



# SUBMISSION

PLASTIC POLLUTION INC • 06 JAN 23

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# POTENTIAL OPTIONS FOR ELEMENTS TOWARDS AN INTERNATIONAL LEGALLY BINDING INSTRUMENT

WWF's submission to the Intergovernmental Negotiating Committee on plastic pollution

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## A PLASTIC POLLUTION TREATY FIT FOR PURPOSE

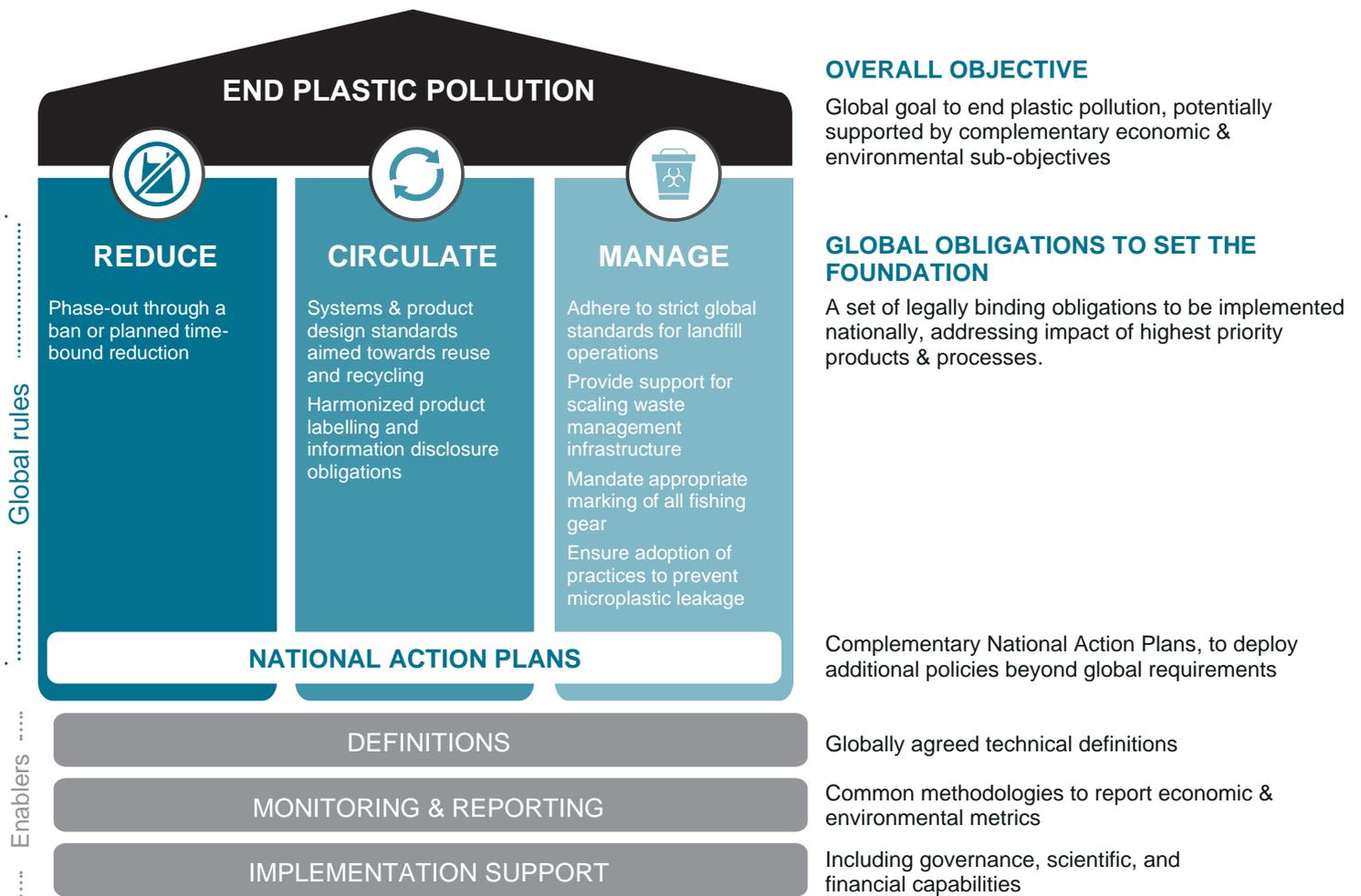
There is no one-size-fits-all solution for ending plastic pollution. With complex challenges at all levels, solutions to the plastic pollution crisis must be **fit for purpose at each level**. Just as national plans and regulations are designed to address country-specific challenges, a global treaty must provide global solutions and create common global rules, focusing on aspects of the problem that are transboundary and for which global regulatory harmonisation is essential to the solution.

