



COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0316 (CNS)

Proposal for a

COUNCIL DECISION

**concerning the conclusion of the World Health Organisation Framework Convention
on Tobacco Control**

(presented by the Commission)

EXPLANATORY MEMORANDUM

INTRODUCTION

The objective of the World Health Organisation 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. The European Community was among the first Parties to sign the Convention on 16 June 2003.

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 May 1999 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 (art. 11) – 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 (art.13) – 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 (art.6) – 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 (art.19) – 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 (art.26) – 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 programmes. The decision on such use of official development assistance (ODA) should be taken on the basis of national priorities set and agreed with donors. 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 (art.15) – 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** (art.14) and **education** (art.12) to prevent people from starting, to **prohibit sales** of tobacco products **to minors** (art.16), and to limit public exposure to **second-hand smoke** (art.8).

BASIS FOR COMMUNITY CONCLUSION

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 is in line with the *acquis*. 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 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 2003/33/EC of 26 May 2003 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 emissions 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).

The 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 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control⁵).

STATUS OF THE COMMUNITY WITHIN THE CONVENTION

Pursuant to Article 35 of the Convention, regional economic integration organisations can become Parties to the Convention. The Community already expressed its intention to become a Party by signing the Convention on 16 June 2003, in accordance with Decision XX/XX/EC of the Council of 2 June 2003.

The Community will be a member in its own right of the Conference of the Parties established by the Convention. However, as some of the issues covered by the Convention fall outside the scope of exclusive Community's competence, the Community will be required to declare the extent of its competencies with respect to the matters governed by the Convention. The Community's competencies, which are defined in Annex II to the Decision, stem from the provisions already adopted by the Community laying down common rules in areas covered by the Convention.

¹ OJ L 298, 17.10.1989, p. 23.

² OJ L 202, 30.7.1997, p. 60.

³ OJ L 152, 20.6.2003, p. 16.

⁴ OJ L 194, 18.7.2001, p. 26.

⁵ OJ L 22, 25.1.2003, p. 31.

FINANCIAL IMPLICATIONS

As a Party to the Convention, the Community will be bound to participate in financing the activities of the Conference of the Parties, including any subsidiary body it may establish, and the functioning of the Secretariat of the Convention.

The exact amount of the financial contribution of the Community is not known at present. The estimation of the costs in the Financial Statement is based on existing comparable international agreements concluded by the Community. This is best estimation available at present. The final financial implications are subject to the negotiations at the first meeting of the Conference of the Parties.

Furthermore, the timing as from when this contribution will be required is uncertain, as it will depend on the date of entry into force of the Convention. This will take place only on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

CONCLUSION

In accordance with Article 300(2) and Article 300(3) of the EC Treaty, the conclusion of international agreements will be decided on by the Council, acting on a proposal from the Commission, after consulting the European Parliament. 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) and Article 300(3).

Proposal for a

COUNCIL DECISION

**concerning the conclusion of the World Health Organisation 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) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Parliament⁷,

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) This Convention has been signed, on behalf of the European Community, on 16 June 2003 subject to its possible conclusion at a later date, in accordance with Decision XX/XX/EC of the Council of 2 June 2003⁸;
- (3) This Convention should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The World Health Organisation Framework Convention on Tobacco Control is hereby approved on behalf of the Community.

The text of the Convention is set out as Annex 1.

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

Article 2

The President of the Council is hereby authorized to designate the person empowered to deposit on behalf of the European Community the act of approval provided for in Article 35 of the Convention, in order to express the consent of the Community to be bound and to make the declaration contained in Annex II.

Done at Brussels, [...]

For the Council
The President

ANNEX I

World Health Organisation Framework Convention on Tobacco Control

ANNEX II

Declaration made by the European Community pursuant to Article 35(3) of the World Health Organisation Framework Convention on Tobacco Control

The European Community declares that, in accordance with the provisions of the Treaty establishing the European Community, and in particular its Articles 3(1)(p) and 152, it is competent to adopt measures, which complement the national policies of its Member States, directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health.

The current members of the Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

The Community competence exists in areas already covered by Community legislation. The Community acts listed below are illustrative of the Community's sphere of competence in accordance with the provisions of the Treaty establishing the European Community.

The exercise of competence that Member States have transferred to the Community by virtue of the Treaties is, by its very nature, bound to continuously evolve. Therefore in this regard, the Community reserves its right to issue further declarations in the future.

