



Council of the
European Union

Brussels, 13 July 2022
(OR. en)

11329/22

ENV 745
MAR 146
RECH 441
RELEX 1010
ONU 103

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 July 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 342 final
Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on behalf of the European Union for an international agreement on plastic pollution

Delegations will find attached document COM(2022) 342 final.

Encl.: COM(2022) 342 final



Brussels, 12.7.2022
COM(2022) 342 final

Recommendation for a
COUNCIL DECISION
**authorising the opening of negotiations on behalf of the European Union for an
international agreement on plastic pollution**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The Resolution 5/14 “End Plastic Pollution: towards an international legally binding instrument”¹, adopted by the United Nations Environment Assembly (UNEA) in March 2022, sets out a mandate for negotiations by an Intergovernmental Negotiating Committee (INC) of an international legally binding instrument on plastic pollution, including in the marine environment. The INC is expected to conclude its work by the end of 2024, with a first meeting to take place in 2022. UNEA may extend this mandate in time, if needed.

Resolution 5/14 was adopted following a series of UNEA resolutions since 2014, with UNEA3 representing a key milestone with UN Member States supporting a number of actions to eliminate the discharge of plastic litter and microplastics into the ocean and the establishment of an ad-hoc open-ended expert group on marine litter and micro-plastics (AHEG) to explore barriers to combating marine litter and microplastics. The AHEG concluded its work in 2020. It identified a number of response options to the global crisis of plastic pollution, including a global agreement on plastics, supported by majority of participants of the expert group, representing almost all regions. In October 2021 the UN report “From Pollution to Solution: a Global Assessment of Marine Litter and Plastic Pollution”² was published to inform UNEA 5.2 on the extent and aspects of global marine litter and plastic pollution.

Following a like-minded meeting hosted by the European Commission in 2020, Peru and Rwanda prepared a resolution with the objective of launching negotiations for a new international agreement on plastic pollution at UNEA5. Several international events, including a Ministerial Conference on Marine Litter and Plastic Pollution hosted by Germany, Ecuador, Vietnam and Ghana in 2021, contributed to building momentum for the resolution and ultimately resulted in final adoption of the resolution by consensus.

The objective of this Recommendation is to ensure a consistent and efficient negotiation position of the European Union (EU) in the sessions of the INC, with a view to negotiating and concluding an international legally binding instrument on plastic pollution.

• **Consistency with existing policy provisions in the policy area**

The launch of negotiations for an international agreement on plastics is a key achievement of the European Union’s Green Deal, the Circular Economy Action Plan³ and linked to a significant number of EU policies and legislation including on the protection of the marine and coastal environment, notably the Marine Strategy Framework Directive (MSFD)⁴. Ensuring an international agreement on plastics that tackles plastic pollution at its source instead of engaging at costly and not fully effective end of pipe solutions has thus been one of the Union’s key environmental priorities for global action over the past few years.

¹ UNEP/EA.5/Res.14.

² <https://www.unep.org/resources/pollution-solution-global-assessment-marine-litter-and-plastic-pollution>.

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1466.

⁴ Directive 2008/56/EC, the first instrument introducing the legal requirement to reduce marine litter and its impacts

This follows from dedicated and progressive Union policy initiatives and legislation on plastics in recent times⁵. In 2018, a Plastics Strategy⁶, forming part of the Circular Economy Action Plan⁷, set forth a blueprint to protect our environment and reduce marine litter, greenhouse gas emissions and our dependence on imported fossil fuels.⁸ Concrete action on plastics includes the impact of certain plastic products on the environment⁹, single use plastics¹⁰, the role of plastics in the circular economy¹¹, ecodesign requirements and labelling¹², plastics and packaging waste¹³ and the upcoming initiatives on intentionally added

⁵ https://ec.europa.eu/environment/topics/plastics_en

⁶ https://ec.europa.eu/environment/strategy/plastics-strategy_en?etrans=hr

⁷ See: https://ec.europa.eu/environment/topics/circular-economy/first-circular-economy-action-plan_en

⁸ See: https://ec.europa.eu/environment/strategy/plastics-strategy_en.

