

EU bureaucrats plotting to use WHO treaty to sideline European Parliament on tobacco harm reduction

written by Clive Bates | 16 October 2023

How?

They will exploit the poor scrutiny and accountability of the [WHO Framework Convention on Tobacco Control 10th Conference of the Parties \(COP-10\)](#) meeting to endorse the extreme positions favoured by the WHO. Then they will be able to present these as requirements of international law that must be implemented by the European Union.

It's a stitch-up. They aim to side-step Parliamentary and public scrutiny and settle it all in the closed groupthink bubble of COP-10 in Panama, in the final weeks of November. Then hand the European Parliament and European public a *fait accomplis*.

How do we know?

Much of this has been going on in secret negotiations between the bureaucrats of the European Commission and the bureaucrats of the member states, through a working group of the European Council.

It's now coming to light as members of the democratically elected European Parliament realise that they are being sidelined in the most important area of public health at the most important point in its evolution.

A so-far unpublished European parliamentary question from the [Swedish MEP Sara Skytvedal](#) gives an insight into what is going on in the background:

**Question for written answer
to the Commission**
Rule 138
Sara Skyttedal (PPE)

Subject: EU position at the COP 10 FCTC

The Commission has proposed a Council Decision on the EU position at the COP 10 FCTC allowing the Commission to bypass Member States. The proposal empowers the Commission to change the EU position "during on-the-spot coordination meetings, without a further decision of the Council". This is unprecedented.

COP decisions legally bind the Member States as FCTC signatories, meaning that the Commission would be imposing international legal requirements on Member States without their consent.

Tobacco policy in the EU is set using the ordinary legislative procedure: Parliament must also agree. Parliament is not being consulted here, but will soon be asked to examine proposals on tobacco control. It should do so without the Commission agreeing to international treaties limiting its scope for action.

The Commission should not bypass the democratic process or indeed its own legislative review on tobacco control without the consent of Parliament and Council. Doing so has legal and democratic implications, and sets a dangerous precedent for future international negotiations.

Will the Commission ensure that decisions taken at COP are taken without prejudice to future legislative decisions of the EU institutions?

Does the Commission intend to use this system in other international negotiations, and if so which ones?

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Note questions can be [tracked on the Parliament website](#).

The point is that the Commission wants the power to take new pro-WHO positions at the COP negotiations in line with WHO's generally extreme proposals, as set out in the [papers for COP-10](#). It is asking the Council (in practice, a working group of member state civil servants) to endorse this power through a formal decision.

The Commission has privately drafted the Decision it wants in document [COM\(2023\)514](#), which is not publicly available. This is understood to be a proposal for a new way for the EU to work at the COP negotiations.

Proposal for a Council Decision on EU position at the 10th WHO Framework Convention on Tobacco Control (FCTC)

Document type	Proposal for a decision
Reference	COM(2023)514
Date	07/09/2023
Responsible service	Directorate-General for Health and Food Safety

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The Council is now deciding what positions to take and how much latitude the Commission should have to adjust or refine positions agreed before COP-10 during the COP-10 meeting. Member states present would merely be “consulted”, not given the right to veto or vote on Commission overreach. Yet these are issues that are relevant to the whole EU legislature: including the European Parliament and, in some cases, member state parliaments. A further document is now in preparation – this will become the Council Decision on the EU’s common position at the COP and the negotiating flexibility granted to the Commission.

No parliament or public consultation is involved – the process is wholly opaque. The EU negotiators will turn up in Panama at COP-10 with unseen positions that affect the health of millions of European Union citizens and the flexibility to take a more hostile stance as they see fit. This is the concern behind Ms Skyttedal’s question.

What kind of measures are in play at COP-10?

For an insight into what WHO is proposing, see the excellent critique of the [COP-10 papers](#) by the consumer-orientated Global State of Tobacco Harm Reduction in its [GSTHR briefing paper on COP-10 papers](#).