To deliver impact at speed and scale, the treaty must include **effective measures at the most appropriate stage in the life cycle** of plastic. These measures must take the form of **specific, implementable, and efficient global rules**. National action plans—as a complementary component—provide the space for States to deploy additional policies beyond the global requirements.

**Through a risk-based approach**, measures to address the plastic categories—including product types, chemical additives, and substances—with the largest leakage volumes and most severe potential harms to human health and the environment should be prioritised.

**Timely, predictable, accessible, and sufficient support**, including both financial and technical resources, technology transfer and capacity strengthening, is particularly important for effective implementation. Additionally, the treaty should include globally agreed technical definitions, and common methodologies to monitor and report on implementation progress and achievements.

The treaty must prepare for **gradual strengthening** overtime, to fulfil its long-term mission to end plastic pollution. This in turn requires dedicated mechanisms for effectiveness evaluation, evidence-based policymaking, amending the treaty's content—including its integrated annexes—and adding additional protocols deemed necessary to reach the treaty's objective.



## SUBSTANTIVE ELEMENTS

### Objective(s)

WWF is of the view that, for the purpose of advancing the negotiations, the overarching scope and objective of the treaty have been adequately outlined in the negotiation mandate (Resolution 5/14): “**long-term elimination of plastic pollution**”, to “**avoid detriment from plastic pollution to ecosystems and the human activities dependent on them**” through “**a comprehensive approach that addresses the full life cycle of plastic**”.

Accordingly, all forms and sources of plastic pollution should be within the scope of the new treaty. Additionally, co-benefits of control measures for other issues should be considered, including for climate change and the promotion of a circular economy. These could be embedded in preambular paragraphs of the treaty.

If a separate article on objective(s) is deemed preferable, precedents set by other multilateral environmental agreements (MEAs), e.g., the Minamata Convention on Mercury and the Stockholm Convention on Persistent Organic Pollutants, offer one potential formulation:

“The objective of this Convention is to protect human health and the environment from plastic pollution.”

A time-bound aspiration (e.g., “[...] with a view to end plastic pollution by 20XX”) could, potentially, be added to reflect the urgency of the problem. It should be noted, however, that the only sure way to put an end to plastic pollution—regardless of which point in the future that may be—is to **act now**. WWF recommends the INC to prioritise discussions of **specific, time-bound actions** that are binding and applicable to all States parties, over mere aspirational objectives, and targets that—in effect—do not create binding obligations.

Details arising from such discussions—for example, the timeframe of bans, phase-outs and product design standard harmonisation, and the range of substances and products for which such measures are applicable—will implicitly reflect the scope and objective of the treaty.

## Core obligations and control measures

At its most basic, total plastic pollution is proportional to two factors: 1) the amount of plastic produced, consumed, and disposed of (**volume**); and 2) the rate at which these plastics leak into the environment (**leakage probability/rate**). Control measures to tackle both factors, through a risk-based approach, are essential to minimise and eliminate total pollution.

The control measures, or core provisions, can be clustered into three main groups:

1. Measures to minimise total pollution **through reduction and elimination** of the production of problematic plastics, limiting their inflow into the economy
2. Measures to minimise total pollution **through increased and non-toxic circulation** of plastic products, starting with circular solutions to the most leakage-prone product categories.
3. Measures to minimise total pollution **through improved waste management, remediation activities, and other measures** to prevent, reduce and control plastic pollution.

The most appropriate control measures will inevitably vary from one product category to another, depending on the categories' characteristics (e.g., avoidability, leakage risks, pathways, and potential harms, etc.).

