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Delegations will find attached document COM(2023) 514 final/2. This is a downgraded version of the Commission proposal (12851/23 ADD 1) issued on 11 September 2023..

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EUROPEAN
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ANNEX

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to the

Proposal for a COUNCIL DECISION

**on the positions to be taken on behalf of the European Union at the tenth session of the
Conference of the Parties to the World Health Organization (WHO) Framework
Convention on Tobacco Control (FCTC)**

ANNEX

Union positions on the key issues to be discussed at the tenth session of the Conference of the Parties to the FCTC, in Panama from 20 to 25 November 2023.

I. Implementation of Articles 9 and 10 of the WHO FCTC (Regulation of contents and disclosure of tobacco products): reports by the Bureau, by the Expert Group, and by WHO

The Union shall, with regard to the reports by the Bureau and by the Expert Group:

1. Thank for the work done by the expert group and agree with the key recommendations that:
 - tobacco product regulation is a powerful tool and should be part of any comprehensive tobacco control strategy, in particular in the changing tobacco market and regulatory environment;
 - addressing new tobacco and related products requires a multipronged approach based on good coordination among various actors, including the Secretariat, its existing Knowledge Hubs, the WHO, the WHO Study Group on Tobacco Product Regulation, the WHO Tobacco Laboratory Network, the WHO collaborating centres, the Global Tobacco Regulators Forum and the civil society; as well as
 - note some interesting ideas taken up in that report, such as the suggestion that Parties should explore the possibility to fund activities related to implementation of Articles 9 and 10 of the FCTC through fees collected from economic operators.
2. Note the recommendation to set up a knowledge hub and invite the Secretariat and the expert group to further demonstrate the benefits and value added of creating a supplementary knowledge hub and how it would interrelate with the already existing structures.
3. Agree to continue the work at the expert group level with a view to discussing future steps in the implementation and possible development of future guidance on Articles 9 and 10, taking into consideration in particular the following:
 - all pertinent issues and evidence, including the impact of new products and product features entering the market;
 - added value of the key recommendations of the expert group (in point 1).
4. Agree that the mandate of the working group to elaborate guidelines for implementation of Articles 9 and 10 of the FCTC remains suspended until otherwise decided by the COP at a future session.

The Union shall, with regard to the report by the WHO:

1. Welcome its focus on Electronic Nicotine Delivery Systems (ENDS), including disposable ones, Electronic Non-Nicotine Delivery Systems (ENNDS), emerging products and the role of flavours and flavouring agents, and the related recommendations to the Parties.
2. Note that disposable ENDS and also nicotine pouches and other tobacco-free nicotine products should be monitored in the future, while a strong regulation of the first two should be considered to protect children and adolescents.

3. Welcome the development, adaptation, and validation of methods for the determination of relevant contents and emissions of tobacco and nicotine products, as well as ENDS and ENNDS.
 4. Acknowledge that ventilation is one of several methods used by the tobacco industry to promote smoothness and make products more appealing, which needs to be taken into account when undertaking efforts to protect children, adolescents and non-smokers from the harmful effects of smoking, and affects the accuracy of the machine-measurement results.
 5. Reiterate that technical work should continue to be carried out by the WHO and related entities.
- II. **Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media:** report by the Working Group

The Union shall:

1. Support the adoption of specific guidelines on cross-border tobacco advertising, promotion and sponsorship (TAPS) addressing *inter alia* new and innovative marketing strategies, such as the increasing use of social media platforms, and tobacco depictions in the entertainment media, including films, computer games, TV and streaming programmes, music, videos, etc.
2. Such guidelines should:
 - supplement the existing Guidelines on Article 13 of the FCTC, and in no way substitute or replace them;
 - ensure that civil society has a crucial role in ensuring their enforcement and implementation;
 - cover digital media communication platforms in the widest possible manner, including internet-accessible online spaces where users can post, purchase, view, share, create, upload, stream or engage with content that includes any form of electronic media such as digital video, audio, pictures, social media, apps, games, web pages and interactive media;
 - ensure effective enforcement of TAPS bans by asking Parties to work collaboratively and systemically to monitor, identify, remove and prevent cross-border TAPS and TAPS across digital media communication platforms;
 - recommend a comprehensive ban on advertising, promotion and sponsorship of novel and emerging tobacco products, including devices used with them, the function of which is to enable the consumption of such products;
 - impose particular obligations, in accordance with national law, on content hosts to identify TAPS and remove TAPS at least when notified by the competent authorities or civil society of tobacco advertising, promotion and sponsorship.

