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?

Proposed scope:
Norway does not see the need to define a scope for the agreement. Many Multilateral Environmental Agreements (MEAs) do not operate with an explicit scope, and usually the objective of the agreement and key definitions will be sufficient and indirectly serve the purpose as a scope. Examples of MEAs without a defined scope: the Stockholm Convention and the Minamata Convention.

The resolution "End plastic pollution" from the United Nations Environment Assembly (UNEA 5.2) gives a broad mandate to the INC-process and indirectly a scope for the agreement.

The risk of defining a scope now is that it could prove limiting in the goal of ending plastic pollution. It risks excluding important measures as scientific knowledge is still developing and there are emerging issues that the instrument could be suited to regulate further down the line. The agreement can and should be strengthened over time. Elements might be left out of the scope and issues deemed necessary to regulate in the future might unintentionally therefore not be regulated. This agreement should be an instrument fit to end plastic pollution.

Explanatory Text:
The treaty should address the whole value chain of plastic (design, production, use, recycling, disposal/waste). Products made partly of plastics, including composite material, should fall under the scope of the agreement. Chemical pollution is an integral part of plastic pollution, and regulation of chemicals in plastics should be a key element of the agreement. Agreeing on a definition of plastics and of plastic pollution would also make a scope redundant. E.g., Plastic pollution: emissions and leakage of (macro and micro) plastics and chemical pollutants from plastic production, use, recycling, and disposal, covering emissions and releases to all environmental compartments.
2. Principles

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

Proposed principles:
Norway does not see the need for a dedicated section on principles in the treaty, but that key principles are reflected in the preamble and in relevant Articles/Obligations, as done in other conventions (e.g., the Stockholm Convention and the Minamata Convention).

The following are examples of relevant principles and views on how they can be included in the treaty.

1) The precautionary approach
The precautionary approach states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Rio Principle 15). In other words, it requires preventive action in the face of uncertainty. This approach is included in many international treaties as well as national legislations on pollution/environmental protection. It has precedence through several relevant Multilateral Environmental Agreements (MEAs) including the Stockholm Convention, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change and the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

In the Stockholm Convention the precautionary approach is recognized in the preamble, the objective and embedded in the Convention. In a similar manner, the precautionary approach of the new plastics treaty should be embedded in the convention text to ensure preventive measures are taken to avoid environmental damage. Measures should be implemented at an early stage before serious or irreversible damage occurs and despite existing knowledge gaps (in the absence of full scientific certainty).

The precautionary approach also implies shifting the burden of proof to the proponents of an activity (reversal of proof). Cause and effect relationships are often difficult to fully established scientifically and the burden of proof should be on those who argue that a proposed activity will not cause significant harm. The principle should be evoked in the context of uncertainty about the effect on human health and on the environment. Lack of full scientific certainty is no excuse for inaction.

The precautionary approach is relevant to the treaty as such and all stages of the plastic life cycle. Aspects of particular importance include regulating chemicals and polymers of concern, production of primary plastic polymers, microplastics and other emissions.

2) The polluter pays principle
The polluter pays principle is a central principle in environmental law, stating that the polluter should, in principle, bear the cost of pollution (Rio principle 16). Many UN members have included this principle in their national legislation on pollution. It is included in several Multilateral Environmental Agreements (MEAs) such as the Stockholm Convention, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the London Protocol (Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter) and the
Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The principle is also indirectly evoked through systems for liability and compensation, such as through several of the instruments of the International Maritime Organisation (IMO).

The polluter pays principle should be an integral part of the plastics treaty as it places the responsibility on the polluter. In spite of the inclusion of this principle in several treaties and national legislation the cost of pollution is often borne by society at large and covered by public funding instead of being borne by those responsible for causing the pollution.

Similar as for the precautionary principle, historically the burden of proof has often been left to the public authorities. The polluter pays principle, when implemented effectively, relieves the burden of public financing for pollution control, remediation, and waste management.

The polluter pays principle is relevant to the treaty as such and should be an embedded feature of the treaty text. Topics of particular importance includes extended producer responsibility, emissions and releases of plastic throughout its life cycle, waste management and remediation of existing plastic pollution.