⁹ For example: [Directive \(EU\) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain *plastic* products on the environment \(Text with EEA relevance\)](#)

[Commission Implementing Regulation \(EU\) 2020/2151 of 17 December 2020 laying down rules on harmonised marking specifications on single-use *plastic* products listed in Part D of the Annex to Directive \(EU\) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain *plastic* products on the environment \(Text with EEA relevance\)](#)

[Commission Decision \(EU\) 2019/1268 of 3 July 2019 on the proposed citizens' initiative entitled 'Let's put an end to the era of *plastic* in Europe' \(notified under document C\(2019\) 4974\)](#)

¹⁰ For example: [Commission Implementing Decision \(EU\) 2022/162 of 4 February 2022 laying down rules for the application of Directive \(EU\) 2019/904 of the European Parliament and of the Council as regards the calculation, verification and reporting on the reduction in the consumption of certain single-use *plastic* products and the measures taken by Member States to achieve such reduction \(Text with EEA relevance\)](#)

[Commission Implementing Decision \(EU\) 2021/1752 of 1 October 2021 laying down rules for the application of Directive \(EU\) 2019/904 of the European Parliament and of the Council as regards the calculation, verification and reporting of data on the separate collection of waste single-use *plastic* beverage bottles](#)

¹¹ For example: [Commission Implementing Decision \(EU\) 2021/1384 of 13 August 2021 on the request for registration of the European citizens' initiative entitled 'ReturnthePlastics: A Citizen's Initiative to implement an EU-wide deposit-system to recycle *plastic* bottles' pursuant to Regulation \(EU\) 2019/788 of the European Parliament and of the Council \(notified under document C\(2021\) 5953\) \(Only the English text is authentic\)](#)

¹² [Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products \(Text with EEA relevance\)](#)

[Regulation \(EU\) 2020/740 of the European Parliament and of the Council of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation \(EU\) 2017/1369 and repealing Regulation \(EC\) No 1222/2009 \(Text with EEA relevance\)](#)

¹³ For example: [2009/292/EC: Commission Decision of 24 March 2009 establishing the conditions for a derogation for *plastic* crates and *plastic* pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste \(notified under document number C\(2009\) 1959\) \(Text with EEA relevance\)](#)

[1999/177/EC: Commission Decision of 8 February 1999 establishing the conditions for a derogation for *plastic* crates and *plastic* pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste \(notified under document number C\(1999\) 246\) \(Text with EEA relevance\)](#)

[Directive \(EU\) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight *plastic* carrier bags \(Text with EEA relevance\)](#)

and un-intentionally released microplastics¹⁴. The Strategy also analysed the potential for harnessing global action, identifying the need (inter alia) for the development of international standards to boost industry confidence in the quality of recyclable or recycled plastics. In relation to waste shipments, it noted the importance of ensuring that any plastics sent abroad for recycling are handled and processed under conditions similar to those applicable in the EU, supporting action on waste management under the Basel Convention, and it proposed development of an EU certification scheme for recycling plants. It called for a global industry effort to promote widespread use of recyclable and recycled plastics.

In the frame of the Circular Economy Action Plan, the Commission will additionally propose mandatory requirements for recycled content and waste reduction measures for key products such as packaging, construction materials and vehicles.

Under the abovementioned MSFD, in September 2020¹⁵ the EU and its Member States agreed that there should be no more than 20 litter items per 100 meters of coastline, placing the EU in a frontrunner position for fulfilling SDG 14.1, which requires to “By 2025, prevent and significantly reduce marine pollution (...) including marine debris (...)”. The support activities underpinning the implementation of the EU Marine Strategy Framework Directive (MSFD), executed in close collaboration with the Regional Sea Conventions, have demonstrated that harmonisation of monitoring, data acquisition and handling in the different environmental matrices is crucial for enabling prioritisation of efforts and for the verification of effectiveness of measures against plastic litter. Under the MSFD Common Implementation Strategy, the Technical Group on Marine Litter¹⁶ is, in close collaboration with Regional Sea Conventions, providing technical harmonisation and collaborates with EMODnet, providing a data platform for marine litter data¹⁷.

The new international agreement will address plastic pollution, including in the marine environment. Pollution and the tackling of its sources is also a key priority of the European Green Deal, most recently in the Commission’s strategy on Zero Pollution to air, water and

[Council Regulation \(EU, Euratom\) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income](#)

[Commission Implementing Decision \(EU\) 2018/896 of 19 June 2018 laying down the methodology for the calculation of the annual consumption of lightweight plastic carrier bags and amending Decision 2005/270/EC \(notified under document C\(2018\) 3736\) \(Text with EEA relevance.\)](#)

[Proposal for a COUNCIL REGULATION on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements](#)

[Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags](#)

[Commission Decision of 11 August 2021 on setting up the Commission expert group on statistics on plastic packaging waste 2021/C 324/05](#)

¹⁴ See: https://ec.europa.eu/environment/topics/plastics/microplastics_en. This does link partially with certain Union legislation notably the Marine Strategy Framework Directive. For intentionally used microplastics, a REACH restriction process is on-going: <https://echa.europa.eu/hot-topics/microplastics>.