III. **Novel and emerging tobacco products:** reports by the Secretariat and by WHO

The Union shall, with regard to the reports by the Secretariat and by WHO:

1. Note with concern the growing market of novel and emerging tobacco products, including heated tobacco products (HTPs).
2. Regret the postponement of substantive discussions on this agenda item which allowed the tobacco industry to further increase in the meantime the market presence of novel and emerging tobacco products. This may have led to a delay in preparation

and implementation of effective tobacco control measures on these products, including on HTPs.

3. Note the recognition that novel and emerging tobacco products are subject to the provisions of the FCTC, and that the Secretariat report on the challenges posed by and classification of novel and emerging tobacco products concludes that all articles of the FCTC and their guidelines for implementation can be applied to novel and emerging tobacco products, including HTPs, and where appropriate, should be extended to the devices needed for their use if they are not covered by national legislation.
4. Express concern as to the fact that no straightforward conclusion was drawn regarding the further update and development of the current FCTC guidelines to explicitly take into account novel and emerging tobacco products, including HTPs.
5. Note the conclusions on smoke, which are relevant for tobacco-related discussions at international level and note that the report is inconclusive about whether combustion is present when using HTPs.
6. Emphasize that appropriate taxation of HTPs, as a substitute for other tobacco products, is an important tool in the context of tobacco control strategy.
7. Consider it important to continuously monitor the use of novel and emerging tobacco products, including HTPs, especially by young people, as well as to monitor the developments in other international bodies, such as the World Customs Organisation, in order to check to which extent health aspects are to be taken into account in the implementation of the new customs classification of novel and emerging tobacco products and nicotine products.

IV. Forward-looking tobacco control measures (in relation to Article 2.1 of the WHO FCTC)

The Union shall:

1. Note that Article 2.1 of the FCTC encourages Parties to implement measures beyond those required by the FCTC.
2. Agree, in this regard, to cooperate with other Parties and work together (e.g., at the expert group level) with a view to identifying and discussing forward-looking tobacco measures within the scope of Article 2.1 of the FCTC, as contemplated, proposed or adopted in different countries.

V. Implementation of Article 19 of the WHO FCTC: Liability

The Union shall:

1. Recall that Article 19 of the FCTC requires Parties to consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.
2. Recognise possible synergies between Article 19 and Article 5.3 of the FCTC, and agree to cooperate with other Parties and work together (e.g., at the expert group level) with a view to exploring these synergies and appropriate means to support, upon request, the Parties in their legislative, enforcement and other actions, to ensure accountability and deterrence, as well as access to justice and effective remedies for those affected by tobacco harms.

VI. Improving the reporting system of the WHO FCTC

The Union shall:

1. Acknowledge the value of periodic reports on the implementation of the Convention submitted by each Party.
2. Thank the Secretariat for exploring how to improve the reporting system of the FCTC and support its further development.

VII. Implementation Review Mechanism

The Union shall, with regard to the report by the Secretariat on the Implementation Review Mechanism:

1. Welcome the report and thank the Secretariat, the experts and the volunteering Parties for the successful completion of the pilot project exercise.
2. Agree to establish the Implementation Review and Support Mechanism as well as to adopt its terms of reference and the costed strategy for the development of detailed costing for its support.
3. Invite the Secretariat to clarify the next steps for the launch of the Implementation Review and Support Mechanism.

VIII. Contribution of the WHO FCTC to the promotion and fulfilment of human rights

The Union shall:

1. Acknowledge the mutually supportive nature of the FCTC and the human rights and the need to raise awareness of the importance of the FCTC implementation for the fulfilment and protection of human rights.
2. Acknowledge the need to cooperate internationally to address the issue of increased tobacco consumption, by linking the human rights framework and tobacco control efforts.

IX. Proposed Workplan and Budget for the financial period 2024-2025

The Union shall:

1. Support the adoption of the proposed Workplan and Budget for the period 2024-2025, following the established structure from the previous periods.
2. Welcome the fact that there is no proposed increase in Assessed Contributions (AC) and support the efforts that the Secretariat put in having explored potential savings.
3. Support and encourage extra budgetary contributions to support the continuing implementation of the FCTC.
4. Support that the initial management and administration costs of the Investment Fund are to be covered with extra budgetary contributions.

