

## Quick Reflections on the Plastics Treaty Zero Draft

### Introduction

Ahead of the third session of the Intergovernmental Negotiating Committee (INC-3), the Chair, in cooperation with the Secretariat, has prepared a Zero Draft (ZD)<sup>1</sup> of the text to form the basis for negotiations to develop a new legally binding instrument to end plastic pollution.

It reflects the substance of the negotiations to date, alongside submissions made to previous sessions of the INC and key elements that have been raised by member states.

The ZD should be viewed as a starting point for negotiations and is a significant milestone in the journey towards creating a new governance framework for addressing plastic pollution. Given lack of substantive negotiating time at INC-2, the task for the Chair to craft a document which reflected both the range of views and level of ambition expressed was a challenge, but the eventual text can certainly serve as the basis for more robust discussions on how specific global rules and provisions can help end plastic pollution and the institutional framework required to delivered them.

### Overall reflections on the Zero Draft

The ZD presents a menu of options that does not prejudge the negotiations to come – but like any diner at a buffet, the task for negotiators is to now decide which items they put on their plate and ensure they are coherent and complimentary.

- **The good**
  - In general, articles include an ‘Option 1’ which reflect the higher level of ambition expressed by many member states and can provide a good basis for advancing negotiations on topics that are essential for meeting the overall objective. In particular, the options for upstream interventions provide decent scope for further discussion. The inclusion of references to measures related to plastic precursors, subsidies and other approaches to managing production reduction, such as transition to reuse systems, captures the essence of this ambition and, if further expanded and developed, can provide a roadmap for the relationship between different control measures. For example, mechanisms to phase out or phase down production are one piece, but the articulation of the alternative systems or materials required is also necessary. The ZD also reflects the accepted narrative shift that plastic pollution poses significant harm to human and environmental health, as well as impacting on workers throughout the plastics value chain, with specific provisions that speak to these concerns.
- **Needs improvement**
  - Due to the nature of the negotiations to date, member states will need more clarity about the legal structure of the instrument and the power of the governing body in order to have more substantive discussions. For example, deciding what content should be contained in annexes versus decisions taken

by the Conference of the Parties (CoP) and establishing the governing body's enabling powers for each article will be paramount. Of particular note, the governing body receives scant attention in the early (upstream) draft articles, which requires dedicated discussion. Furthermore, the lack of structure creates ambiguity regarding the facilitation and implementation of some of the provisions, and a priority for negotiators will be to determine the legal structure and institutional arrangements. This is particularly relevant for the section on Means of Implementation.

### **Quick takes on priority topics included in the zero draft**

- **Production remains squarely in scope.** An effective instrument to end plastic pollution will need to deal with both aggregate production of virgin/primary plastic polymers (II.1) and chemicals and polymers of concern (II.2). The level of detail provided in the ZD underscores the urgent need to clarify the nature of the obligations on plastic production and advance discussions on reporting requirements, baseline years, the mechanisms for polymer limits and reductions and the role of the CoP in adopting future decisions to establish limits on production via a start-and-strengthen mechanism. Further discussion on appropriate measures related to plastics precursors and feedstocks will also be required given lack of attention to date.<sup>ii</sup>
- **Stable, predictable financing is included.** The ZD includes an ambitious option to establish a mechanism for financing through a dedicated multilateral fund (111.6), alongside options for hybrid financing. However, it omits any reference to the activities which shall be funded under the mechanism, leaving the text wide open for interpretation. Conversations will need to move swiftly to exploring the types of costs to be covered in the form of incremental costs and enabling activities – a priority candidate for intersessional work. Additionally worth noting is the inclusion of provisions for a globally coordinated fee on virgin plastic polymers (111.9). This relatively new concept is worth exploring as a way to operationalise the polluter pays principle in the new instrument, but concrete proposals for how the mechanism could function have thus far been lacking and negotiators should ensure the fee does not distract from substantive negotiations on more stable and predictable financing in the form of the dedicated fund. Part 111.10.b also requires some further clarification of the types of projects suitable for financing, with negotiators strongly encouraged to direct financing away from harmful and high-emissions waste treatment infrastructure development and towards genuinely safe and circular models, such as reuse systems.
- **Inclusion of a fishing gear article.** EIA welcomes the inclusion of a specific provision dedicated to fishing gear, given the need for a bespoke and tailored governance for this harmful source of marine plastic pollution.<sup>iii</sup> However, such governance requires regulation across the entire lifecycle of fishing gear – as a material and as products – a point emphasised during the discussions in Contact Group 1 at INC-2. The provision's current location in the waste management section textually minimises upstream measures requisite to address abandoned, lost or otherwise discarded fishing gear adequately. A holistic approach should include product design criteria, Extended Producer Responsibility and environmentally sound retrieval, among other elements, in addition to the measures set out in the current article. Furthermore, despite being in the waste management section, the current provision does not include the necessary language to facilitate adequate end-of-life treatment, which falls outside the scope of current governance suggested in II.9.b.2. Another element to consider is how the text can more explicitly empower the CoP to have a role, for example to adopt requirements,

a comprehensive global strategy and/or guidelines, and to promote synergy and complementarity with relevant initiatives beyond just safe disposal.

