1. The Tenth session of the Conference of the Parties (COP10) to the Framework Convention on Tobacco Control (hereinafter "FCTC") will be held in Panama on 20-25 November 2023.

2. The Commission submitted a 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), based on article 218 (9) as procedural legal basis, regarding items of the COP10 Agenda having and not having legal effect. It was the first time that this procedural legal basis was used in this instance.

3. Some delegations requested the inclusion, as an Any Other Business item in COREPER of 20 September 2023, of the issue of the procedural legal basis for the Council decision, seeking clarification. Following the discussion at COREPER, the Presidency took note of the concerns of many delegations. It noted that although the Commission's proposal appears to be legally sound, the hybrid solution, consisting on splitting the proposal in two parts
to cover, in one part, items with legal effects and, in the other, acts that have not been identified as having legal effects, was one of the possible options to address the concerns expressed by the delegations. The Presidency suggested to continue the substantive work at the WP and go back to Coreper at a later stage if there was strong support to move towards a hybrid procedure.

4. Following this discussion and after having worked on the substance at the 21 September 2023 Working Party, and with the objective to facilitate the decision on whether to move or not to the hybrid approach, the Presidency presents this document: Option B (Hybrid approach), incorporating the split of the proposal from the Commission into two parts.

5. The first part (Annex 1 to this document) contains amendments to the Commission proposal for a Council Decision on the positions to be taken on behalf of the European Union at COP10. These amendments refer to article 218.9 as procedural legal basis covering only the three items of the COP10 Agenda identified by the Commission as having legal effect.

6. The second part (Annex 2 to this document) is a Note containing the European Union positions and common positions to be adopted on the items of the COP 10 Agenda that have not been identified as having legal effect. The Working Party will be invited to reach tentative agreement on these positions. In case there is support for the Hybrid approach and considering that there might be some items contained in Annex 2 that constitute new policy, the Working Party will be invited to agree to submit all the positions contained in the Note to the Council for its agreement.

7. Changes to the Commission proposal are marked in **bold/underline** for additions in **strikethrough** for deletions.
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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 114 and Article 168(5), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Framework Convention on Tobacco Control (‘FCTC’) of the World Health Organization
was concluded by the Union pursuant to Council Decision 2004/513/EC\(^1\) and entered into
force on 27 February 2005.

(2) Pursuant to Article 23(5) of the FCTC, the Conference of the Parties (‘COP’) may take the
decisions necessary to promote the effective implementation of the FCTC.

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\(^1\) Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO
The objective of Directive 2014/40/EU\(^2\) is to approximate the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products in order to ensure, among others, that the Union meets its obligations under the FCTC. The objective of Directive 2003/33/EC\(^3\) is to approximate the laws, regulations and administrative provisions of the Member States relating to advertising of tobacco products and their promotion.

At its tenth session from 20 to 25 November 2023, the COP is expected to adopt certain acts having legal effects, including an act that is capable of decisively influencing the content of Union law related to tobacco control. **In particular, the envisaged decision related to tobacco advertising, promotion and sponsorship, including the adoption of supplemental, specific FCT Guidelines on Article 13 FCTC; the envisaged decision related to possible amendments to the Rules of Procedure of the COP and the envisaged decision related to the amendment of the procedure for the appointment of the Head of the Secretariat, constitute acts capable of having legal effects or of decisively influencing the content of legislation adopted by the EU.** Therefore, it is appropriate to establish the positions to be taken on the Union's behalf on these acts, **regarding those acts**, at the tenth session of the COP pursuant to Article 218(9) TFEU.

Certain positions included in the annex to this decision relate to areas where the Union shares competence with its Member States. In this respect, this decision should not be understood as altering the division of competences between the Union and its Member States.

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(5) As it is important to continuously monitor the contents and emissions of tobacco products, in particular new ones, it is appropriate to agree to continue with the work on this subject at the level of an expert group and to keep the mandate of the related working group suspended.

(6) In line with the Union’s position expressed at the eighth session of the COP, the Union should support the adoption of the new proposed guidelines on tobacco advertising, promotion and sponsorship and the depiction of tobacco in the entertainment media, in line with the Union’s overall objective to reduce the consumption of tobacco products.

(7) In view of the worryingly fast-growing market of novel and emerging tobacco products and their effects on human health, it is appropriate to underline the importance of continuously monitoring the use of these products.

(8) The Union should acknowledge the need to cooperate internationally to address the contribution of the FCTC to the promotion and fulfilment of human rights and agree to cooperate at the international level with a view to identifying and discussing forward-looking tobacco control measures. The Union should also agree to work together with all Parties regarding the liability for tobacco harm.