X. WHO FCTC Investment Fund

The Union shall, with regard to the report by the Secretariat:

1. Thank the Secretariat for having made the arrangements to launch the WHO FCTC Investment Fund, as requested by COP decision FCTC/COP9(13).
2. Reaffirm the principles for the launch and operation of the Investment Fund as presented during COP9, in particular:

- The contribution to the Investment Fund should remain voluntary and there should be no consequence for Parties deciding not to invest in this dedicated financial instrument.
 - The funds should remain complementary and the generated additional resource should not be used to replace non-paid Assessed Contributions or divert donors from providing Extra-Budgetary Contributions when appropriate.
 - The costs related to the operation of Investment Funds should be carefully assessed and monitored, seeking synergies and limiting additional workload and costs borne by the Secretariat.
 - The activities to be funded by the Investment Fund should be clearly detailed and assessed, while COP and the MOP shall be the main bodies entitled to take decisions regarding the allocation of the Fund.
 - Any resource of the Secretariat dedicated to the Investment Fund should not bring prejudice to the Secretariat's fulfilment of its core objectives.
 - Compliance with Article 5.3 of the FCTC shall be ensured.
3. Support the establishment of a single Oversight Committee, with its appropriate terms of reference, serving the FCTC and the Protocol Investment Funds, to provide support to the COP and the MOP and their Bureaus in the governance of the Funds.

XI. Payment of assessed contributions and measures to reduce Parties in arrears

The Union shall:

1. Welcome that some Parties have cleared their arrears, in response to the Secretariat's actions taken to encourage the payment of AC and to reduce the number of Parties in arrears.
2. Note that those actions by the Secretariat will have to be continued to avoid any further increase in the total amount of outstanding AC.
3. Call on Parties to fulfil their financial commitments to the Convention and encourage all Parties with outstanding ACs to make their contribution in accordance with the FCTC as soon as possible.

XII. Review of accreditation of nongovernmental organizations with the status of observer to the Conference of the Parties

The Union shall:

1. Thank the Convention Secretariat for preparing the report on this item and highlight that all 26 nongovernmental organizations (NGOs) accredited as observers to the COP have responded to the online questionnaire before the required deadline. No conflicts of interest were declared in any of the NGO reports.
2. Support that the observer status of these 26 NGOs is maintained.

XIII. Possible amendments to the Rules of Procedure of the Conference of the Parties

The Union shall:

1. Propose an amendment of Rule 8 that currently obliges the Secretariat to distribute the provisional agenda, together with other conference documents, to the Parties at least sixty days before the opening day of the session. This period should be extended to 120 days before the opening of the session in order to enable regional economic integration organizations and federal countries to properly prepare and

establish their positions. This period should at the least be ensured for conference documents for COP decisions that are legally binding on the Parties or have important policy or legal implications.

2. Support amendments proposed to simplify and rationalise the work at the COP, such as accepting the approval of the verbatim records after the close of the session or introducing the general possibility of live webcasting of agenda items of COP sessions, subject to an approval by the COP at the beginning of each session.
3. Agree to clarify, without amending the Rules of Procedure of the COP, that verbatim records of plenary meetings are understood to include audio files.
4. Support the amendment related to arranging for virtual sessions of the COP; however, virtual sessions should not be strictly limited to exceptional circumstances, thereby taking into consideration also the need to balance the environmental costs of in-presence sessions whenever possible.
5. Support the amendment to define more clearly the participation of the members of the Bureau of the Meeting of the parties (MOP) in the appointment of the Head of the Secretariat, as well as the amendment providing for the possibility of designating an acting Head of the Secretariat, when required.
6. Support the amendment related to the presence of accredited media in public sessions, as this amendment leads to better consistency between Rules 2 and 32.

XIV. Strengthening synergies between the Conference of the Parties and the World Health Assembly: report by the WHO Director-General on resolutions and decisions of the World Health Assembly

The Union shall:

1. Note the report by the WHO Director-General on the outcomes of the Seventy-fifth and Seventy-sixth World Health Assembly (WHA) and WHO Regional Committees relevant to the implementation of the FCTC.
2. Welcome the opportunity to be updated on the resolutions of relevance for the FCTC taken by the WHA.

XV. Appointment of the Head of the Convention Secretariat: report by the Bureau

The Union shall:

1. Support the improvement of the process for the selection and appointment of the Head of the Secretariat, established by decisions FCTC/COP8(8) and FCTC/MOP1(12), including modifications to simplify a single renewal of the term of office of the Head of the Secretariat for a further four years, provided that his/her performance is beforehand evaluated and assessed positively.
2. Support the improvement of the criteria for the selection of the candidates for the position of the Head of the Secretariat; however, request that aspects related to the Protocol to the FCTC are added to the selection criteria. In particular, documentary criteria 1 should include strong background, knowledge and substantive experience in fight against illicit trade, and documentary criteria 2 should include experience in fight against illicit trade and strong links with the international anti-fraud community.

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