List of legislative acts and Community programmes contributing to promoting tobacco control

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 activities (OJ L 298, 17.10.1989, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ L 202, 30.7.1997, p. 60).

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 products (OJ L 194, 18.7.2001, p. 26).

[Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco (OJ L 215, 30.7.1992, p. 70, last amended by Council Regulation (EC) No 546/2002 of 25 March 2002 fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 2002, 2003 and 2004 harvests and amending Regulation (EEC) No 2075/92 (OJ L 84 of 28 March 2002, p. 4).]

[Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008) (OJ L 271 of 9.10.2002, p. 1).]

[Community action in the field of public health (2003-2008) - Work plan 2003 (OJ C 62 of 15.3.2003, p.21).]

[Commission Regulation (EC) No 2182/2002 of 6 December 2002 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 with regard to the Community Tobacco Fund (OJ L 331 , 7.12.2002, p. 16).]

Directive 2003/33/EC of 26 May 2003 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 products (OJ L 152, 20.6.2003, p. 16).

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Health and consumer protection

Activit(y/ies): Public Health

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

1. BUDGET LINE(S) + HEADING(S)

Budget lines to consider :

- ABB 17 01 01 Expenditure related to staff in active employment of policy area Health and consumer protection
- ABB 17 01 02 11 : Other management expenditure
- ABB 17 03 : Public Health

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): 1 Mio €

2.2. Period of application:

From the date the Convention enters into force. It enters into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

2.3. Overall multiannual estimate of expenditure:

- (a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million *(to three decimal places)*

	2004	2005	2006	2007	2008	2009	Total
Commitments	0	0.200	0.200	0.200	0.200	0.200	1.000
Payments	0	0.200	0.200	0.200	0.200	0.200	1.000

- (b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments	0						
Payments	0						

Subtotal a+b	2004	2005	2006	2007	2008	2009	Total
Commitments	0	0.200	0.200	0.200	0.200	0.200	1.000
Payments	0	0.200	0.200	0.200	0.200	0.200	1.000

- (c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	0.016	0.016	0.016	0.016	0.016	0.016	0.096
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TOTAL a+b+c	2004						Total
Commitments	0.016	0.216	0.216	0.216	0.216	0.216	1.096
Payments	0.016	0.216	0.216	0.216	0.216	0.216	1.096

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

[X] Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:⁹

[X] Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
C	D.A	YES	NO	NO	4

4. LEGAL BASIS

Article 152 in conjunction with Art. 300 of the Treaty

⁹ For further information, see separate explanatory note.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention ¹⁰

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.

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 negotiation 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.

5.1.1. Objectives pursued

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.

5.1.2. Measures taken in connection with ex ante evaluation

Not applicable

5.1.3. Measures taken following ex post evaluation

Not applicable

5.2. Action envisaged and budget intervention arrangements

Not applicable

5.3. Methods of implementation

Not applicable

¹⁰ For further information, see separate explanatory note.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B – 1 M€

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	2004	2005	2006	2007	2008	2009	Total
Action 1	0	0.200	0.200	0.200	0.200	0.200	1.000
TOTAL	0	0.200	0.200	0.200	0.200	0.200	1.000

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

Not applicable

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)¹¹

The estimation of the costs, 200 000 euros annually, is based on existing comparable international agreements concluded by the Community. This is best estimation available at present. The final financial implications are subject to the negotiations at the first meeting of the Conference of the Parties.

¹¹ For further information, see separate explanatory note.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A B C		0.1		<i>If necessary, a fuller description of the tasks may be annexed.</i>
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials	10 800	0.1 x 108 000 €
Temporary staff		
Other human resources (specify budget line)		
Total	10 800	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) A0701 – Missions ¹	4 750	5 missions to Conference of the Parties
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total	4 750	

¹ Based on the standard cost used in the Commission (800 € for travel and 150 e for per-diem) : 950 € x 5 = 4 750 €

The amounts are total expenditure for twelve months.

¹ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	0.016 Mio €
II.	Duration of action	6 years
III.	Total cost of action (I x II)	0.096 Mio €

All administrative and Human Resources requirements will be covered from within the Budget allocates to the managing DG in the framework of the annual allocation procedure.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

Minutes of each meeting are forecasted.

8.2. Arrangements and schedule for the planned evaluation

Id. 8.1.

9. ANTI-FRAUD MEASURES

The secretaries of the Committees will certify participation of members or experts in meetings.