To allow for tailoring of measures to each category, a potential option is to include core obligations and control measures in the main text of the treaty, while the range of plastic products categories and technical details that are applicable for the measure are elaborated through annexes. This option could enable swift initial adoption and ratification of the treaty and allow immediate control measures to be put in place and implemented on prioritised issues, while leaving room for further development and gradual strengthening of these measures over time.

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### **Minimise total pollution through reduction and elimination of the production of problematic plastics, limiting their inflow into our economy (REDUCE)**

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Where possible, production and consumption of problematic plastics should be significantly reduced. In line with the risk-based approach, initial emphasis should be on the product categories, additives or materials that generate the largest pressure on the system, most frequently end up in the environment, and obstruct the transition towards a non-toxic circular economy. These include, *inter alia*, packaging, and other single-use plastic items, fishing gear and other maritime equipment, and microplastics. Priority lists of such products, additives or materials should urgently be developed

*Example (non-exhaustive) measures:*

- Bans and phase-outs of certain product categories, materials or substances deemed to pose a significant risk, including probability of leakage and potential harm to human health and the environment
- Market-based instruments such as taxes and fees to reduce production, consumption and trade of certain product categories, materials, or substances

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### **Minimise total pollution through increased and non-toxic circulation of plastic products, reducing inflow of virgin material and preventing leakage (CIRCULATE)**

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Remaining plastic products that are not banned or phased out must not obstruct the transition to a non-toxic circular economy and should be subject to requirements and standards for reuse and effective recycling, starting with measures aimed at the most leakage-prone product categories. Both positive (i.e., allowed) lists and negative (i.e., not allowed) lists should be considered to specify these requirements and standards.

*Example (non-exhaustive) measures:*

- Design standards for high-risk product categories or applications (e.g., packaging), aimed at incentivizing reuse, collection and/or recycling
- Global standardisation of materials, colours and additives allowed for use in certain products; elimination of toxic additives that make reuse and recycled materials dangerous for human health and the environment
- Harmonised product information disclosure obligations to improve global transparency (e.g., polymers and chemical additives of products)
- Technical requirements to ensure that plastic items found in the environment can be traced back to the producer, importer and point of sales can be expected to increase accountability, which in turn can be expected to increase precaution
- Labelling requirements aimed at informing consumers about the presence of plastic in products (e.g., wet wipes or cigarette filters). For certain product categories, such awareness raising could prove a helpful measure for reducing leakage

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### **Minimise total pollution through improved waste management, remediation activities, and other measures to prevent, reduce and control plastic pollution (MANAGE)**

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While the treaty should include specific measures to ensure improved waste management standards, it is important to recognize that reactive measures alone will do nothing to address the current plastic production and consumption trajectories.

*Example (non-exhaustive) measures:*

- Prohibition of open dumping, and mandatory strict global standards for landfill operations
- Provision of necessary support for access to and scaling of collection and waste management infrastructure across the globe
- More specific restrictions on disposal methods for certain high-risk product categories, substances, or materials (e.g., ban on disposal of lightweight materials in open dumpsites, or near aquatic systems; or binding targets for separate collection of certain product categories/materials)
- Mandatory development and implementation of Extended Producer Responsibility (EPR) schemes, including deposit return schemes for certain product categories (e.g., beverage bottles, or certain types of fishing gear)
- Mandatory marking of fishing gear (e.g., building on FAO guidelines); mandatory reporting of lost fishing gear
- Adoption of technological standards for tires and other high-risk products to prevent microplastic release from the source, and of end-of-pipe capture practices to prevent microplastic leakage, such as filters on washing machines, improvement of sewage plants, wastewater treatment, etc.
- Incentivize clean-up, both within and beyond national jurisdiction (e.g., through the establishment of a dedicated financial mechanism for clean-up/recovery beyond national jurisdiction)

## **IMPLEMENTATION ELEMENTS**

### **Scientific and technical cooperation and coordination**

The establishment of a scientific and/or technical body is amongst the fundamental underpinnings of the treaty's long-term effectiveness. Legitimate decision making—often challenged by political interests and forces—could be strengthened through clear and persuasive scientific evidence.

