

Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment

Ad hoc intersessional open-ended expert group to identify and analyse criteria and non criteria based approaches with regard to plastic products and chemicals of concern in plastic products, and product design focusing on recyclability and reusability of plastic products, considering their uses and applications

In-person meeting

Bangkok, 24-28 August 2024

EG2 – Summary under agenda item 4b - Chemicals of concern in plastic products¹

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¹ This summary is intended to reflect discussions at the in-person meeting of Expert Group 2 on 25 and 26 August. A verbal summary was presented to the Expert Group 27 August. This document is an amended version following the comments provided by the experts to the verbal summary. This summary is not exhaustive and does not reproduce elements contained in the synthesis document. This summary provides material to inform the preparation of the Co-Chairs' report for Expert Group 2. In preparing their report, the Co-Chairs will also take into account the deliberations during the virtual meetings, responses to the questionnaire and other further reflections related to agenda item 4(b) provided by experts at this in-person meeting. The Co-Chairs' report is a non-negotiated document and will be finalized by the Co-chairs after this Expert Group meeting and forwarded for the consideration by the Committee at INC-5. The report will be without prejudice to national positions and the outcome of negotiations conducted by the Committee.

The Expert Group considered possible criteria and non criteria based approaches regarding chemicals of concern in plastic products, considering their uses and applications, with reference to broad categories of possible approaches identified in light of earlier inputs received from experts. A range of views were expressed by participating experts.

A range of views were heard, and the summary below should not be read to imply agreement among experts on any particular view.

1. Preliminary observations

Different views were expressed concerning the extent to which chemicals of concern in plastic products fall within the scope of resolution 5/14, including the following:

- It was suggested that the discussion should relate to plastic pollution – not chemical pollution or the lifecycle of chemicals itself.
- Different views were expressed concerning the terminology and definition of chemicals of concern.
- It was heard that chemicals of concern are not specifically mentioned in UNEA Resolution 5/14 and therefore fall outside the scope of the instrument
- An alternative view was that UNEA resolution 5/14 addresses the full lifecycle of plastics, including promoting sustainable consumption and production of plastics, which includes adverse impacts on human health and the environment, thereby including chemicals of concern.

It was also noted that the Expert Group received a mandate to consider possible approaches to chemicals of concern in plastic products, and that it will be the sole responsibility of Members of the Committee to determine the scope of the instrument.

General context

Over the course of the discussion, it was noted that:

- Chemicals of concern in plastic products are a transboundary problem, as plastic products are globally traded and may be used outside their country of origin.
- All chemicals may be harmful, as risk depends on the hazard characteristics and exposure levels.
- The use of chemicals of concern in plastic products affects human rights, including the human right to health and the human right to a clean, healthy and sustainable environment.
- With respect to chemicals of concern in general, it was noted that **there are data and knowledge gaps**, including on:
 - the level of existing oversight of chemicals, in the absence of a standardized methodology, and on
 - hazard data and the impacts of chemicals of concern in plastic products on human health and the environment.

General considerations on possible approaches to chemicals of concern in plastic products

A number of general considerations were heard that could inform the development of any approach to chemicals of concern in plastic products, including the following:

- There should be complementarity across provisions of the instrument, including any provisions on chemicals of concern in plastic products, product design, transparency, labelling and reporting.
- Approaches could be applied horizontally across uses and applications in plastic products or these could be assessed on a case-by-case basis.
- Approaches should only **focus on chemicals of concern in plastic products**, and not on other applications or the polymers themselves.
- Approaches should be **focused, implementable, and provide flexibility to address different contexts**, while remaining ambitious enough to allow for meaningful outcomes.
- Approaches should be **based on robust knowledge**, including scientific data and existing best practices from existing MEAs, allowing for broad participation.
- **Complementarity** is needed **with existing global and national chemicals regulations**, which may differ in their approaches and mechanisms.
- **Improved transparency** on the chemical contents of plastic products is required for adequate regulation.
- In line with WTO principles, the **least trade restrictive measures possible** should be adopted, and measures should **not lead to unnecessary** restrictions or discrimination in international trade.
- Approaches would need to **consider the availability, accessibility, and affordability of safe alternatives and substitutes**, and promotion of sustainable practices in relevant industries.
- The **importance of rising downstream challenges, including legacy plastics and recycling** of products should be borne in mind in considering a full life cycle approach.
- **Some developing countries may not have the sufficient resources** to dedicate to addressing plastic pollution, and have different capacities to address waste, and there will be an acute need for adequate means of implementation for developing countries, including adequate timeframes for implementation, funding, capacity building and technology transfer, to comply with any obligations under the instrument, also considering common but differentiated responsibilities.
- **Funding for research, innovation and development** will also be required to identify and develop safe alternatives to chemicals of concern in plastic products.