- **Sectoral governance through programmes of work.** Language of sector-specific governance is used throughout the ZD, for example, in design criteria, targets, schemes and remediation. EIA strongly supports a sectoral approach to design customised governance based on the best available knowledge from all relevant stakeholders across the value chain, which should help mitigate problem shifting. However, the ZD is missing a critical provision – the scope, facilitation and implementation of the sectoral work. Thus, EIA recommends using ‘dedicated programmes of work’ to facilitate and carry out the sectoral work mandated by the CoP, not just at its first meeting but as necessary. EIA strongly advocates for the inclusion of text that specifically enables the CoP to adopt these dedicated programmes and enabling language for the CoP to adopt guidance, criteria, decisions or other outcomes from those programmes of work. The CoP should mandate the implementation of overarching treaty obligations, e.g., product design criteria, to these dedicated programmes of work. Programmes can start with the highest emitting sectors first, like packaging, fisheries and aquaculture, agriculture and textiles, but Parties should be enabled to create programmes for other sectors as they see fit.
- **Inclusion of strong trade measures, including all plastic waste trade.** The ZD section on *Trade in listed chemicals, polymers and products, and in plastic waste* (II.10) is an important inclusion to implement the corresponding sections on *Chemicals and polymers of concern* (II.2) and *Problematic and avoidable plastic products* (II.3). Part b on the *Transboundary movement of plastic waste* includes welcome trade mechanisms for all plastic waste, is a critical step in mitigating waste colonialism, increasing environmentally sound waste management and addresses current issues of transparency in plastic waste trade, which is essential to minimise plastic waste trade’s threat to environmental and human health. To further protect from harm, EIA strongly suggests considerations for technical criteria to determine appropriate environmentally sound waste management technologies through quantitative science-driven criteria to ensure that the new Treaty’s means of implementation do not promote or facilitate the use of harmful technology.
- **Explicit reference to reuse systems.** The inclusion of provisions on reuse systems (II.3.b) and in particular the coupling of reduction and reuse marks a significant evolution in conceptualising the problem and its solutions and is a welcome addition to the text. Within the options the reference to ‘reuse systems’ is important and will need further defining as the negotiations progress, specifically to consider whether and where guidance on minimum design criteria for reuse systems should sit in the text. The need for sector specific targets and baselines is essential for implementing the provisions, so we recommend further work on high-impact categories such as plastic packaging to determine the most appropriate measures for this sector and how they should be interpreted at the national level. We strongly recommend further consideration of how the discussions on finance can prioritise investment in reuse systems over recycling, in line with the waste hierarchy.<sup>iv</sup>
- **Microplastics reallocation to new provisions.** The potential core obligation to reduce microplastics is divided into two ZD sections. While EIA welcomes option 1 to eliminate intentionally added microplastics in Section II.3.b, governance for secondary microplastics found in the current section *Emissions and releases of plastic throughout its life cycle* (II.8) requires both implementation and facilitation beyond that currently presented. Section II.8 is another provision reliant on sectoral guidance; however,

lacking the requisite language to facilitate the adoption, use, or legal implementation of that guidance over time. Further, in the potential provision that promotes innovation to capture the releases of microplastics (II.8.5), member states must ensure this is done with technology that is certified to be environmentally sound, and with an aim to prevent all releases, not just those to the marine environment.<sup>v</sup>

## Conclusion

The ZD is a steppingstone which can provide a direction of travel, but for safe crossing in the negotiations ahead there will need to be a focus on substantive discussions on key elements.

To build on the work to date, we recommend four priorities for advancing discussions at INC-3 and providing a solid foundation for an updated text at INC-4:

1. it is imperative that intersessional work is initiated to advance core topics given limited negotiating time and the limits on the number of contact groups that can take place simultaneously. This work will be essential to provide greater clarity and specificity in the options presented in the next draft of the text
2. moving forward, it is clear there is a need for more contact groups at the negotiations running concurrently to advance different topics and ensure adequate in-person time for exploring all potential options in the text, in addition to exploring longer INCs in the final year of negotiations. We recommend structuring future sessions to allow for more contact groups
3. informal intersessional work on some topics would be advisable to solicit input to improve text where the issues are more sector-specific or technical in nature – e.g. building capacity among delegates on issues such as reuse and fishing gear by engaging expert stakeholders in those consultations
4. as we move forward to negotiating text, we encourage negotiators to use the full range of tools available to advance matters of substance, from informal convenings to the submission of in-session documents that can further advance thinking on specific topics.

## Contacts

Christina Dixon  
Ocean Campaign Leader  
[christinadixon@eia-international.org](mailto:christinadixon@eia-international.org)

Amy Youngman  
Legal and Policy Specialist  
[amyyoungman@eia-international.org](mailto:amyyoungman@eia-international.org)

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<sup>i</sup> UNEP/PP/INC.3/4 Advance: Zero draft text of the international legally binding instrument on plastic pollution, including in the marine environment. [Available here](#).

<sup>ii</sup> Read more from EIA's template B submission on intersessional work on primary plastic production [here](#).

<sup>iii</sup> Read more on EIA's recommendations for addressing fishing gear in the new instrument [here](#).

<sup>iv</sup> Read more in EIA's group submission to INC-3 on reuse, prepared in partnership with members of Break Free from Plastic, [here](#). EIA's *Essential Elements: Reuse* provides further detail [here](#).

<sup>v</sup> Read more from EIA's group submission to INC-3 on microplastics, prepared in partnership with members of the Microplastic Working Group within the Civil Society and Rights Holder Coalition and the Pew Charitable Trusts, [here](#). EIA's *Essential Elements: Microplastics* provides more clarity on sectoral strategies to address microplastics pollution [here](#).