Some aspects of plastic pollution, including, for example, long-term effects of (micro)plastic on human health, solution-oriented knowledge and innovations are still uncertain, and additional research is needed. The treaty should, as appropriate, establish mechanisms and responsible bodies to facilitate robust and salient research to expand our knowledge of the status and impacts of plastic pollution, and innovations relevant to the strengthening and implementation of the treaty's control measures. It is however important to note that while new research is needed, there is sufficient scientific evidence to act now.<sup>1</sup>

## National action plans

National action plans provide the space for countries to align national targets and action roadmaps with the objectives and aspirations of the new treaty. Beyond common obligations, countries will need to deploy a set of additional policies to complement the treaty and tackle location-specific/ context-dependent aspects of the problem. These are areas where national (and local) discretion and flexibility would be important. While common obligations are critical to unlocking a step-change and setting the right foundations, countries should be encouraged to develop complementary policy measures to address context-specific causes and effects of plastic pollution.

For example, as the effectiveness of Extended Producer Responsibility (EPR) schemes may be maximised through context-specific designs, the treaty can oblige countries to establish EPR schemes for a specified list of plastic applications (e.g., packaging) and specify a set of criteria or guidelines for the essential elements of such schemes. The detailed design and mechanisms of those schemes could then be elaborated and implemented by the countries through their national action plans, to implement the common obligation in a way that is most appropriate to their national circumstances.<sup>2</sup>

## Effectiveness evaluation and national reporting

Effective monitoring—including standardisation of methodologies for data collection, evaluation, and reporting—is a condition for discovering non-compliance as well as areas where the treaty's measures could be strengthened. It should thus be closely linked to both States' implementation of control measures, and the expected outcomes of those measures.

The results could then be utilised in improvement of both States' compliance and design of control measures, providing a fundamental component amongst gradual strengthening mechanisms.<sup>3</sup> For example, regular collection and sharing of plastic waste management data (e.g., share of uncollected waste, mismanaged waste, landfilled waste etc.), could provide strong indications of the effectiveness of measures being implemented by States.

In combination with monitoring, specific reporting requirements, standards and deadlines should be established. This is important both to avoid confusion and to facilitate verification and assessment of progress. Clear guidelines for reporting with standard definitions and harmonised units of measure is key. For the same reason the treaty should establish reporting obligations to assess progress and compliance (with independent verification, as best practice). Reporting could relate to three dimensions:

1. Reporting on status (including, for example, relevant indicators of plastic waste generation, collection, management, and mismanagement)
2. Reporting on progress of fulfilling core obligations, e.g., legislative, regulatory, and administrative measures taken at the national level to enforce the provisions of the treaty; the implementation bans and phase-outs; the rate of plastic recycling and level of recycled content in production of new products; plastic waste collection and safe disposal rates.

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<sup>1</sup> UNEP/PP/INC.1/7, [Plastic Science](#)

<sup>2</sup> This has been done, for example, in [Directive 2018/852](#) of The European Parliament And Of The Council of 30 May 2018, on packaging and packaging waste (Article 7(2), p. 149-150)

<sup>3</sup> E.g., plastic collected-for-recycling rates in countries could inform better design of control measures using circular approaches, and local difficulties found in implementing common obligations could inform necessary implementation assistance

3. Reporting on other supporting provisions, including capacity-building, technical assistance, technology transfer on mutually agreed terms and financial assistance, etc.

## Compliance

To identify Parties' difficulties in compliance, and to improve compliance in a facilitative manner, clear procedures and mechanisms must be established. This is usually done through an elected Implementation Committee, or Compliance Committee, that has a mandate to make recommendations, while the final output is a decision by a CoP. Transparency through self-reporting and monitoring, as discussed above, is an important element in any compliance mechanism.

Such mechanisms should be designed to first assist Parties for better compliance: guidelines including invitation to cooperation between a non-complying Party and the secretariat to find a solution will be crucial and should be the default in case of non-compliance.