¹⁵ https://ec.europa.eu/commission/presscorner/detail/en/mex_20_1696

¹⁶ https://mcc.jrc.ec.europa.eu/main/dev.py?N=41&O=434&titre_page=&titre_chap=TG%20Litter

¹⁷ <https://www.emodnet-chemistry.eu/marinelitter>

soil and the Chemicals Strategy on Sustainability. The recently adopted Zero Pollution Action Plan set reduction targets for 2030 (i. e. to reduce plastic litter at sea by 50 % and microplastics released into the environment by 30%), further boosting the effectiveness of EU policies against marine litter and its impacts. Addressing plastic pollution at a global level thus very much dovetails with multiple existing Union policies and legislation relating to the protection of the environment from pollution. This can include waste¹⁸, shipments of waste¹⁹, chemicals²⁰, bathing water²¹, and other (such as Urban Waste Water Treatment and Water Framework Directives)²².

¹⁸ [Regulation \(EC\) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics \(Text with EEA relevance\)](#)

[Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives \(Text with EEA relevance\)](#)

[Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment \(WEEE\) Text with EEA relevance](#)

[European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste](#)

¹⁹ For example: [Regulation \(EC\) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste](#)

[Directive \(EU\) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC \(Text with EEA relevance\)](#)

²⁰ For example: [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 \(REACH\), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation \(EEC\) No 793/93 and Commission Regulation \(EC\) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC](#)

[Regulation \(EC\) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC \(Text with EEA relevance\)](#)

[90/437/EEC: Commission Recommendation of 27 June 1990 on the reduction of chlorofluorocarbons used by the Community's foam plastics industry](#)

[Commission Regulation \(EU\) No 284/2011 of 22 March 2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China](#)

[Commission Regulation \(EU\) 2018/2005 of 17 December 2018 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\) as regards bis\(2-ethylhexyl\) phthalate \(DEHP\), dibutyl phthalate \(DBP\), benzyl butyl phthalate \(BBP\) and diisobutyl phthalate \(DIBP\) \(Text with EEA relevance.\)](#)

[Commission Regulation \(EU\) No 1272/2013 of 6 December 2013 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\) as regards polycyclic aromatic hydrocarbons Text with EEA relevance](#)

[Commission Regulation \(EU\) 2016/293 of 1 March 2016 amending Regulation \(EC\) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I \(Text with EEA relevance\)](#)

[Commission Regulation \(EU\) No 848/2012 of 19 September 2012 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\) as regards phenylmercury compounds Text with EEA relevance](#)

The EU contributes substantially to international initiatives directly related to curbing plastic pollution, such as the implementation of the Basel Convention on the transboundary shipments of waste, as recently amended with enhanced controls on plastic waste,²³ and the IMO (International Maritime Organisation) Action Plan against plastic litter and microplastics. Furthermore, the EU participates actively in all actions against plastic pollution in the marine regions around Europe (through technical and financial support to the Regional Action Plans in Mediterranean, Black Sea, Baltic and Northeast Atlantic) and with its G7 and G20 partners. The EU has also co-sponsored an initiative in the WTO that addresses plastic pollution and sustainable plastics trade.

Plastics and its pollution permeate well beyond environmental policy considerations. The section below sets out its crosscutting relevance to diverse policies across the Union's remit.

- **Consistency with other Union policies**

The proposed Recommendation is also consistent with other Union policies and legislation, such as on:

- health, specifically those policies and actions regarding materials and articles intended to come into contact with food²⁴, Union policies on the protection of the marine and coastal environment,
- port reception facilities²⁵,
- EU Sustainable Finance Taxonomy, particularly in respect of “do no serious harm” criteria for plastic packaging and other plastic products,
- Future development of Ecodesign criteria including for packaging and other plastic products placed on the EU Single Market,
- The proposed revision of the Waste Shipments Regulation,
- Basel and Stockholm Conventions,
- Development cooperation and international partnerships,
- Bilateral and multilateral relations,
- Union policy on Persistent Organic Pollutants within the framework of the Stockholm Convention, with several plastic additives listed or proposed for listing, and

²¹ [Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC](#)

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31991L0271>

²³ The fourteenth meeting of the Conference of the Parties to the Basel Convention in 2019 adopted amendments with the objectives of enhancing the control of the transboundary movements of plastic waste.

²⁴ For example [Regulation \(EC\) No 1935/2004 on food contact materials; Regulation \(EU\) No 10/2011 on plastic food contact materials; Regulation \(EC\) No 282/2008 on recycled plastic materials and articles \(replacement expected in Q4 2022\)](#)

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0883&rid=1>

- Chemicals policy, including REACH restrictions on microplastics and plastic additives and the recently published Restriction Roadmap²⁶, which targets widely used additives (such as flame retardants) and PVC.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The procedural legal basis for the proposed decision is Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

Article 218(3) of the TFEU provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominating the Union negotiator. According to Article 218(4) of the TFEU, the Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be concluded.

