Proposed response template on written submissions prior to INC-3 (part a)

At its second session, the intergovernmental negotiating committee (INC) requested the secretariat to invite written submissions on:
- Elements not discussed at INC-2, such as principles and scope of the instrument

INC-2 further requested the secretariat to post any submissions received on the INC website and to prepare a synthesis report of the submissions.

The template below was prepared by the secretariat, in consultation with the Chair, and is meant as a guide to assist Members and Observers in preparing their written submissions.

A number of documents prepared by the secretariat for INC-1 and INC-2 are of relevance to this submission, including:

- **UNEA resolution 5/14** on ‘End plastic pollution: towards an international legally binding instrument’
- **UNEP/PP/INC.1/5** on ‘Potential elements, based on provisions in paragraphs 3 and 4 of United Nations Environment Assembly resolution 5/14, including key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering implementation and compliance under the future international legally binding instrument on plastic pollution, including in the marine environment’
- **UNEP/PP/INC.1/6** on ‘Glossary of key terms’
- **UNEP/PP/INC.1/8** on ‘Description of standard articles on final provisions that are typically included in multilateral environmental agreements’
- **UNEP/PP/INC.2/4** on ‘Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by United Nations Environment Assembly resolution 5/14’
- **UNEP/PP/INC.2/INF/4** on ‘Additional information linked to the options for the potential elements towards an international legally binding instrument’
- **UNEP/PP/INC.2/INF/7/REV.1** on ‘Information submitted by the Secretariat of the Basel, Rotterdam and Stockholm conventions’

All written submissions must be sent to unep-incplastic.secretariat@un.org. As detailed in the mandate, the submissions received will be made available on the INC webpage, a synthesis report of the submissions will also be developed in advance of INC-3.

Please note that not all fields in the template need to be answered in the submission.

**Deadline for submissions:**
- By **15 August 2023** for written submissions from observer organizations.
- By **15 September 2023** for written submissions from Members of the Committee.
Elements not discussed at INC-2

1. **Scope**

*What is the proposed scope for the future instrument?*

*Which types of substances, materials, products and behaviors should be covered by the future instrument?*

The EU and its Member States (MS) recall the ambitious scope agreed in Nairobi (UNEA resolution 5/14) and urge all delegations to work comprehensively on that basis, understanding that upcoming INC negotiations may by no means lower this ambition.

The scope is important, since this forms the basis for how comprehensive and ambitious the instrument will be in addressing existing and future plastic pollution through the whole life cycle of plastics.

The scope should reflect an ambition to end all types of plastic pollution, including but not limited to the marine environment, with a view to protect human health and the broad environment, and recognizing the positive impact such an instrument will have on climate change and biodiversity, thereby addressing the triple planetary crisis.

The scope should generally identify what the instrument will address in terms of main drivers and sources of plastic pollution (such as, but not limited to, mismanaged waste -from e.g., packaging and single use plastics, fishing and aquaculture, agricultural plastics, shipping, including cruise tourism and maritime transport- legally or illegally released; unintentionally released or intentionally added microplastics and pre-production plastic pellets and specific materials, products, substances, additives, uses and processes to be covered etc.

However, as the scope should be derived from the mandate from UNEA Resolution 5/14, we would want to avoid spending a substantial amount of time discussing this topic.
In this sense, the EU and its MS welcome the options put forward on the scope in Appendix I.C of the document ‘Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics’, as called for by United Nations Environment Assembly resolution 5/14 (UNEP/PP/INC.2/4). Building on the wording of the first option as a good starting point to truly end plastic pollution once and for all, we suggest the following formulation for the scope:

“This legally binding instrument covers the whole life cycle of plastics, from extraction to production, design, use, consumption, disposal and remediation, and addresses all sources of plastic pollution. It covers plastic materials and products, as well as plastic related chemicals and microplastics. It recognizes the risk of plastic pollution to human health and the environment and the impact on climate change and biodiversity.”

