



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.5.2003
COM(2003) 307 final

Proposal for a

COUNCIL DECISION

on the signing of the World Health Organisation's Framework Convention on Tobacco Control

(presented by the Commission)

EXPLANATORY MEMORANDUM

INTRODUCTION

The objective of the World Health Organisation's Framework Convention on Tobacco Control is to protect present and future generations from the consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at national, regional and international levels. This will make for a sustained reduction in the levels of tobacco use and exposure to tobacco smoke.

The Convention was adopted by the World Health Assembly on 21 May 2003, and will be open for signature at the World Health Organisation (WHO) headquarters in Geneva from 16 to 22 June 2003, and after that date at the United Nations headquarters in New York.

Adoption of the Convention was the final step of a procedure initiated in 1999, when, in view of the serious global health consequences caused by tobacco consumption, the World Health Organisation decided to establish an intergovernmental body open to all Member States of the organisation with the aim of drafting and negotiating an international framework convention on tobacco control and related protocols designed to curtail the global spread of tobacco and tobacco products and thus limit the health effects resulting from tobacco consumption.

BASIS FOR COMMUNITY INVOLVEMENT IN THE NEGOTIATIONS

The development of a WHO Framework Convention on Tobacco Control and related protocols was seen as an effective way of increasing international co-operation in the field of public health protection, as provided for in Article 152(3) of the EC Treaty, while at the same time ensuring that existing Community initiatives were respected and integrated at international level.

On this basis, and taking into account the Resolution of 24.05.99 of the World Health Assembly, allowing the European Community to participate in the drafting and negotiations for matters under its competence, the Council, acting upon a recommendation from the Commission, adopted on 22 October 1999 a decision authorising the Commission to negotiate on behalf of the European Community, within the context of the World Health Organisation, an international framework convention on tobacco control and related protocols.

The negotiations were conducted by the Commission in accordance with Negotiating Directives issued by the Council and in consultation with a special committee appointed by the Council pursuant to Article 300(1) of the Treaty.

According to a joint statement of the Council and the Commission entered in the Council minutes, the Negotiating Directives covered only matters falling within the sphere of Community competence under Articles 95 and 152 of the Treaty. The Negotiating Directives were reviewed by the Council on 24 April 2001, with the aim of extending the Commission's authorisation to include negotiating on behalf of the Community on matters within the Community field of competence which do not fall under Articles 95 and 152, including matters which require unanimity in the Council.

PARTICIPATION OF THE EUROPEAN PARLIAMENT

In its resolution of 13 November 2001, the European Parliament supported the objective of a Framework Convention on Tobacco Control set by the World Health Assembly in its

resolution of 24 May 1999 and indicated its belief that a substantive international legal instrument such as this would provide an important means of addressing tobacco-related problems and, consequently, promoting public health.

There is no explicit provision in the Framework Agreement of 5 July 2000 between the Commission and the European Parliament for members of the European Parliament to be included in Community delegations participating in international negotiations. Nevertheless, the participation of members of the European Parliament as observers was always welcome, both by the Commission and by the Council, during the FCTC negotiations.

OUTCOME OF THE NEGOTIATIONS

The Convention deals with a wide range of tobacco control-related matters. Some of the key elements of the final text include:

Labelling – The text requires that at least 30 per cent - but ideally 50 per cent or more - of the principal display areas on tobacco product packaging should be taken up by clear health warnings in the form of text, pictures or a combination of the two. Packaging and labelling requirements also prohibit misleading language that gives the false impression that the product is less harmful than others. This misleading language may include the use of terms such as “light”, “mild” or “low tar”.

Advertising – While a wide majority of countries agreed that a comprehensive ban would have a significant impact in reducing the consumption of tobacco products, some countries have constitutional provisions – for example, covering free speech for commercial purposes – that will not allow them to implement a comprehensive ban in all media. The final text requires Parties to move towards a comprehensive ban within five years of the Convention entering into force. It also contains provisions for countries that cannot implement a comprehensive ban which require them to restrict tobacco advertising, promotion and sponsorship within the limits of their constitutions or constitutional principles.

Taxes – The text formally recognises that tax and price measures are an important way of reducing tobacco consumption, in particular among young people, and requires signatories to consider public health objectives when implementing tax and price policies on tobacco products.

Liability – Parties to the Convention are encouraged to consider taking legislative action, where necessary, to deal with criminal and civil liability, including compensation where appropriate.

Financing – Parties are required to provide financial support for their national tobacco control programmes. In addition, the text encourages the use and promotion of existing development funding for tobacco control. The eventual need to enhance existing mechanisms or to set up other appropriate financial mechanisms to channel additional financial resources, which may include a voluntary global fund, should be assessed by the Conference of the Parties based on a review of the existing and potential sources and mechanisms of assistance and on an assessment of their adequacy.