The agreement should be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be reflected at source, and on the polluter pays principle, with the specific basis to be considered at a later stage once more information is available on the scope and content of the international agreement on plastic pollution.

• Subsidiarity

Although its exact scope is not yet known, the envisaged international agreement is intended to address plastic pollution through measures along the entire lifecycle of plastics, including product design, production, consumption, use and the sound management of plastic waste. The foregoing sections on the policy area and its related policy links under the Union's remit, aptly demonstrate the leading role that the Union has played to date and the appropriateness of handling negotiations for the envisaged agreement at Union level.

The envisaged agreement will therefore have an inevitable impact on the exercise of Union competences and on Union legislation in areas such as (in particular) environment, trade and internal market, all of which might become relevant as the negotiations on specific provisions unfold.

In view of the above and the likely affectation of existing Union provisions (in particular those covering the 'policy area' listed under Heading 1) in different areas of the Union's action, it is essential that the participation of the Union in the future negotiations and resulting international agreement is assured.

• Proportionality

This will be the first multilateral agreement addressing plastic pollution by a holistic approach covering both the upstream and the downstream part of the plastic life cycle. Several national and regional initiatives that address plastic pollution, including marine plastic pollution, already exist, but they have not proven sufficient to respond to the global challenge of plastic pollution. The Ad-hoc Open-Ended Working Group on Marine Litter and Micro-Plastics, established at the third session of the UNEA in response to UNEP/EA.3/Res.7 Marine Litter and Microplastics, and which concluded its work in November 2020, identified a global agreement on plastics as a key response option to the global crisis. At UNEA 5 the Resolution

²⁶ <https://ec.europa.eu/docsroom/documents/49734>

5/14 “End plastic pollution: towards an international legally binding instrument”, which called UNEP’s Executive Director to establish the INC, was adopted.

A Council Decision is necessary to authorise the opening of negotiations by the Union on a global agreement on plastics in order to address plastic pollution.

The proposed recommendation does not go beyond what is necessary for achieving the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union (TEU).

- **Choice of the instrument**

The choice of the instrument is stipulated in Article 218(3) and 218(4) of the TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

According to Article 37 of the Charter of Fundamental Rights of the European Union, a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

The proposed recommendation seeks authorisation for the opening of negotiations with a view to address plastic pollution, not only in marine environments, but also on land, by addressing the entire plastic life cycle. This would have a positive impact upon the right on environmental protection, as enshrined in Article 37 of the Charter of Fundamental Rights of the European Union.

According to Article 37 of the Charter of Fundamental Rights of the European Union, Union policies shall ensure a high level of consumer protection.

The proposed recommendations would equally positively impact upon the right on consumer protection by also taking into account the upstream part of the plastic life cycle, i.e. product design, production and labelling of plastic products.

According to Article 3(1) of the Charter of Fundamental Rights of the European Union, everyone has the right to respect for his or her physical and mental integrity.

The proposed recommendation would positively impact upon the right to the integrity of the person as well, as it also aims to tackle the risks plastic pollution, in particular microplastics, is posing to the human physical health.

4. BUDGETARY IMPLICATIONS

The exact budgetary implications of this initiative are impossible to determine at this stage insofar as its scope and key elements remain to be multilaterally negotiated. There will be a negotiation process with numerous INC meetings until a Diplomatic Conference expected not before 2024.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

A preparatory meeting (Open-ended Working Group/OEWG) on organisational matters pertaining to the INC took place from 30 May to 1 June 2022 in Dakar, Senegal.

Negotiations proper on the new instrument will start at the first meeting of the INC in the second half of 2022 (date and venue tbc).

- **Explanatory documents (for directives)**

No.

- **Detailed explanation of the specific provisions of the proposal**

The Commission recommends that:

- The Council authorises the Commission to open and conduct negotiations for the conclusion of a new international agreement on plastic pollution,
- The Commission is nominated as Union negotiator,
- The Commission conducts the negotiations in consultation with the special committee if designated by the Council in accordance with Article 218(4) TFEU,
- The Council approves the negotiating directives annexed to this recommendation.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on behalf of the European Union for an international agreement on plastic pollution

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty in the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The United Nations Environment Assembly at its Fifth Session from 28 February to 2 March 2022 adopted the Resolution “End plastic pollution: towards an international legally binding instrument” (5/14) establishing an intergovernmental negotiating committee to negotiate a new international agreement to address plastic pollution, including in the marine environments, with a view to address the entire life cycle of plastics.
- (2) The Union, should participate in the negotiations on such convention, agreement or other international instrument,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate on behalf of the Union an international agreement on plastics to end plastic pollution as set out in the UNEA-5.2 Resolution 5/14.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*