a mandatory framework. Beyond allowing countries to choose their schedule, the Amendment also allows Parties to use a country-driven approach in implementation to meet their obligations.²⁰

This pragmatic design, when paired with incentives for access to financial support and non-party trade provisions, has led to broad ratification.²¹

Application in the Chair's text for the Global Plastics Treaty

To ensure broad participation and effective implementation, flexibility mechanisms should be strategically applied to control measures in the global plastics treaty. The Chair's text already contains several entry points where structured flexibility can be integrated without weakening ambition. Below is an assessment of how flexibility mechanisms can support ambition in selected articles.

- **Supply.** Article 6 outlines a global target-setting process for reducing plastic production. At this stage, it is framed as a collective ambition-setting tool rather than a binding obligation.²² Given this structure, there is limited scope and little need for flexibility mechanisms in this article. Instead, negotiators could strengthen Article 6 by clarifying that the global ambition will serve as a guidepost to inform lifecycle-wide measures, resource mobilisation and national efforts. This framing reinforces ambition without requiring legal differentiation.
- **Chemicals and plastic products with exemptions.** Article 3 sets out a framework for addressing plastic products and chemicals of concern, proposing control measures guided by scientific criteria and expert review. Annex Y lists specific products – single-use plastic cutlery, microbeads and harmful additives such as phthalates and BPA – targeted for global phase-out. However, the key question under negotiation is how these measures will apply across countries with differing capacities. The current text opens the door to differentiated implementation through Article 4, which establishes an exemption process allowing Parties to delay compliance with phase-out dates, provided they submit a justification and adhere to a fixed timeline. Exemptions are limited to five years with a single five-year extension, creating a de facto opt-out mechanism within a binding treaty structure.

This approach mirrors flexibility mechanisms seen in other MEAs, such as the reservation system in CITES, but introduces stronger safeguards. Exemptions must be justified, registered publicly and time-bound, reducing the risk of permanent non-compliance. This approach balances ambition and pragmatism by allowing Parties to delay implementation in specific cases without undermining the treaty's overall objectives. At the same time, discussions are ongoing about how the annexes should function, whether obligations should be uniform or tiered, how scientific and socio-economic factors guide listings and exemptions, and the role of any review committee in shaping decisions. These elements remain central to shaping a system that is both fair and enforceable.

To ensure the exemption process supports ambition rather than delay, negotiators should work to keep this flexibility mechanism tightly scoped. Key safeguards include a public registry of exemptions, CoP oversight and requirements for Parties to report progress in phasing out the exempted product. Strong and clearly defined institutional arrangements are essential, particularly around the listing and amendment of annexes, the review of exemptions and the operation of any review committee. These processes should be designed to be transparent, scientifically rigorous and resistant to political backsliding. If well-designed, Articles 3 and 4 could provide a flexible yet robust pathway for addressing problematic products and chemicals, enabling Parties to meet obligations at different paces without eroding the treaty's environmental effectiveness.

- **Product design.** Article 5 calls on Parties to improve product design to support circularity and reuse. It already includes references to national circumstances and capabilities. This article offers an ideal space to apply differentiated implementation pathways, similar to tiered obligations in the Kigali Amendment. For example, guidance under this article could set out baseline expectations with tiered benchmarks for action (e.g. mandatory design standards, recycled content thresholds, or use of safer additives). Parties could commit to progressive compliance over agreed timelines based on capacity, with enhanced financial and technical support to facilitate early adoption. Differentiation here would not dilute ambition but instead allow for phased compliance tailored to national readiness.
- **Institutional design.** Although Article 29 states there are no reservations, Article 24 on the adoption and amendment of annexes introduces an opportunity for a party to notify of its non-acceptance of new annexes. This opt-out approach has been used successfully in treaties to streamline decision-making while allowing room for flexibility. However, the Chair's text also includes the possibility for parties to pre-emptively shield themselves from acceptance of any annex amendments by invoking Article 27(4) at the time of ratification.²³ This clause allows parties to declare that any future annexes or amendments will only apply to them upon explicit consent, effectively turning a streamlined opt-out process into a slower, opt-in one. While this reflects text from the Minamata Convention, that instrument's annexes were further developed at the point of ratification. Thus, it feels inappropriate and will likely weaken the effectiveness and universality of future commitments that are listed on an annex here.
- **Other measures.** For provisions relating to releases and leakage (Article 7), waste management (Article 8), existing plastic pollution (Article 9), and just transition (Article 10), no specific differentiation is required as the measures are broad, and parties will achieve them through national approaches. These articles focus on enabling

implementation and should be strengthened through support mechanisms rather than flexibility in legal obligation.

Pairing flexibility mechanisms with financial incentives

MEA precedent shows that for flexibility mechanisms to be effective, they should be supported by strong financial and technical assistance that assures equitable participation.

Financial incentives are crucial for incentivising commitments, especially from low-income nations facing economic or technological barriers to compliance. However, financial support should be tied to tangible commitments and demonstrable progress.

As with the Kigali Amendment, financial assistance and technical support could be directly linked to the timing of the entry into effect of the obligation.²⁴ For example, countries which commit to phase-outs of targeted chemicals or accelerated timelines may receive access to funding to support compliance, creating a positive reinforcement mechanism that incentivises greater ambition. As in the Montreal Protocol, a new dedicated multilateral fund to support implementation can effectively deliver this support.²⁵

Moreover, countries which opt-out of measures or take exemptions could face similar trade consequences as non-parties. The treaty could limit market access for non-participating countries, unless they reach similar levels of compliance, similar to the approaches taken in the Montreal Protocol, Basel Convention and CITES.^{26,27,28}

By pairing flexibility mechanisms with financial incentives, the treaty can create an equitable framework where all nations, regardless of economic standing, can take ambitious action without disproportionately burdening lower-income countries.

Additional considerations

- **Non-party trade provision:** Trade measures are a vital tool for enforcement and incentivisation. Even with flexibility, a strong non-party trade provision would ensure a level playing field for parties, a clean market for regulated plastics and a way to discourage parties from using exemptions or voluntary measures as a loophole. Flexibility mechanisms and common but differentiated responsibilities can be useful, but they must not serve as a veil for inaction.
- **Institutional arrangements:** The design of institutional structures is key to ensuring that flexibility supports ambition rather than undermining it. Provisions on the Conference of the Parties, voting and annex amendments provide the procedural tools to manage flexibility. Their effectiveness, however, will depend on how they are implemented. Opt-out provisions should be narrowly applied, exemptions must remain time-bound and the CoP should have the capacity to review and adjust commitments. Well-crafted institutions are essential not just for governance, but for flexibility to drive ambition.

Conclusion

To succeed, the Global Plastics Treaty may wish to balance ambition with inclusivity. Flexibility mechanisms, if well-structured, can support countries with differing capacities while upholding shared goals.

Lessons from other MEAs show that flexibility must be time-bound, transparent and linked to real progress. Optional provisions, exemptions and financial support should also drive ambition, not delay it. Strong institutional and trade measures are essential to prevent loopholes and ensure accountability.

Ultimately, the treaty must bridge the gap between plastic-producing economies hesitant to adopt high-ambition measures and countries suffering the worst impacts of plastic pollution. Differentiated responsibilities cannot serve as a pretext for inaction; rather, they should facilitate a transition where all countries, regardless of economic capacity, are empowered to meet ambitious goals.

If designed effectively, the treaty can drive systemic change, ensuring the global shift away from plastic pollution is both inclusive and enforceable.

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