In detail:
The EU and its MS consider that such a formulation should allow the instrument to cover:

- All forms of plastic pollution, including but not limited to the marine environment.
- The full life cycle of plastic, while particular attention should be given to the upstream part of the life cycle, through commitments and provisions that ensure a transition to a sustainable and circular production and consumption of plastics, including improved product design, reuse, repair and recyclability.
- Promotion of behavioral change and environmentally sound waste management, including through resource efficiency and circular economy approaches.
- All plastic materials and products, including microplastics and potentially nanoplastics (intentionally added or unintentionally released), irrespective of the feedstock (i.e. fossil based, biobased or recycled raw material).
- Chemicals added to or associated with the production of plastics and plastic products, as well as potentially released during production, use and disposal, that are of concern to human health or the environment, or that compromise the plastic recycling process.
- Health aspects and chemical occupational hazards due to the exposure to plastics and chemicals used in the plastics production, use and waste management.
- Risks for the environment and potential effects on climate change and biodiversity.
- Problematic plastics and avoidable plastics, with a view to reduce, eliminate, substitute or ban such products and materials with more sustainable alternatives or to ensure minimisation of their presence in the environment as waste and/or pollution.
- Both existing and future plastic pollution.
2. Principles

What principles could be set out in the future instrument to guide its implementation?

The EU and its MS consider that guiding principles provide the basis for the operative provisions on which we build the future agreement and will guide its interpretation. Principles could either be explicitly stated in the preamble or be subject to a dedicated provision/article. However, as the UNEA Resolution 5/14 gave no specific mandate to negotiate principles for the ILBI text, we want to avoid spending a substantial amount of time discussing this.

We highlight the importance of taking a comprehensive approach that addresses the full lifecycle of plastic, taking into account, among other things, the principles of the Rio Declaration on Environment and Development as well as national circumstances and capabilities.

With that in mind, the EU and its MS consider it of high importance that the agreement be firmly rooted in:

- The polluter pays principle
- The precautionary principle
- The principle of non-regression
- Sustainable development
- The ecosystem approach
- Just transition
- Circular economy approaches, as a key approach to achieve sustainable production and consumption
- The waste hierarchy
- The right to a clean, healthy and sustainable environment as recognized by the UN General Assembly
- The use of and reliance on the best available science and scientific information
- Access to information, public participation and stakeholder involvement, and access to justice in environmental matters.

Explanatory text:

- The polluter pays principle
  - It is now commonly accepted practice that those who produce pollution should internalize its environmental costs by bearing the costs of managing it to prevent damage to human health or the environment (as recognized in Principle 16 of the 1992 Rio Declaration). In the context of plastics, producers and manufacturers placing the raw material/product on the market shall be responsible for supporting the costs of collection, sorting, recycling and littering. The application of this principle may include, among many approaches, the use of Extended Producer Responsibility (EPR), taking
into account different national and regional circumstances. EPR is a concrete application of the polluter pays principle and an environmental policy approach in which a producer’s responsibility for a product is extended to the waste stage of that product’s life cycle. Specifically, EPR is based on the assumption that manufacturers have the greatest control over product design and marketing and have the greatest ability and responsibility to reduce toxicity and waste. EPR systems can allow producers to exercise their responsibility either by providing the financial resources required and/or by taking over the operational aspects of the waste management process from governments.

- The precautionary principle
  - The precautionary principle is fundamental as all economic actors must take responsibility that any plastic material, product or component they intend to place on the market will not (or is very unlikely to) result in significant harm. The precautionary principle is also of particular importance when it comes to the development of alternatives and substitutes: this is the reason why the EU and its MS recommend the establishment of a subsidiary body – a technical review committee – which could be responsible of the assessment of the sustainability of alternatives and substitutes and apply the precautionary principle before authorizing the placement of any new product on the market. The precautionary principle is a fundamental and well-established principle of international environmental law.

- The principle of non-regression
  - The principle of non-regression prohibits any recession of environmental law or existing levels of environmental protection, as recalled in the UNEP@50 Declaration. In the context of the future instrument on plastic pollution, this implies that all Parties shall “resolve to continuously strengthen, where needed, environmental laws, policies and regulatory frameworks at the national, regional and global levels, without reducing the existing levels of environmental protection”.

- Sustainable development
  - Based on the Rio Declaration and the 2030 Agenda for Sustainable Development.

- The ecosystem approach
  - The CBD provides the following definition: “The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way”. In the context of plastic pollution, this approach can be useful, for instance, when determining the impacts of microplastics along the food chain.

- Just transition
  - Just transition, as defined by ILO, is greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind. The EU and its MS also consider that the agreement should ascertain the human rights implications of plastic pollution and environmental damage, the importance of a just transition and more particularly the participation of specific
groups that are already in vulnerable situations including the informal sector and waste pickers, Indigenous Peoples and local communities, workers at all phases of the plastic life-cycle, women, children, older persons and persons with disabilities.