(9) The Union should support the further development of the FCTC reporting system and agree to the establishment of the FCTC Implementation Review Mechanism.

(10) The Union should support the proposed legal and administrative arrangements for the FCTC Investment Fund, as well as the adoption of the proposed workplan and budget for the financial period 2024-2025 and suggest exploring potential savings to avoid future increases in the Assessed Contributions.

(11) The Union should support that the observer status to the COP of 26 nongovernmental organisations is maintained and welcome the opportunity to be updated on the resolutions of relevance for the FCTC taken by the World Health Assembly.
In order to enable appropriate preparation and representation of the Union positions, the Union should propose an amendment to the Rules of Procedure of the COP to require the Secretariat to distribute the official conference documents at least 120 days before each COP.

For the purpose of simplifying the work at the COP and to arrange for virtual sessions of the COP, as well as to provide for the possibility of designating an acting Head of the Secretariat, the Union should also support the amendments to the Rules of Procedure of the COP proposed with these aims.

The Union should support the improvement of the process for the selection and appointment of the Head of the Convention Secretariat, notably to simplify a single renewal of the term of office, while respecting the objective performance criteria,

HAS ADOPTED THIS DECISION:

Article 1

The positions to be taken on the Union's behalf at the tenth session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control, shall be in accordance with the Annex to this Decision.

Article 2

Adjustment Refinement of the positions referred to in Article 1 may be agreed to, in the light of developments at the tenth session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control, by the representatives of the Union in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.
Article 3

This Decision is addressed to the Commission and shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President
ANNEX

to the Proposal for a COUNCIL DECISION

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

European 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. I Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media: report by the Working Group (document FCTC/COP/10/8)

The European Union shall:

1. **In line with the objectives of the FCTC**, supports the adoption of specific guidelines **proposed by the WG** on cross-border tobacco advertising, promotion and sponsorship (TAPS), addressing inter alia new and innovative marketing strategies, **on initiation and consumption with special emphasis on young people and children**, recommending the application of the bans of TAPS to all types of media, including digital medial and social medial platforms, and the reduction of tobacco depictions that constitute TAPS in entertainment medial, including films, **computer games, etc.** 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, without any conflict of interest, has a crucial role in ensuring their enforcement and implementation; **conflict of interest should be avoided.**

   - 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 all tobacco products, specially 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.

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:

4. 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: report by the Secretariat (document FCTC/COP/21)

The European Union shall:

1. Proposes 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.
1. Supports 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.

2. Agrees to clarify, without amending the Rules of Procedure of the COP, that verbatim records of plenary meetings are understood to include audio files.

3. Supports the amendment related to arranging for virtual sessions of the COP, when exceptional measures are required by an extraordinary situation; however, virtual sessions should not be strictly limited to exceptional circumstances, thereby taking into consideration also the need to balance environmental costs of in-presence sessions whenever possible. At the same time, it should also take into consideration the need to balance the environmental costs of in-presence session and the need for such sessions whenever possible.

4. Supports 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.

5. Supports the amendment related to the presence of accredited media in public sessions, as this amendment leads to better consistency between Rules 2 and 32.

6. Proposes 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.

[fall-back position: The European Union can agree with any extension of the distribution period beyond current 60 days before the opening of the session, and at least for conference documents for COP decisions that are legally binding on the Parties or have important policy or legal implications.]

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. **III  Appointment of the Head of the Convention Secretariat:** report by the Bureau (document FCTC/COP/23)

The European Union shall:

1. Thanks the Bureau for the report, containing joint recommendations of the Bureau of the COP and Bureau of the MOP to improve the process of selection and appointment of the Head of the Secretariat and criteria for the selection of candidates for the position of the Head of the Secretariat.

2. Supports the **proposed** improvements 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.
3. Supports the improvement of the criteria for the selection of the candidates for the position of the Head of the Secretariat; however, requests that aspects related to the Protocol to the FCTC are added to the selection criteria. In particular, documentary criteria 1 should also include possible strong background, knowledge and substantive experience in fight against illicit trade, and documentary criteria 2 should also include possible experience in fight against illicit trade and strong links or network with the international anti-fraud community.