3) Waste hierarchy principle
A five-step hierarchy of waste management options which must be applied in this priority order. Waste prevention, as the preferred option, is followed by reuse, recycling, recovery including energy recovery and as a last option, safe disposal.

The waste hierarchy is widely used in national and regional legislation, including the EUs waste framework directive. While being an established principle, there can be benefits in further developing the waste hierarchy to put more attention to the upstream and preventive measures. The R-ladder could serve as an alternative in this respect. The R-ladder is more elaborate on the waste prevention stage by breaking it down to the following three stages; refuse, rethink, reduce. This will not only clarify which strategies are relevant to reduce waste, but also the strategies that are relevant to reduce consumption and production of plastics. Making the first step of the ladder more detailed and explicit will provide an important pedagogic measure to remind and enlighten national and local policy makers on the most key priorities and strategies when implementing the plastic agreement.

It is impossible to recycle our way out of the plastic problem. Preventive measures must be taken in order to reduce the overall supply of plastics in the economy. The waste hierarchy (or R-ladder) gives a clear priority order to the most effective actions to achieve key objectives of the agreement. By following the waste hierarchy, the environmental impact of consumption, production and waste creation is reduced, and resource efficiency is increased.

The waste hierarchy is relevant to several parts of the agreement, including but not limited to: (based on zero draft text): Primary plastic polymers; Product design, composition and performance; non-plastic substitutes. It is also important that the waste hierarchy (or r-ladder) is reflected in the incentives/fee structure in plastic EPR schemes. The hierarchy is central in the commitments related to waste management, and existing plastic pollution, including in the marine environment.
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).*

Proposed inputs:

**Preamble**

As proposed in the section on principles we prefer to include these in the preamble. Some additional elements to the preamble are added in the explanatory text below. Work on the preamble could be initiated at INC-3, an informal working group could be set up and if need be continue their work during INC-4, the co-chairs of the group could then present a draft with proposed element for the preamble.

*Explanatory Text:*

**Agenda 2030**

Agenda 2030 is relevant to the new plastics treaty. Agenda 2023 is holistic, and all the Sustainable Development Goals (SDGs are of relevance), in particular SDGs 3, 12 and 14. The preamble should include reference to sustainable development (Agenda 2030 and the principles of the Rio Declaration on Environment and Development), recognition of the interlinked triple planetary crisis of climate change, biodiversity loss and pollution.

As in Agenda 2030, the role and responsibility of business and civil society should be recognised. This wording could be inspired by the preamble in the Stockholm Convention. Recognizing the important contribution that the private sector and non-governmental organizations can make to achieving the reduction and/or elimination of emissions and discharges of "plastics". In this context the contribution from the “informal sector” and/or “workers in co-operative and/or informal sectors/setting” should be recognised.

**Definitions**

Norway's proposal is that only key terms should be defined and that concepts not strictly needed for the purpose of regulation/implementation do not require a definition (e.g., "circularity"). Discussing and agreeing on a number of definitions could take valuable time away from negotiating core obligations of the treaty and should be avoided. In addition, the understanding of certain terms could change over time, due to new scientific knowledge or otherwise, so that including these definitions could limit the flexibility of the treaty. Many MEA's of a similar nature strictly limit the number of definitions.

Based on this thinking, we propose to develop definitions for terms that are critical for the understanding and implementation of the obligations of the treaty, but to be cautious of those definitions that could change over time or where it could be challenging to arrive at an agreed text.

**Sectoral approach and a scientific and technical subsidiary body**

As previously proposed, in the submission to INC 2, Norway sees the need for a sectoral approach to several of the obligations in the treaty and for technical work within different sectors/areas of use.
(including but not limited to, fisheries, aquaculture, agriculture, packaging, textile, transportation, medical and healthcare, industry and construction). The Conference of the Parties to the new treaty could establish working groups under a scientific and technical body. The purpose of such work would be to provide guidance on sector specific issues, share best practice and propose candidates for listing in annexes, relevant examples: on design/product requirements, bans on specific products or polymers as well as effective measures to reduce leakage and emissions of microplastics.