- Circular economy approaches, as a way to achieve sustainable production and consumption
  
  o As referenced by UNEA resolution 4/1 on “innovative pathways to achieve sustainable consumption and production”, “a more circular economy (…) in which products and materials are designed in such a way that they can be reused, remanufactured, recycled or recovered and thus maintained in the economy for as long as possible, along with the resources of which they are made, and the generation of waste, especially hazardous waste, is avoided or minimized, and greenhouse gas emissions are prevented or reduced, can contribute significantly to sustainable consumption and production”. Recalling the mandate from UNEA resolution 5/14 which mentions “circular economy approaches” and “the promotion of sustainable consumption and production”, it is the view of the EU and its MS that circular economy, and specifically the idea of design for circularity shall be at the core of the future instrument, to ensure that all new plastic products placed or intended to be placed on the market are designed for circularity.

- The waste hierarchy
  
  o Introducing and recognizing the waste hierarchy as the basis of the future instrument is imperative to achieve tangible results and effectively end plastic pollution across the full life cycle. Indeed, the waste hierarchy is an integrated approach where priority is given to prevention/minimization and preparation for reuse before recycling, recovery and then disposal. Such pyramidal approach promotes the material to be valued and reused as much as possible, in order to extract the maximum benefits from products and to generate the minimum amount of waste. Such principle is already recognized and mentioned in UNEA resolution 2/11 “Marine plastic litter and microplastics” (para 7) and deserves to be a cornerstone in the future instrument.

- The right to a clean, healthy and sustainable environment as recognized by Resolution 76/300 of the UN General Assembly

  o A human rights-based approach shall be a cross-cutting priority guiding the implementation of the instrument. The ultimate goal of ending plastic pollution will have to be considered in the spirit of ensuring the protection of the environment and human health.

- The use of and reliance on the best available science and scientific information

  o The urgency of tackling plastic pollution was highlighted and has been taken seriously by the international community thanks to the availability of scientific knowledge and information on the risks and adverse impacts posed by plastic pollution on human health and the environment. All provisions and measures taken in the framework of the future instrument shall thereafter be informed by science, while taking into account the precautionary principle. In addition, the new instrument should allow for continuous strengthening, updates and development, on the basis of the best available
concrete scientific, technical and technological guidance, inter alia with regard to the formulation and periodical revision of its technical provisions, i.e. annexes.

- Access to information, public participation and stakeholder involvement, and access to justice in environmental matters
  - The EU and its MS reiterate that access to information, public participation in decision-making processes and access to justice in environmental matters is key to increase transparency, ensure accountability and protection of stakeholders’ interests.
  - The principles are operationalized in both the Aarhus Convention and the Escazú Agreement, which could inspire the approach to be taken by the new legally binding instrument.

The EU and its MS are open to further discuss the elements put forward in the Options Paper and will take into account the preamble of the UNEA 5.2 mandate. Finally, the EU and its MS do not see the relevance for the general application of CBDR principle in the agreement.

3. Additional considerations

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

3.1 Definitions

When it comes to definitions, the EU and its MS consider it crucial to focus on those definitions needed to clarify the scope of provisions of the instrument so that the parties have the same understanding of what is agreed. It is imperative that we do not stray into lengthy discussions trying to define concepts not contributing to this purpose, or trying to redefine those that already have an internationally agreed definition. However, we remain open to discuss all terms which will play a role in the future instrument.

At this point in time, the EU and its MS see a particular need for defining the terms “plastic” “plastic pollution”, “polymer”, “producer”, “problematic plastics”, “avoidable plastics”, “microplastics”, “recycling”, “life cycle” and “(full) life cycle approach”. We believe the term “plastic product” is more of an overarching term than “single-use plastic products”. The term “recyclability” should also be defined with a view to conceive it at scale and in practice as it is a critical cornerstone to develop a circular economy. The definition of such key terms benefit from being short, easily understandable, and should respond to the objectives set in the mandate of UNEA resolution 5/14.

Explanatory Text:
For some of the terms above the EU and its MS would like to share the following draft definitions which, at this point in the INC process, should not be considered as our final position and do not bind the EU and its MS to any particular definition. This is because definitions cannot be discussed in abstract, independent of discussions on operational provisions which they will derive from. It will thus be necessary to review definitions once the operational provisions will be agreed:

- **Plastic pollution**
  Broadly, all emissions and risks resulting from plastics production, use, waste management and leakage, both from legal and illegal activities.