My brief summary of the approach of WHO and the FCTC secretariat to COP-10 includes the following:

- Always treating novel smoke-free products as a threat rather than an opportunity to end the epidemic of smoking, and smoking-related disease. The EU should recognise how the free movement of smoke-free products has the potential to make cigarettes obsolete. The EU has also developed this sort of reflex hostility to innovation: see my article, [Snatching Defeat from the Jaws of Victory](#). The EU is squandering the opportunity for the internal market to destroy the cigarette trade.
- To cast doubt on the safety of non-combustible products stressing uncertainties, cherry-picking flawed literature, raising the ‘long term’, and focussing on ‘youth’ without any real grasp of youth risk behaviours or how young people are likely to respond to restrictions on safer products (clue: smoking remains an easy option).
- To deny or marginalise harm reduction benefits as if these are merely tobacco industry claims, arguing that there isn’t enough evidence and ignoring the body of evidence showing a pronounced substitution effect between smoking and smoke-free products. There is plenty of solid evidence supporting tobacco harm reduction. You just need to want to see it.
- To press for prohibitions wherever possible and to use language that suggests this is the norm. It’s hard to see how prohibitions on products that are much safer than cigarettes can help to secure the free movement of goods with a high level of health and consumer protection. The EU has already made an epic and lethal error with its snus ban, it should not be thinking about replicating that mistake with other products that are much safer alternatives to cigarettes.
- To extend the FCTC to non-tobacco nicotine products (ENDS, pouches) and press for full or partial prohibition (e.g. by flavour bans, nicotine limits, or banning categories like disposables or pouches) or regulation equivalent to cigarettes. The EU should not allow this creeping extension to non-tobacco nicotine products. The EU has the “[Tobacco-free Generation](#)” objective to reduce *tobacco use* to below 5% by 2040, *not nicotine use*. One way to expedite progress to this goal is to displace tobacco with non-tobacco nicotine products. Even the EU target is misconceived – it should focus on *smoking* and reducing combustible tobacco. Smoke-free forms of tobacco have been successful in achieving that – the most dramatic example being Sweden, which has almost reduced smoking to 5%, thanks to snus.

- To fiddle with definitions of “smoke” so that the treaty includes products that do not produce smoke (i.e. non-combustion products) so that such products can be treated as equivalent to cigarettes for policy purposes. There is no scientific basis for doing this – it is just manipulation. Smoke is produced in combustion processes and can be measured easily by the presence of significantly elevated levels of carbon monoxide.
- To push for extreme restrictions on advertising that spill over into restrictions on free expression as ordinary members of the public may be barred from talking positively about tobacco harm reduction, for example, via social media. The EU should recognise that most pro-vaping advertising is effectively anti-smoking advertising and regulate, not ban it. The EU is grounded in ideas of liberal democracy and should not indulge the WHO’s autocratic impulses regarding free expression on social media etc.
- To ignore trade-offs and unintended consequences of proposed policies – they are never discussed in the papers, just wished away with false evidence. The EU should be pushing back against shallow analysis, not endorsing it. The WHO [enthusiastically endorsed](#) India’s prohibition of vapes and heated tobacco in 2019. But where’s its evaluation of how that worked out? That’s the sort of question EU officials should be putting to the COP, not trying to engineer further prohibitions.
- To stretch the FCTC into “endgame” strategies that are outside the scope of the FCTC articles by using Article 2.1, which is about the right of parties to go beyond the treaty. But these measures (such as shutting down most retail outlets, reducing nicotine in cigarettes, or raising the age of legal sale annually) have minimal supporting evidence and should not be generalised into the FCTC without extensive evidence gained from the experience of the Parties, once these have been implemented.
- To exclude dissent by filtering who can attend as observers, hand-picking 26 sycophantic and beholden observers, and handing greater responsibility to expert groups selected by WHO or the Secretariat, not by parties.

These are not positions that would help to secure the EU’s objectives in relation to cancer, non-communicable diseases, tobacco, or even the internal market. The consumer group, European THR Advocates (ETHRA) raised much of this in a

September [letter](#) to the Council Working Group Health Attachés. More recently, [ETHRA highlighted \[PDF\]](#) how the Commission's approach is at odds with the basic concepts of the internal market.

