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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
Subject:	WHO Framework Convention on Tobacco Control (FCTC) – Ninth session of the Conference of the Parties (COP9), online, 8-13 November 2021 Common position on Agenda item 6.4 (Investment Fund) - <i>Approval</i> - <i>Decision to use the written procedure</i>

Introduction

1. The Ninth session of the Conference of the Parties (COP9) to the Framework Convention on Tobacco Control (hereinafter "FCTC") will be held virtually from 8-13 November 2021.
2. Concerning Agenda item 6.4, the Council Legal Service has drawn the attention to the fact that the establishment of an Investment Fund constitutes a new policy in the FCTC framework and may be politically sensitive. Therefore, the Council should be invited to establish the corresponding common position.
3. The Working Party on Pharmaceuticals and Medical Devices, at its meeting held on 15 October 2021, agreed on the common position on item 6.4 as set out in the Annex.¹

¹ As outlined in document 13021/21, the Working Party on Pharmaceuticals and Medical Devices has tentatively agreed common positions and EU Positions on all relevant COP9 Agenda items.

4. In the light of the above, the Permanent Representatives Committee is invited:

- to confirm the agreement reached at the Working Party level on the common position on Agenda item 6.4; and
- to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, as extended, that the Council uses the written procedure for its approval.

Agenda item 6.4**Convention Secretariat's fundraising strategies: Investment Fund concept
(Doc. FCTC/COP/9/15 and INF.DOC./2)****Common position**

The EU and its Member States

- thank the Convention Secretariat for submitting proposals for Investment Funds and for holding information sessions ahead of COP9 and MOP2.
- express their reservations regarding the set up of the Investment Funds, in detail:
 1. Contrary to the assumption, the Investment Funds do not fulfil the need to provide for “sustainable and predictable resources”, because of their nature and of the current financial and political environment. In case of a lower amount of contributions and/or a low return of investment, or in case that donors withdraw their contribution before the end of the contract, the expected sum will not be generated and therefore the management costs of the funds might be disproportionate compared to the generated interests, given the management costs' fixed nature.
 2. The funds may create competing interests that could be detrimental to securing the financing of certain activities of the Convention and of the Protocol.
 - First, potential donors to the Investment Fund may be detracted from providing Extra-Budgetary Contributions. This situation would have negative consequences for the amount available to immediately finance specific projects and actions.

- Second, launching two separate funds (one for the Convention and one for the Protocol) may create competing interests in the donor community between the two instruments and undermine the ability to reach the expected amount for each of these Funds.
 - Third, resources involved in managing the funds (see below) may be detrimental to the proper collection of outstanding Assessed Contributions, as well as to the exploration of complementary financial resources. Related to the latter, we regret that alternative financial solutions no longer feature in the budgetary proposal, these alternative solutions might have provided additional complementary and tangible resources, as previously indicated by the draft budget and workplan presented in December 2020 (including savings and the contingency fund).
3. Managing the Investment Funds would divert Convention Secretariat resources from priority activities of the Convention and of the Protocol. The Investment Funds appear to be resource consuming proposals, whereas the FCTC staff should be fully dedicated to the actions required for the implementation of the Convention and of the Protocol, including assistance and guidance provided to the Parties to achieve the core objectives of the Convention and Protocol. These priorities for the Secretariat include first and foremost that existing finances are fully accounted for and to ensure outstanding Assessed Contributions from the Parties are duly collected. Moreover, managing the Investment Funds requires specific skills and knowledge that are not directly linked to the scope and core activities of both the Convention and the Protocol. This raises doubts as to the relevance and value added for the Convention Secretariat to be involved in managing these instruments, and are concerned that the Secretariat is not best placed to manage or guide the Parties regarding these financial instruments without investing significant time and resources on their side.