- **Polymer**
  A substance consisting of molecules characterized by the sequence of one or more types of monomer units. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. A polymer comprises the following:
  - a simple weight majority of molecules containing at least three monomer units which are covalently bound to at least one other monomer unit or another reactant;
  - less than a simple weight majority of molecules of the same molecular weight.¹

- **Life cycle**
  The consecutive and interlinked stages of a product system, from raw material acquisition or generation from natural resources to final disposal. *(Taken from 2006 ISO:14040:2006(en) Environmental management – Life cycle assessment – Principles and framework)*

- **(Full) life cycle approach**
  Considering all potential impacts of all activities and outcomes associated with the production and consumption of plastics, including raw material extraction and processing (for plastics: refining; cracking; polymerization), design and manufacturing, packaging, distribution, use and reuse, maintenance and end of life management, including segregation, collection, sorting, recycling, and disposal. *(taken from UNEP/PP/INC.1/7)*

- **Problematic plastics items**
  The EU and its MS are willing to build on the terminology proposed in “UNEP/PP/INC.1/7”, which is a good starting point to delimit the scope of the instrument. See suggestion below, modified from “UNEP/PP/INC.1/7”.
  Problematic plastics items could be characterized as any plastic material or product:
  - that pose a significant risk to human health or the environment (applying the precautionary principle).

¹ From: Regulation (Ec) No 1907/2006 Of The European Parliament And Of The Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
that contain or release polymers, monomers or additives or absorb substances that are hazardous to human health or the environment, or compromise their recyclability.
- that are most frequently found in the environment due to their characteristics, mismanagement, littering, inappropriate use etc.
- that contain intentionally added microplastics or that release high quantities of microplastics during normal use.
- that are not reusable for the same use, repairable or recyclable at scale and in practice.

- **Avoidable plastics items**
  Avoidable plastic items, including unnecessary and short-lived products, could be characterized as any plastic material or product that can be avoided or replaced by less harmful alternatives.

- **Plastic products**
  All kinds of products which contain or are partly or entirely made of any form of plastic materials (polymers) e.g., single use products such as cigarette butts, packaging, consumer goods, building materials, materials and chemicals used in offshore industries, recreational boats, paints, tires, textiles, fishing gear and items used in aquaculture or agriculture, or products with components where an essential function is determined/achieved by plastics.

- **Recycling**
  Any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.

- **Recyclability**
  A plastic product or component shall be considered recyclable when it fulfils the following conditions:
  a) it is designed for material recycling, according to design guidelines or standards
  b) when it becomes waste, it can be recycled AT SCALE and IN PRACTICE, and it can be is effectively and efficiently collected and sorted
  c) it can be sorted into defined waste streams without affecting the recyclability of other waste streams; and
  d) when it becomes waste, it can be recycled so that the resulting secondary raw materials are of sufficient quality or of equivalent quality compared to the original material and can be used as a substitute to primary raw material.

### 3.2 Institutional arrangements

- **Governing body**
When it comes to the **governing body**, the EU and its MS are of the opinion that its functions will depend on how provisions are designed. Some of its potential functions have been put forward during the discussions so far and more may emerge throughout the process. When it comes to standard functions of the governing body, inspired by other conventions such as the BRS - Basel, Rotterdam and Stockholm - Conventions, we strongly suggest including a general authorisation for the governing body to “consider and take any action necessary to achieve the objectives of the agreement.” Another function that we wish to highlight is that the governing body should be authorized to request and consider scientific and technical assessments or reviews from the subsidiary bodies to the instrument (e.g., a Technical Review Committee and a Monitoring and Review Committee) or any independent body linked to the future instrument (e.g., the Science-policy panel to contribute further to the sound management of chemicals and waste and to prevent pollution, SPP). The governing body with the help of the subsidiary bodies can provide guidance on the financial needs for the implementation of measures.

**Subsidiary bodies**

The EU and its MS are of the view that the future instrument would benefit from the establishment of subsidiary bodies handling specific issues under the ultimate authority of the governing body or where the governing body should delegate its competence due to e.g. a technical nature of the matters.

The subsidiary bodies need to be established within the main body of future instrument, which should also allow the creation of additional subsidiary bodies by the governing body of the instrument, in a similar manner as is done in the Minamata Convention on Mercury. The provisions setting up the subsidiary bodies need to include all necessary elements to ensure that they can start their work without delay and that they can carry out the work in an effective way. The proposed subsidiary bodies are:

**A technical review committee** is needed to ensure continuous strengthening, updates and development of the instrument, on the basis of the best available knowledge and technical guidance. Such committee could be tasked to develop recommendations and provide guidance to the governing body on matters such as:

- Identification of problematic and avoidable (including unnecessary) plastic products based on criteria to be developed
- Identification of polymers and chemicals of concern based on criteria to be developed
- Development of criteria for circular design
- Provision and assessment of evidence base and standardized measuring methods on amounts, characteristics and impacts of plastics and microplastics in different environmental compartments
- Assessment of the sustainability of alternatives and substitutes etc.