[fall-back position: The European Union can agree with the proposed improved criteria also if the aspects related to the Protocol are not added to them or added only to certain extent.]
NOTE

EUROPEAN UNION POSITIONS AND COMMON POSITIONS TO BE ADOPTED BY CONSENSUS ON THE ITEMS OF THE COP10 AGENDA

THAT DO NOT HAVE LEGAL EFFECT

I. Implementation of Articles 9 and 10 of the WHO FCTC (Regulation of contents and disclosure of tobacco products): reports by the Bureau (document FCTC/COP/10/5), by the Expert Group (document FCTC/COP/10/6), and by WHO (document FCTC/COP/7)

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

1. Notes the work done by the expert group that was established to provide
   • a detailed analysis of factors that lead to a low implementation of Art 9 and 10,
   • describing positive experiences in order to address such barriers and
   • recommendations regarding next steps to the COP

2. Thanks for the work done by the expert group and agrees 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;
the documentation of best practices, independent scientific developments and lessons learnt from Parties on their implementation work – also on addressing gaps and barriers – can further advance tobacco product regulation.

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

notes 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.

3. Notes the recommendation to set up a knowledge hub and invites the Secretariat and the expert group to clarify its further demonstrate the benefits and value added of creating a supplementary knowledge hub and how it would be created and interrelated with the already existing structures.

Fall back position: “Nonetheless, the EU is willing to accept the creation of such a hub, when other parties are in favour of setting it up”.

4. Agrees to continue the work at the expert group level, within the mandate proposed in the draft decision, with a view to discussing future steps in the implementation and possible development of future guidance on Articles 9 and 10 at the next COP, 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).
5. 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. Notes the lack of consensus for the reactivation of the mandate of the WG in the short term but a positive view of the prospects in the medium and longer term for developing additional guidance on articles 9 and 10. In view of this agrees that the mandate of the working group should remain suspended until otherwise decided by the COP at a future session.

The European Union thanks the WHO for the report on technical matters related to Articles 9 and 10 of the WHO FCTC, and:

1. Welcomes its focus on Electronic Nicotine Delivery Systems (ENDS), including disposable ones, Electronic Non-Nicotine Delivery Systems (ENNDS), including disposable ones for both, emerging products and the role of flavours and flavouring agents. Notes that the role of other components, sweetening and sugary agents, additives like vitamins, stimulants like caffeine or taurine or other additives and stimulants that are associated with an increased energy and vitality, should be further explored. And the related recommendations to the Parties.

2. Supports Note that in particular disposable ENDS/ENNDS and also nicotine pouches and other tobacco-free nicotine products should be strongly regulated, which could include a ban to protect in particular children and adolescents, and regularly monitored in the future, while a strong regulation of the first two should be considered to protect children and adolescents.

3. Welcomes the development, adaptation, and validation of methods for the determination of relevant contents and emissions of tobacco and nicotine products (including novel and emerging tobacco products), as well as ENDS and ENNDS.
4. Acknowledges that ventilation is one of several mechanisms 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 health, in particular children, adolescents and non-smokers from the harmful effects of smoking, and that affects the accuracy of the machine-measurement results, and considers the use of more efficient measurement of the human exposure to smoking emissions.

5. Reiterates that technical work should continue to be carried out by the WHO and related entities in consultation with the parties.

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 (document FCTC/COP/10/9) and by WHO (document FCTC/COP/10/10)

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

1. Witnesses Note with concern the growing market of all novel and emerging tobacco products, including heated tobacco products (HTPs).

2. Regrets the COP9’s 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. Notes 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. Expresses 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. Invites COP10 to consider setting of a working group to prepare the update and development of the current FCTC guidelines and propose the results to COP11.

5. Notes the conclusions on smoke, which are relevant for tobacco-related discussions at international level and notes that the report is inconclusive about whether combustion is present when using HTPs. Invites COP 10 to request the setting up of further studies focusing on emissions inhaled by the user of HTPs.

6. Acknowledges that appropriate taxation of HTPs, as a new form of very attractive tobacco products as a substitute for other tobacco products, is an important tool in the context of tobacco control strategy.

7. Considers it important to strongly regulate and continuously monitor the use of novel and emerging tobacco products, including HTPs, especially by young people, given the worrying trends of popularity existing in this age group and non-smokers 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) (document FCTC/COP/10/11 and document FCTC/COP10/P/CONF./1)

The European Union shall:

1. Thanks the Secretariat for the report providing the context for work that could be undertaken to strengthen the implementation of the FCTC, taking into account Article 2.1 of the FCTC.

2. Notes that Article 2.1 of the FCTC encourages Parties to implement measures beyond those required by the FCTC and that it should be read in conjunction with the objective of the FCTC.

3. 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.