Illicit trade – The text recognises that the elimination of smuggling, illicit manufacturing and counterfeiting of tobacco products, including the development of an effective system for the tracking and tracing of such products, and the development and implementation of related

national law are essential components of tobacco control, and requires the Parties to take appropriate measures in this regard.

The text also requires countries to promote treatment programmes to help people **stop smoking** and **education** to prevent people from starting, to **prohibit sales** of tobacco products **to minors**, and to limit public exposure to **second-hand smoke**.

During the course of the negotiations, it became clear that the way in which the Parties perceive the role that measures relating to each of these matters may play in reducing tobacco consumption varies greatly. Moreover, regulation of these matters often has serious implications in other aspects of internal and external policies. Employment is just one example: the International Labour Organisation's tripartite meeting on the Future of Employment in the Tobacco Sector, in February 2003, underlined the need to study the impact of tobacco control policies on employment in the tobacco sector, taking into account the nature of the Framework Convention on Tobacco.

The need to accommodate different and sometimes opposite views within the context of an international agreement can help to explain why certain provisions meant to be at the core of the Convention were somehow emptied of all binding effects, and became little more than mere declarations of principle.

Indeed, the Convention does not address all subjects in similar terms. The level of commitment imposed upon the Parties varies greatly according to the issue at stake (e.g. a strict deadline is required for the adoption of effective measures regarding the packaging and labelling of tobacco products whereas there is no more than a mere general invitation to implement tax and price policies). Furthermore, detail given as to the measures to be taken differs according to the matter in question (from a detailed set of restrictions on advertising and sponsorship of tobacco products, or from a list of measures to fight illicit trade, to a general reference to the need to provide support for economically viable activities for farmers, for example).

BASIS FOR COMMUNITY SIGNATURE

The main objective of the Convention is the **promotion of public health** in a global context. This is in line with the EC Treaty, especially Article **152**, which imposes upon the Community the obligation to act towards improving public health and urges the Community and the Member States to foster co-operation with third countries and the competent international organisations in the sphere of public health.

Several of the areas included in the Convention are actually already covered by existing Community instruments. The Convention does not require amendments to the *acquis*. On the contrary, the core provisions of the Convention reflect the solutions adopted in Community legislation, in accordance with the Negotiating Directives issued by the Council.

Relevant binding Community legislation in the field of tobacco control regulates the **advertising** of tobacco products in the media and through information society services and the **sponsorship** by tobacco companies of both radio and television programmes and international events (Council Directive 89/552/EC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹, as amended by Directive

¹ OJ L 298, 17.10.1989, p. 23.

97/36/EC of the European Parliament and of the Council of 30 June 1997² which bans all forms of television advertising and teleshopping for cigarettes and other tobacco products; Directive 03/XX/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member states relating to the advertising and sponsorship of tobacco products³; **the contents and disclosures of cigarettes** and respective **measurement methods**; as well as the **packaging and labelling of tobacco products** (Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products⁴).

Other non-binding legislation addresses, *inter alia*, **sales to children and adolescents**; **other forms of advertising and sponsorship** of tobacco products; **disclosure of information concerning the expenditure** incurred by manufacturers, importers and large-scale traders in tobacco products on advertising, marketing, sponsorship and promotion campaigns not prohibited under national or Community legislation; **smoking cessation**; as well as protection from exposure to **environmental tobacco smoke** (Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control⁵).

In accordance with Article 300(2) of the EC Treaty, the signing of international agreements will be decided on by the Council, acting on a proposal from the Commission. Considering that the Convention clearly pursues the attainment of public health, as set out in Article 152 of the EC Treaty, combined with the fact that existing Community legislation in the field of tobacco control is mainly based on Articles 95 and 152, and given furthermore that the Convention will have an influence on the regulation of international trade in tobacco products, the Council Decision should be based on Articles 95, 133 and 152 in conjunction with Article 300(2).

² OJ L 202, 30.7.1997, p. 60.

³ OJ L ...

⁴ OJ L 194, 18.7.2001, p. 26.

⁵ OJ L 022, 25.1.2003, p. 31.

Proposal for a

COUNCIL DECISION

on the signing of the World Health Organisation's Framework Convention on Tobacco Control

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 95, 133 and 152 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission⁶,

Whereas:

- (1) The Commission has negotiated on behalf of the Community a Framework Convention on Tobacco Control under the auspices of the World Health Organisation.
- (2) The Convention reflects the Community position expressed during the negotiations as well as the main Community provisions adopted in the area of tobacco control,
- (3) Subject to its possible conclusion at a later date, the Convention adopted on 21 May 2003 should be signed,

HAS DECIDED AS FOLLOWS:

Sole Article

1. Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the World Health Organisation Framework Convention on Tobacco Control.
2. The text of the Convention is attached to this Decision.

Done at Luxembourg,

For the Council
The President

⁶ OJ C , , p. .