Consumers believe that the European Union should do what it is supposed to do: promote the free movement of goods with a high level of human health and consumer protection while respecting the long-established principles of proportionality and non-discrimination - with a focus on reducing cancer (Europe's Beating Cancer Plan) and reducing the burden of noncommunicable disease (Healthier Together). If it did so, it would recognise smoke-free forms of nicotine and tobacco as significant opportunities with minimal and manageable risks, with the potential to expedite the obsolescence of the cigarette through the smooth functioning of a competitive internal market.

[ETHRA, October 2023](#)

Implications for democracy

If these sorts of measures pass in the FCTC with the connivance of the EU's negotiators, they would then become international treaty commitments binding on (1) the member states and (2) the European institutions, including the European Parliament, which has not been consulted. The COP would have been used as leverage by one part of the EU (the Commission) to leverage compliance from another, more democratically accountable, part of the EU (the Parliament).

EU tobacco policy is mostly made through what is known as the [Ordinary Legislative Procedure](#) - a complicated and lengthy three-partner embrace that ultimately requires the Commission, Council and Parliament to reach a compromise. But this secretive handshake between the European bureaucrats and WHO's anti-vaping extremists cuts through all those democratic checks and balances. Instead, there will be cheering from a complex of interests and fake civil society organisations funded by overconfident prohibitionist Amicaran billionaire, Michael Bloomberg.

At the member-state level, legally binding agreements at the COP might be used to ram through domestic legislation with reduced scrutiny, arguing that these are treaty obligations or even just new international norms requiring a response. Again a remote and dysfunctional process (the FCTC COP) is used to sidestep

accountability and scrutiny of elected representatives.

Why would the Commission fear democratic scrutiny?

1. It was thwarted last time. In June 2013, the European Commission and European Council thought they had it all stitched up: they agreed that e-cigarettes would be regulated as medicines in the upcoming Tobacco Products Directive. That would have been a public health disaster. Thankfully, after a massive campaign by vapers, the European Parliament rejected this position on 8 October 2013. The Commission should have learned a lesson about its own elitism and remoteness from citizens' experiences and been more inclusive in future. Instead, it appears to have learned the wrong lesson: that democracy gets in its way.
2. It would be unlikely to survive scrutiny this time. The chances are that the weaknesses of the Commission's approach to the further development of the tobacco *acquis* in the EU would not withstand scrutiny in the European Parliament. MEPs would hear from thousands of people threatened by the Commission's reckless approach to products that have saved them from smoking. They would understand that if the EU is serious about "[Beating Cancer](#)" or tackling NCDs by being "[Healthier Together](#)", the new smoke-free products are a major opportunity to reduce smoking and only a minor and manageable threat.
3. It likes unaccountable overreach. The Commission is inherently expansionist and casually ventures beyond its democratic boundaries. The Commission is now in trouble with the courts for unilaterally legislating on heated tobacco products, overstretching powers delegated from the Tobacco Products Directive TPD (see EU Reporter: [Exclusive: Commission to face European court over tobacco law overreach](#)). In this case, the Commission has, in effect, unilaterally created brand new EU laws for products that are not included in the TPD because they didn't even exist when the directive was agreed in 2014. But the Parliament and the public had no say at all. Overreaching is baked in.

What should be done?

It is reasonable for the Commission to approach the FCTC COP meetings with a mandate and clarity on a negotiating position. However, it is not reasonable for the negotiators at COP-10 to sign up to FCTC measures that would require them to change legislation in the EU or member states, without the proper processes of the EU and member state legislatures being followed.

The answer: the negotiators should not be able to make agreements at the FCTC that go beyond the current body of EU legislation, or “*acquis*”. To make that clear, the Council should insert the following text into the EU common position and negotiating mandate:

For the avoidance of doubt, the Union shall not endorse proposals made at meetings of the FCTC Conference of the Parties that go beyond the Union’s tobacco and related products acquis, requiring updated EU legislation or creating pressure to pass new legislation in areas not covered by the acquis.

There are two problems: (1) the Commission is adopting unethical and anti-scientific positions on tobacco harm reduction; (2) it is trying an abuse of process to try to circumvent scrutiny of and accountability for positions that will cause direct harm to Europeans.