In case of continuous non-compliance, however, there should be clear and credible consequences. Importantly, punitive measures to respond to non-compliance—if States would be willing to agree on such measures to minimise free-riders—should be severe enough that States would want to proactively avoid, but not so severe that the threat is not credible. Potential options could be gleaned from precedents set by some MEAs, such as CITES, Montreal Protocol, Kyoto Protocol, and a few others.<sup>4</sup>

## Means of implementation

To ensure that the Parties start out from a more level playing field, primary implementation assistance (e.g., technical, and financial assistance) should be established right at the beginning. In order to develop a robust financial mechanism, States should immediately start exploring lessons learned regarding the set-up of such mechanisms in other treaties.<sup>5</sup>

One potential option could be to first establish an obligation to provide implementation assistance to developing countries and economies in transition in the treaty text, and then set up the detailed and necessary institutional arrangements and mechanisms to carry out this obligation once the treaty is adopted. This should help assure States that assistance will be provided in a timely and predictable manner, to cover the incremental costs of enabling compliance with the obligations.<sup>6</sup>

Negotiations on financial support, including possible global targets for financial mobilisation, should be conducted in parallel to negotiations on core obligations and control measures, to ensure ambition both in terms of actions and the means of implementing them. Financial mechanisms should be designed to directly support the implementation of the treaty's core obligations and control measures. A potential option is to establish a dedicated multilateral fund, linked directly with the future treaty.

In addition to financial assistance, transfers of technical know-how and technologies to countries in need would be necessary. [Article 10](#), [Article 10A](#) of the Montreal Protocol could be used as inspirations for texts in the new treaty on plastic pollution.

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<sup>4</sup> United Nations Environment Programme (2007). Compliance mechanisms under selected multilateral environmental agreements. <https://wedocs.unep.org/20.500.11822/7507>

<sup>5</sup> Most MEAs provide primary implementation assistance, both financial (e.g., in the form of a fund) and technical (e.g., implementation guidelines (Ramsar), capacity building obligations (CITES, POPs), cooperation obligations and technology transfer (CBD), establishment of regional centres for training as well as information sharing (Basel), clearing house mechanisms (CBD, UNFCCC). This is crucial to ensure that assistance is available right from the start, especially to the countries with scarce resources, to secure implementation and compliance.

<sup>6</sup> The Multilateral Fund for the Implementation of the Montreal Protocol was established by the Second Meeting of the Parties to the Montreal Protocol (London, June 1990) with the main objective to assist developing countries to comply with the control measures of the Protocol. Article 20 of CBD obligates developed Parties to provide “new and additional financial resources”, and article 21 provides an obligation to establish a financial mechanism, the Global Environmental Facility filling that role.

## ADDITIONAL INPUTS

### Institutional arrangements

The treaty could broadly follow established practice when it comes to institutional arrangements. A Conference of the Parties (or equivalent) would be set up to evaluate implementation and serve as the governing body of the legal instrument. On one critical point, however, **the treaty must avoid repeating the same mistake as previous MEAs have made**, namely, to require the COP to adopt its rules of procedure by consensus.

For every MEA since 1992—from UNFCCC to Minamata, the effect of this requirement has been that the COPs are left without an agreed set of rules decision-making. For the UNFCCC, the rule on decision-making has been bracketed since 1996. **The treaty text for the new treaty on plastic pollution must state clearly that the COP is to use the rules of procedure of the INC when adopting its own rules of procedure.**

### Final provisions

#### Reservations

In accordance with established practice, no reservation should be allowed. Most MEAs do not allow reservations, in order to promote internal consistency and coherence of implementation.

#### Amendments

To enable further development and gradual strengthening of the treaty and its integrated components (such as annexes), the treaty must include clear procedures on adoption of amendments, detailing how amendments could be proposed, reviewed, and approved. The treaty could, as a potential option, establish procedures for States parties to propose amendments, a competent body—an authorised expert panel or committee—to review and recommend amendments, and the Conference of the Parties to decide on the proposed amendments through majority votes. A three-fourths majority—as provided for in the Minamata, Rotterdam, Stockholm, Basel, UNFCCC, and the Vienna Convention on the Protection of the Ozone Layer—could be used as a threshold for adoption of amendments.

#### Entry into force

In addition to currently proposed texts in the Final Provisions, additional conditions relating to the estimated total volume of plastic consumption of States should be established for the instrument's entry into force (similar to the Montreal Protocol). This design should rely on the most recent data of production, consumption and trade of the controlled substances and their applications (i.e., plastic polymers and products), to determine a realistic entry-into-force threshold that can act as a tipping point.

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