2. Identification and analysis of possible criteria based and non criteria based approaches with regard to chemicals of concern in plastic products considering their uses and applications

Overall, different possible approaches were identified, noting that some may be complementary.

Possible approaches identified were:

- a. Stepwise hazard- and risk-based approach at the global level, resulting in lists and/or other control measures**
 - It was suggested that a global, mandatory criteria-based approach may promote harmonized, effective, and consistent measures, to allow Parties to move in the same direction, enable transparency for a circular economy, and protect human health and the environment, including in countries that are net importers of plastic products.

- A two-step approach was proposed, starting with hazard-based screening criteria for listings of chemicals of concern in plastic products in an annex, as basis for industry action and transparency measures. This approach could enable the nomination of groups of products if sufficiently robust scientific evidence is available. It was proposed that the criteria would be based on specific category 1 hazard classes. This would be followed by a risk-assessment based approach for the determination of control measures and possible exemptions and the development of a risk profile and risk management dossier by a scientific or technical review committee, for the governing body to decide on the most appropriate action. This could result in restrictions, phase-outs or bans, with room for time-limited exemptions to specific parties or general exemptions. Restrictions could be timed, e.g., considering just transition and non-disruptive phase-outs, including availability and affordability of alternatives.

b. A risk-based approach at global and/or national level

- An alternative approach identified was risk-based approaches.
- It was noted that risk assessments and management tools are well established, and that, unlike hazard-based approaches, they can take into account different uses and applications as well as exposure.
- It was suggested that risk-based approaches according to agreed criteria could be applied at the global level, resulting in global control measures. An alternative view was that risk-based approaches could be applied at the national level, for instance through national chemicals or risk management systems, building on the guidelines of the Global Framework of Chemicals or globally agreed criteria. Hybrid approaches with global risk-based approaches or assessments informing nationally determined control measures were also proposed, leaving scope for management decisions in line with national circumstances and capabilities in a phase-wise manner.
- A risk-based approach could entail a two step approach, starting with an initial global or national risk assessment across the life cycle for particular applications, including a robust nomination process, taking into account availability of alternatives, socioeconomic impacts and cost of implementation at the international and/or national level, to determine the appropriate control measures. If risks are identified, the second step would entail risk management measures for applications.

c. Guidelines

- Guidelines could be applied standalone approach or to complement other approaches.
- There were different views on whether guidelines should be adopted on the national or global level, and on the level of obligation, i.e., whether they would be binding or voluntary.
- Guidelines could allow adaptation of approaches to national circumstances and capabilities.
- Guidelines could be developed to prevent the use of hazardous chemicals in plastic products through waste management and product design measures at the national level.
- They could draw on international standards, national systems, and guidelines from the GFC.
- Other proposals included the development of guidance for the preparation of risk profiles of chemical substances, guidelines for socioeconomic analyses, essential use determination, implementation.