4. Agrees that Parties may benefit from additional information in relation to forward-looking tobacco control measures and measures that expand approaches to tobacco control and that could be said to fall within the scope of Article 2.1. In that regard the EU would like to propose the creation of an Expert Group to prepare a report including an overview of the experience of the Parties and a literature review of relevant tobacco control practices, to be presented at COP11.
V. Implementation of Article 19 of the WHO FCTC: Liability (document FCTC/COP/10/12 and document FCTC/COP10/P/CONF./2)

The European Union and its Member States shall:

1. Thank the Secretariat for the report providing an overview of the work undertaken by the COP in relation to Article 19 of the FCTC and considerations for potentially expanding that work.

2. 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.

3. Recognise possible synergies between Article 19 and Article 5.3 of the FCTC, and agrees 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 (document FCTC/COP/10/13)

The European Union and its Member States 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.
3. Welcome the decision that the information that is collected by WHO during the data collection process for the biennial WHO reports on the global tobacco epidemic should not be collected in the WHO FCTC reporting instrument but obtained by the Convention Secretariat for analysis from WHO, thus ensuring that the same information is not collected twice from the Parties.

VII. Implementation Review Mechanism (document FCTC/COP/10/14)

The European Union and its Member States shall, with regard to the report by the Secretariat on the Implementation Review Mechanism:

1. Welcome Thank the Secretariat for preparing the report and thanks the Secretariat, the experts and the volunteering Parties for the successful completion of the pilot project exercise for the Implementation Review Mechanism.

2. Consider that the gaps reported in Point 14 relating to the lack of full compliance with Article 5.3 and lack of full implementation of Article 6 in the volunteer Parties are concerning and need attention from all Parties.

3. Agree to establish the Implementation Review and Support Mechanism, on a voluntary basis, as well as to adopt its terms of reference and the costed strategy for the development of detailed costing for its support.

4. Invites 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 (document FCTC/COP/10/15 and document FCTC/COP10/P/CONF./3)

The European Union and its Member States shall:

1. Thank the Secretariat for preparing the report.

2. 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 and to achieve the Sustainable Development Goals (SDG).

3. Acknowledge the need to cooperate internationally to address the issue of increased tobacco and other nicotine products consumption, by linking the human rights framework and tobacco control efforts.

Performance and Progress Reports (document FCTC/COP/10/16)

The European Union and its Member States:

1. Thank the Secretariat for the performance and progress reports for the reported periods and supports the extension to 2030 of the Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019-2025.

2. Agree that the five-year extension will provide an opportunity for Parties to focus efforts to accelerate implementation of the FCTC.

3. Welcome the alignment of the Global Strategy with the time frame for the 2030 Agenda for Sustainable Development. And share the view that the strategic objectives of the Global Strategy remain relevant.
IX. Proposed Workplan and Budget for the financial period 2024-2025 (document FCTC/COP/10/17 and document FCTC/COP/10/INF.DOC./1)

The European Union and its Member States shall:

1. Thank the Secretariat for the comprehensive proposed Workplan and Budget for the financial period 2024-2025.

2. Support the adoption of the proposed Workplan and Budget for the period 2024-2025, that follows following the established structure from the previous periods.

3. 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.

4. Support and encourage voluntary extra budgetary contributions to support the continuing implementation of the FCTC.

5. 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 (document FCTC/COP/10/18)

The European Union and its Member States, shall, with regard to the report by the Secretariat:

1. Thank the Secretariat for the report and for having made the arrangements to launch the WHO FCTC Investment Fund, in accordance with 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 Investment Fund funds should remain complementary to existing sources of funding, 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 management of the Investment Fund should be flexible to adapt to shifting market conditions and to COP priorities and respective decisions.

- 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 overseen by COP, which shall be the main only body entitled to take decisions regarding the allocation of the Fund’s revenue to activities in the COP workplan and budgets.

- 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 Investment Fund and the Protocol Investment Funds, to provide support to the COP and the MOP and their Bureaus in the governance of the Funds.

XI. XII. Payment of assessed contributions and measures to reduce Parties in arrears (document FCTC/COP/10/19 Rev1)

The European Union and its Member States shall:

1. Welcome that some Parties have cleared their arrears, in response to the Secretariat’s actions taken to encourage the payment of assessed contributions (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. XIII Review of accreditation of nongovernmental organizations with the status of observer to the Conference of the Parties (document FCTC/COP/10/20)

The European Union and its Member States 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-person 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. XV. 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 (document FCTC/COP/10/22)

The European Union and its Member States 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. Regret that not all WHO Regional Committees have adopted or endorsed resolutions, decisions or documents relevant to tobacco control, according to the conclusion mentioned in point 13 of the doc. FCTC/COP/10/22.

3. Welcome the opportunity to be updated on the resolutions of relevance for the FCTC taken by the WHA and WHO Regional Committees.

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.