4. Finally, despite some guarantees announced by the Convention Secretariat, a legal risk remains as regards compliance with Art. 5.3 of the Convention.
- In the event of the Parties' (COP/MOP) decision to launch an Investment Fund, given the reservations made by the EU and the Member States stated above, the following conditions would have to be met:
 1. Basic principles already included in Documents COP/9/15 and MOP/2/12 have to be highlighted:
 - the contribution to the Investment Funds should remain voluntary and there should be no consequence for Parties deciding not to invest in this dedicated financial instrument, regardless of the fact that they support or not the proposed instrument;
 - the funds should also 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.
 2. As regards the reservation concerning the costs related to the Investment Funds, we require that these costs are carefully assessed and monitored. Costs to be paid by the revenue generated by the Investment Fund should be clearly detailed and assessed:
 - the fixed sum allocated to the World Bank should be further detailed to understand the scope of activities expected from the World Bank and allow the Convention Secretariat to negotiate this sum;

- the costs related to possible activities such as external studies should be proportionate to the revenues generated; in case of the absence of revenue or low revenue, such costs should not be incurred;
- In the case that WHO charges the standard 13% Programme Support Costs on the revenues of the Investment Fund, therefore decreasing the amount of the revenue, this should be made clear.

Given the need for the Convention Secretariat to maintain its efforts on core activities of the Convention and of the Protocol, we invite the Convention Secretariat to seek synergies and limit additional workload and costs borne by the Convention Secretariat.

More specifically, if one additional staff member would be appointed to deal with the activities related to the funds, the tasks related to the Convention IF and the Protocol IF should be dealt with the same person and the related costs should be shared between the Convention budget and the Protocol budget, in proportion to the amount of each fund.

Furthermore, it appears that the budgets and workplans for 2022-2023 foresee provisional spending related to fundraising campaign for the IF (19 000 USD for the Convention, 15 000 USD for the Protocol). We invite the Convention Secretariat to limit this spending.

Linked to the proposals for synergies and reduction of workload of the Convention Secretariat, a single Investment Fund may be considered for financing the activities of both the Convention and Protocol.

3. As regards the reservation concerning the priority activities of the Convention Secretariat, we require that any resource dedicated to the Funds should not detract the Convention Secretariat from efforts related to its objectives, including:
- dedicating its resources primarily to the core objectives and activities of the Convention and the Protocol; launching and managing an IF should not lead the Convention Secretariat to delay its activities and/or to affect the quality of its own work and support to the Parties to achieve our objectives.
 - securing traditional resources, namely collecting outstanding Assessed Contributions and securing extra-budgetary contributions [as well as promoting FCTC implementation in existing non-communicable diseases (NCD) programmes].
4. As a general rule, the COP and the MOP must be the main bodies entitled to take decisions regarding the allocation of this resource.

Since the Investment Funds may provide long-term financial resources, the use of this resource has to be carefully assessed as regards its amount, its mid-term/long-term availability and its predictability, before any decision is taken to allocate it.

In order to clarify this principle, there is a need to discuss basic rules for the allocation of this additional resource at an early stage of the process and to consider including some of these principles in the decision.

5. Compliance with Art. 5.3 of the Convention shall be ensured.
- In the event of the Parties' (COP/MOP) decision to launch the Investment Funds, the EU and its Member States would need to obtain clarity on the following points:
 1. What would be the nature of the required relevant experience for the members of the Oversight Committee?
 2. Ensure the fact that the COP decision includes Annex 1 (FCTC/COP/9/15) as well.
 3. Clarify who the “designated stakeholders” are as referred to in section B point 5 (“The Convention Secretariat will report on the performance of the Fund to the COP, to investors and to designated stakeholders.”).
 4. What does “the application of WHO rules and the World Bank financial and good governance rules” referred to in Section C point 7 and Section D point 8 mean?
 5. What are the reasons for approval of non-Party funders by COP (Section G point 14) (we recall that it is not needed for extra-budgetary contributions)?
 6. Why the World Bank reports to Secretariat and not directly to the Oversight Committee and COP (Section H point 15)?
 7. What kind of activities are foreseen to be supported from the Fund?
(FCTC/COP/9/15 Section I point 23: The implementation of activities in the COP workplan and budget that are supported by the Fund and
FCTC/COP/9/INF.DOC./2 Question 12: Examples include key measures to assist in the implementation of the WHO FCTC, in line with the Global Strategy.)
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