- The guidelines and tools could be developed by a scientific or technical committee, and adopted by the governing body of the instrument.

d. Nationally determined measures aligning with existing processes and instruments

- Under this approach, measures could be developed at the national level, to allow flexibility to identify the most effective and appropriate approaches, including by drawing on BRS and GHS, without the need for specific provisions under the instrument. It was also suggested that voluntary guidance could be developed for the development of national plans and national reports to guide nationally determined measures.
- Measures could also include identification of maximum permissible concentration limits of chemical residues in plastic products, for specific uses and applications.

e. Grouping approaches

- Different views were expressed on the possibility of grouping chemicals of concern in plastic products for the purposes of identifying and addressing them. Grouping approaches could provide an avenue to avoid regrettable substitutions and ease regulation by avoiding case-by-case assessments of chemicals with similar chemical structures or functions. It was noted that grouping approach can drive innovation and allow for chemical simplification, more comprehensive and effective management, and prevent regrettable substitution. Grouping approaches would also need to be based on experimental information, and only be appropriate for specific groups with strong scientific evidence of hazards.
- It was also suggested however that not all chemicals in the same family have the same toxicity profile, so that case-by-base assessment of any chemicals of concern in plastic products may be needed, taking into account specific uses and applications. It was also suggested that functional grouping approaches could hamper innovation to develop safer alternatives with similar functions.

A. Additional considerations relating to possible criteria and non criteria based approaches

In addition to these broad types of approaches, a number of additional considerations on criteria based approaches, and what is needed to make them effective, were noted.

For example, it was suggested that:

- Clear timelines would be needed, with possible adaptation based of advancement of science, and exemptions to reflect national circumstances.
- Criteria should be consistent, simple and science-, evidence- and knowledge-based and rely on all information available, including Indigenous knowledge and traditional knowledge of Indigenous and local communities, through an inclusive process.
- Whether or not criteria would be cumulative or non-cumulative may depend on the criteria.
- As national regulations tend to be based on national availability of alternatives, socioeconomic impacts and cost-benefit analysis, which may differ between countries, compliance- or regulatory-based criteria cannot easily be derived as basis for global application.
- The “No data no market” approach was also noted.

- It was suggested that Members may explore innovative approaches that could specify a range of measures under the instrument that a Party could take to address chemicals that have been identified as being of concern, providing flexibility to account for diverse contexts among Parties.

B. Different approaches to the identification of criteria were also proposed, including:

- Following the UN GHS system
- Drawing from existing criteria under MEAs such as the Stockholm Convention.
- Risk-, hazard- and concentration-based criteria or
- Criteria to be proposed by a scientific/technical body or scientific, technological and economic panel (STEP).

C. Potential for stepwise approaches

Different suggestions were also made to allow for the progressive development of criteria, lists of chemicals of concern in plastic products, or related guidance under the instrument:

It was suggested that initial lists of criteria could be developed based on:

- Existing regulation and initiatives in the public and private sector which are already widespread and well established, to be complemented by a subsequent criteria-based approach.
- Chemicals with well-established scientific evidence for harm/hazard, especially those used in high volumes.
- Chemicals of concern relevant to plastics already listed under existing MEAs.
- Availability and affordability of substitutes.

Such initial lists could be completed later through criteria-based approaches, with specific criteria to be developed between the Diplomatic Conference and the first COP;

It was also suggested that specific aspects could be developed at a later stage for example by the first meeting of the governing body. This could include criteria, lists, or guidance, including to develop synergies with existing MEAs.

3. Additional considerations and analysis relevant to criteria and non criteria based approaches

A. Relationship with existing MEAs

It was noted that **the instrument should not duplicate provisions and processes under existing MEAs** regulating chemicals. The BRS conventions and the GFC (Global Framework for Chemicals) were mentioned as effective existing approaches.

Different views were expressed on the mutual implications of these existing instruments for the development of the instrument:

- **One view** is that **chemicals in plastic products should be addressed under existing instruments**, which adequately cover chemicals and have the capacity to develop further in a dynamic manner. Any

gaps for chemicals of concern in plastic products under existing MEAs should as far as possible therefore be addressed under these instruments, and overlaps between instruments should be avoided;

