

Policy Briefing

Zero Draft Text of the International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment

Summary

- The United Nations Environment Programme published a zero draft of a future UN Plastics Treaty on 4 September 2023. This briefing analyses this text and makes recommendations for improvement.
- The text is comprehensive in approach – aiming to set out clear objectives and addressing plastic pollution and its impacts through measures to limit production and reduce harm across the life cycle of products.
- The Treaty includes options for an overarching objective, and we recommend that this is kept simple and clear, but includes a need for consistency with sustainable development.
- The section on definitions is currently blank and we stress the importance of clear definitions and make recommendations for these.
- We welcome the introduction of targets to limit plastic production. This will be very challenging.
- The Treaty addresses alternative plastics, such as bio-based and biodegradable plastics. It is important that these reduce the harm caused by conventional plastics.
- The provisions on waste management are very important – on collection, reuse, recycling, transboundary movement, etc. This is a particularly problematic area and varies significantly around the world.
- This briefing includes specific recommendations on these issues which we hope that Parties consider in the further development of the text of this highly important UN Treaty.

Introduction

On 4 September 2023 the United Nations Environment Programme published a Zero draft text of the international legally binding instrument on plastic pollution, including in the marine environment¹. This is more commonly referred to as the UN Plastics Treaty. The text will be discussed by the Intergovernmental Negotiating Committee to develop this instrument in its third session in Nairobi on 13–19 November 2023. This short briefing highlights key points that we believe should be taken into account in the discussions.

The zero draft covers a range of issues relating to the reduction in production and use of plastics and the management of plastic waste. This briefing does not seek to comment on all of these, but rather it focuses on a few selected issues derived from analysis undertaken within the SEALIVE Horizon 2020 project.

This briefing is produced by the SEALIVE H2020 project, funded by the European Union (EU). SEALIVE aims to demonstrate innovative circular strategies for bio-based plastics in land and sea applications. The project also aims at standing as a reference to be disseminated and widely used in Europe and beyond. To do this, SEALIVE will implement sustainable solutions based on novel bio-based plastics to avoid plastics ending-up on land and sea. As part of the work of SEALIVE, there is particular research on the policy implications of the production and use of bio-based, biodegradable and compostable plastics, analysing policies and developing conclusions and recommendations for future policy development. This briefing is an output of this research within SEALIVE.

Overview of the Draft Treaty

The zero draft sets out a comprehensive Treaty that, if well elaborated, has the potential significantly to tackle plastic pollution globally. It begins with objectives and continues with sections on definitions, principles and scope (though these are currently blank). It continues with provisions to reduce plastic production, address use of hazardous chemicals in plastics, stop the use of intentionally added microplastics and improve product design and performance. Measures on all of these issues are essential to address the problems of plastics.

The zero draft continues by considering specific issues of alternative plastics (the subject of SEALIVE research), use of Extended Producer Responsibility, the whole life cycle approach, waste management (including transboundary waste movement), fishing gear, trade, and tackling existing plastic pollution. Again, each of these addresses specific areas contributing to stopping or reducing plastic pollution.

The text continues by emphasising just transition in relation to the implementation of the Treaty and financing. It then sets out a key element – the use of National Plans whereby Parties will elaborate specific measures appropriate to national conditions to implement the different parts of the Treaty and, therefore, tackle plastic pollution. The Treaty text concludes with a list of possible annexes which would elaborate different sections of the Treaty, including with concrete targets.

As stated previously, this is, therefore, a comprehensive instrument and this is important. The problems of plastic cannot be addressed through measures on one or two issues. Furthermore, the best interventions to address plastic pollution will vary significantly around the world.



Photo by AKTI Project and Research Centre



SEALIVE research has not examined all of the provisions raised in the zero draft of the Treaty. It has, however, focused on some. This briefing, therefore, looks at those and makes specific recommendations to improve the text.

Objective

Section 2 of the zero draft sets out the objective of the Treaty. Two options are presented.

Option 1 is that “The objective of this instrument is to end plastic pollution, including in the marine environment, and to protect human health and the environment.”