**An implementation and compliance committee** has to be established to promote implementation of, and review compliance with, all obligations and provisions of the
instrument. The committee should make recommendations to the governing body, as appropriate, both in individual cases and for systemic issues. The EU and its MS believe that the compliance and implementation mechanism should be facilitative in nature, and the recommendations by the committee regarding individual compliance should, therefore, in principle be facilitative measures. In cases of repeated non-compliance, however, stronger measures should not be ruled out, to prevent jeopardizing the implementation of the legally binding instrument.

**A monitoring and review committee** should be tasked to periodically assess and evaluate collective progress in achieving the objectives of the instrument on the basis of the observed levels and trends in quantities and impacts of plastic in the environment, addressing efforts in relation to the implementation of all its provisions, based on a variety of sources, including national, regional and other reporting and information provided by the future SPP. On this basis, the committee could provide recommendations and guidance to the governing body regarding how to improve progress in achieving the objectives.

- **Scientific and technical cooperation and coordination**

The EU and its MS note that the issue of scientific and technical cooperation and coordination (presented in Appendix 1 section II.C) is linked to the issue of research (presented in paras. 36-38 of the options paper). The issue is also linked to the issue of cooperation and coordination more generally, on which the EU+MS have expressed views during INC-2 and subsequently submitted those.

It is important to address issues regarding research and science in a coherent and consistent manner clearly distinguishing a) the role of research and science and the need for cooperation; b) the need to periodically assess the state of knowledge of plastics, overall or thematically, to inform Parties and non-Parties; and c) the need to ensure scientific and technical advice to provide guidance to the governing body of the new instrument.

  a) **Research and science**

While noting that sufficient knowledge is available to warrant urgent action, and underlining the importance of the precautionary principle, it will be important for the instrument to promote further research, including on all elements in the lifecycle of plastics. The EU and its MS welcome options contained in E.3 of the options paper, notably paras. 36-38, as a basis for further deliberations on how the instrument could promote research.

  b) **Periodic assessment of the state of knowledge**

Regarding scientific knowledge related to plastic pollution, the EU and its MS propose to establish a clear relation between the future Instrument and the future Science-policy panel to contribute further to the sound management of chemicals and waste and to prevent pollution (SPP). We foresee that the governing body can request the SPP to provide relevant scientific knowledge and carry out assessment work. Such assessments could be general in nature, or focus on specific thematic areas around plastics,
and should in principle be done at the global level, with possible differentiation to UN (sub-)regions, or as deemed relevant and decided by the Parties. The governing body could consider assessments provided by the SPP in its regular meetings. It is important to underline that apart from the SPP, also a clear relationship with other global assessment panels such as UNEP-IRP, IPBES and IPCC should be established, as well as BRS conventions, especially for its focus on environmentally sound management of plastic waste (technical guidelines) and plastic waste shipment streams, as appropriate.

c) Scientific and technical guidance to the governing body
The EU and its MS underline the strong need for the instrument to be informed by concrete scientific, technical, and technological advice. It should allow for continuous strengthening, updates and development, on the basis of the best available knowledge and technical guidance. For this, the new instrument could benefit from a Technical Review Committee (see above). The EU and its MS would welcome an article along the lines of Stockholm Convention article 19(6).

- Secretariat
It is the view of the EU and its MS that a secretariat for the new treaty should be established, as is standard for MEAs. Its functions should be outlined in the body of the instrument. Looking at the options presented in Appendix I of UNEP/PP/INC.2/4, the EU and its MS are ready to explore and support the potential following functions for a working secretariat:
  (a) Make arrangements for sessions of the governing body, subsidiary bodies, if any, and the multistakeholder action agenda, if any, and provide related services as required;
  (b) Coordinate with the secretariats of other relevant international bodies and instruments, as appropriate;
  (c) Assist Parties in the exchange of information related to the implementation of the instrument as required;
  (d) Prepare and make available to the Parties periodic reports based on national reporting and other sources of information, as appropriate;
  (e) Enter, under the overall guidance of the governing body, into administrative and contractual arrangements that may be required for the secretariat to perform its functions;
  (f) Perform any secretariat functions specified in the instrument and any other functions as may be determined by the governing body.