- **Another view** is that **chemicals of concern in plastic products are not covered to a large extent under existing MEAs**, and that a criteria based approach in the instrument can **be complementary to other MEAs**. Further, the mandates of existing instruments do not cover plastics specifically or the full lifecycle of plastic products, and chemicals of concern utilized in plastic products do not necessarily meet the criteria required for consideration under other instruments. A new instrument could address chemicals of concern in plastics in a more targeted and focused manner.
- Possible approaches identified to **ensure complementarity** with existing instruments and **learn from their processes** include the following:
 - An interface for collaboration and sharing knowledge between the instrument and other MEAs;
 - Using criteria under the Stockholm Convention, the Global Harmonized System for the classification of chemicals, and the Global Chemicals Framework as a starting point;
 - Drawing on the Stockholm Convention and Montreal protocol assessment approaches, including an “essential use” approach for possible exemptions
 - The establishment of a scientific and technical body comparable to the process under the Stockholm Convention.

B. Capacity to take into account evolutions in the state of knowledge

The need for the instrument to be dynamic and able to consider scientific advances, new knowledge and information in a timely manner was emphasized. This could involve:

- A robust and independent assessment and review mechanism including a scientific, technical, or chemicals Committee or Technical and Economic Assessment Panels (TEAP) under the instrument to provide scientific guidance, recommendations, assessments and regular review. Such committees could have strong conflicts of interest policies, and include Indigenous knowledge.
- Capacity for criteria to evolve to consider evolutions in the state of knowledge. Three possible approaches were discussed:
 - Fixed, simple criteria that allow for flexibility and thereby not requiring reviews and updates.
 - Initial criteria, with opportunity to add additional criteria over time. (dynamic and expandable)
 - Criteria open for regular review to be altered over time.
- Lists and annexes could be open to regular review and updated in line with evolving science.
- Measures to raise capacity and disseminate emerging science and best practices amongst all relevant stakeholders.

C. Monitoring and evaluation

Interventions also addressed requirements for monitoring and evaluation, including the need to ensure transparency, data disclosure, effective monitoring, tracking, labelling and better scientific information on

chemicals of concern for an effective circular economy. This could include real time monitoring of chemical exposure and environmental impacts to help identify emerging issues.

D. Socio-economic impacts

It was also stressed that socioeconomic impacts, which will vary for different applications and chemicals of concern, should be considered by a technical or scientific committee and that both positive and negative impacts of action and inaction, including costs of human health, cultural and environmental impacts, would need to be assessed. It was noted that potential measures could have positive or negative impacts on specific communities, such as frontline communities and waste pickers, or developing countries developing petrochemical industries and mining.

Assessments of socioeconomic impacts should be open and could include public consultations to hear views from relevant stakeholders and impacted communities.

E. Conditions and prerequisites for effective application and implementation

Finally, in respect of conditions and prerequisites for an effective application and implementation of any approach, it was noted that whether the approach adopted is based on voluntary action or mandatory commitments would have a significant impact on implementation requirements. If mandatory commitments are to be implemented, access to adequate means of implementation for developing countries, including adequate funding, technical assistance and access to technology, would be essential.

The parameters identified as conditions for effective application and implementation overlapped with aspects highlighted earlier. Aspects identified in this context included the following:

- Clear definitions.
- Synergies and cooperation with existing MEAs, and avoiding overlaps.
- a dynamic instrument that can be updated with new information and scientific advances, including new standards.
- Robust scientific criteria and tools for harmonization of assessment methods
- An effective, robust and independent science-policy panel.
- Availability and accessibility of alternatives, assessed on the global level.
- A cooperation mechanism on science, technology and regulatory aspects between national regulatory agencies, industry and scientific communities.
- Flexibility to adapt to national circumstances, including with specific exemptions.
- Improved transparency, testing and effective disclosure mechanism including a global database.
- Adequate, accessible and predictable means of implementation, especially for binding obligations.
- A solid reporting, enforcement, and compliance mechanism.
- A robust and inclusive process for effective implementation and assessment
- Addressing illegal and informal trade, and trade with non-parties
- Innovation, technology-based approaches and initiatives and community led solutions.
- Prioritization of key applications such as food contact materials, medicine, healthcare, agricultural plastics, furniture, building materials, children's toys.
- Consideration of waste management capacity and legacy plastics and use of best practices.