Option 2 is that “The objective of this instrument is to protect human health and the environment from plastic pollution, including in the marine environment.” Further, the draft proposes further sub-options for option 2 for consideration:

- “by ending plastic pollution.”
- “based on a comprehensive approach that addresses the full life cycle of plastic.”
- “through the prevention, progressive reduction and elimination of plastic pollution throughout the life cycle of plastic by 2040.”
- “through, inter alia, managing both the utilization of plastics and plastic waste, while contributing to the achievement of sustainable development.”

Option 1 is clear. However, option 2 mixes objective and means. The additional points in Option 2 are all important, but not all are appropriate in the overall objective. For example, “environment” includes “marine environment”, tackling plastic pollution of necessity involves considering the full life cycle, etc.

The sub-options for option 2 include two points that are additional to that of option 1. The first is a date (2040). It is, of course, important to have target dates otherwise actions are often delayed. It is not clear, however, if an overall date is possible in the initial objective. Target dates are envisaged later in the Treaty text.

The second is reference to sustainable development. This is important. However, not only should implementation of the Treaty contribute to sustainable development, but measures adopted should be consistent with sustainable development. This will be important in ensuring that measures within national plans, for example, take into account social equity issues.

We, therefore, recommend that the objective of the Treaty should be clear and simple, such as Option 1. However, we recommend that the objective includes the words “contribute to, and consistent with, sustainable development”.

Definitions

The zero draft includes a Section 3 on “definitions”. At this stage there is no text. However, from our SEALIVE research **we recommend the importance of ensuring that all terms are defined and that those definitions are clear**. We have found that many terms are defined in different ways by international organisations (and some not at all). It is important to ensure consistency. This new



UN instrument will be a template for further initiatives and act as an umbrella for other instruments. Therefore, the definitions included here will be extremely influential.

SEALIVE has produced a briefing² making recommendations for definitions for some key terms, based on a critical examination of definitions in different legal and policy contexts. We found that the same term may have different definitions depending on the context of use (e.g. scientific work vs law) and, therefore, care must be taken to ensure clarity and to avoid using terms at cross purposes in discourse. We also concluded that it was important to avoid confusion in definitions that seek to explore intrinsic characteristics, behaviour in different environments, specific uses or some combination of these. As a result, our briefing on definitions sets out the principles underlying the formulation and use of definitions. **We recommend that Parties to this UN instrument consider the recommendations made by SEALIVE in populating section 3 of the instrument.**

Reducing plastic production

The zero draft text includes different provisions to reduce plastic production and specific harmful aspects of this. With regard to the latter, it seeks to ban the use of certain (as yet unspecified) chemicals in plastics and also tackle the issue of products where microplastics have been intentionally added. **These are, in our view, important but minimum provisions to address the harm that plastic causes.**

It is the provisions on reducing production which are challenging. These include specific consideration of banning certain single use plastics. This has been achieved in jurisdictions, such as the EU, and is feasible elsewhere. It is, however, important to ensure that alternatives are not harmful (e.g. paper with harmful additives).



The first provision includes options for Parties individually or collectively to reduce plastic production to agreed targets. The specific numbers are not in the draft and agreeing these will be politically challenging. However, **we consider that such targets are important**. Indeed, they go beyond existing EU law.

Setting a ceiling on production, let alone a reduction target, raises all sorts of questions at national level. Which manufacturers need to reduce production? How to achieve this? How to address new uses? And many more. This is why the use of National Plans is important as it can explore the social, economic and environmental issues concerning the production of different plastics in each country and determine the most appropriate responses. A further challenge will arise where much domestic plastic use is imported (or, indeed, where much production is for export). **We consider that these tough issues deserve close attention**.

Alternative plastics

The potential use of bio-based and biodegradable plastics is addressed by the zero draft in a section entitled “Alternative plastics and plastic products”. This lists two options for Parties to consider:

Option 1

“1. Parties shall ensure that alternative plastics and plastic products are safe, environmentally sound and sustainable, taking into account their potential for environmental, economic, social and human health impacts, including food security.”

Option 2

“1. Parties should encourage the development and use of safe, environmentally sound and sustainable alternative plastics and plastic products, including through regulatory measures and economic instruments.

2. Parties, in implementing the above provision, shall ensure that alternative plastics and plastic products are safe, environmentally sound and sustainable, taking into account their potential for environmental, economic, social and human health impacts, including food security.”



Photo by [Brian Yurasits](#) on [Unsplash](#)



The zero draft continues with a further section concerning the replacement of plastics with non-plastic substitutes (e.g. as seen in the EU with replacements for single-use plastic cutlery and straws with wooden and paper alternatives).

With regard to alternative plastics, the first option does not encourage their use, while the second does. However, in both cases their use should be for products where it is possible to ensure that these products are “safe, environmentally sound and sustainable”.

This condition is both desirable and problematic. Of course, it is desirable that the use of these plastics is safe for people and environmentally friendly (there will be debate over what is meant by “sound”). However, there is a question about why this condition is required for alternative plastics, but not for plastics generally. The Treaty will, if well formulated and implemented, reduce the harm that plastics cause. It will not eliminate it. The Treaty does not require that remaining plastic products are “safe, environmentally sound and sustainable”. Rather, a realistic outcome for traditional plastics is to make their use less harmful. **We recommend that consideration is given to principles for the safe use of all types of plastic rather than just alternative plastics.**

For alternative plastics, should their use be limited to where they are “environmentally sound” or simply to where they reduce the environmental harm compared to current plastics and any other reasonable alternative? The Treaty certainly aims to make traditional plastics less harmful (hence the provisions on the chemicals they contain), so surely the provisions for alternative plastics should be to encourage their use where they are the best alternative AND where they reduce harm to human health and the environment. **We recommend that the Treaty encourage the use of alternative plastics where these cause less impact than conventional plastics or other alternative materials.** Essentially, applying a stricter environmental objective to alternative plastics compared to traditional plastics risks “the best being the enemy of the good”.

We note that there is a section 4 on “Principles” which is currently blank. It may be appropriate to set out principles for the use of plastic products (safety, environmental harm, etc.) in this section and these would apply equally to traditional and alternative plastics products.

Managing plastic waste

The zero draft also includes several provisions relating to the management of plastic waste. The two options presented are similar in stressing the importance of safe and environmentally sound actions across different elements of waste handling and the importance of the waste hierarchy. Common provisions aim to ensure that hazardous substances are not released during waste management, for example.

We do have specific comments on the key elements within the text as it stands. However, with regard to plastic waste, we argue that two further points need to be taken into account.

One is that the ability to reuse and recycle plastic waste (primary aims of the waste hierarchy) may depend on the type of plastic used in products (varying depending on techniques used for recycling). Thus, **we recommend that national plans for plastic waste management should be integrated with plans for plastic production (outlined earlier in the zero draft).**



The waste management provisions do not seem to take littering into account. Littering is end-of-life of plastic that is lost to control within the waste management system. **We, therefore, recommend that choices for products, waste management practices, etc., should consider how these may impact on littering** (which, in the real world, may be reduced, but rarely eliminated).

Fishing gear

The zero draft states that parties “shall cooperate and take effective measures, including appropriate marking, tracing and reporting requirements, to prevent, reduce and eliminate, abandoned, lost or otherwise discarded fishing gear containing plastic, taking into account internationally agreed rules, standards and recommended practices and procedures.” These actions shall be in the national plans, etc.

SEALIVE has been researching the potential for use of biodegradable plastics in fishing gear. We fully support the aims to “prevent, reduce and eliminate” lost gear. However, we consider that if gear is lost, then choices in its manufacture and design may be made so as to reduce the harm it causes if it is lost. **We, therefore, recommend that reduction in harm should be an additional objective in relation to lost fishing gear.**



Conclusions

The development of a UN Treaty to reduce the environmental problems of plastics is important and the zero draft is a major step towards this. Many parts of the text are still to be elaborated and negotiations will alter the text already in the zero draft. The text needs to be ambitious in tackling a major threat to global environment and health, but it also needs to be flexible enough to reflect the different plastic production and uses around the world, different waste systems, different pollution problems, etc. The combination of targets to drive action on the one hand and use of national plans on the other to reflect these different conditions, should ensure an appropriate combination of ambition and flexibility.

In negotiating the Treaty, we hope that Parties retain the necessary ambition. In elaborating the text, we also hope that Parties consider the recommendations set out in this briefing.

¹ <https://wedocs.unep.org/bitstream/handle/20.500.11822/43239/ZERODRAFT.pdf>
² SEALIVE 2023. Briefing: The Importance of Clear Definitions in Managing Bio-based and Biodegradable Plastics <https://doi.org/10.5281/zenodo.7744012>

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