

**Tender for**

“L-Luxembourg: tobacco control in Europe – progress in the European Community, the Member States, the 10 acceding countries and EFTA-countries over the last 20 years, present challenges and future options”

**Contract notice 2003/S 165-151049**

**Invitation to tender No. SANCO / G2 / 2003 / 03**

presented by

**The European Respiratory Society**

**The European Heart Network**

**The European Network for Smoking Prevention**

and

**GOPA-Cartermill International**

**PART B: Technical Proposal**

## **PART B: Technical proposal**

### 1. Rationale: Understanding of the Terms of Reference

#### 1.1 Context

Since its inception in 1985 the Europe Against Cancer Programme (EAC) and the Public Health Directorate in Luxembourg have been a driving force for tobacco control at EU level. Working together with the Member States, WHO and NGOs, they have transformed the EU tobacco control landscape to become a leading player in global tobacco policy.

The adoption in May this year of the WHO Framework Convention on Tobacco Control was a defining moment in global tobacco control and the EU. The Member States and the EFTA and Acceding Countries played a key role in securing agreement on the world's first ever public health treaty.

At a regional level the EU's attempts to adopt a comprehensive tobacco advertising directive, whilst ultimately unsuccessful, have still had the effect of persuading well over half of its current members to introduce comprehensive bans at national level. And in 2001 the Community became the first jurisdiction in the world to introduce legislation banning the use of misleading descriptors, such as "light" and "mild".

But the EU stands at a critical moment in its tobacco control activities and cannot afford to rest on its laurels. Much remains to be done to secure effective protection of non-smokers. And whilst the causal links between tobacco consumption and smoking related disease are now indisputably established, we know very little about the composition of tobacco products and still do not regulate some of the most toxic substances contained in or emitted by them.

Two major obstacles to effective regulation are the lack of a strong, co-ordinated research base outside the tobacco industry, and the failure to develop product testing mechanisms which realistically reflect how tobacco products are smoked.

Other problems of specific relevance to the EU include the absence of a legal base which enables the regulation of tobacco products to protect public health, rather than the Internal Market and, closely associated with this, constant legal challenges from the tobacco industry and its proxies to all attempts at effective European regulation.

However, with the adoption and, hopefully, rapid ratification of the FCTC, as well as EU enlargement, the Community is well placed to take on and overcome these challenges over the next ten years, thus moving the global tobacco control community forwards towards its goal of reducing the four million deaths attributable globally to tobacco every year.

The purpose of this tender is to provide a historical overview of EU policy in tobacco control policies in Europe and provide some concrete recommendations for a roadmap for future EU action. This is an important period for health in the EU:

- A new Constitutional Treaty will adapt or possibly significantly alter the legal competence of the Union in public health.
- In the other EU institutions, the delicate balance in the Council that has allowed some incremental progress on tobacco legislation will be changed.
- A new Parliament in June 2004 will bring in new deputies many with little knowledge of tobacco issues and with an unknown attitude to tobacco control.
- The European Commission will be re-organised and there is a strong possibility that there will be a stand-alone DG for health matters and an associated Commissioner whose respective priorities may not be tackling tobacco consumption.

These are all opportunities for further consolidation and progress on combating tobacco use but they also represent significant risks that the current institutional consensus and priority on tobacco will dissipate and achievements to date will be undermined.

The Consortium is cognisant of these issues and will ensure that the report will be an authoritative reference document to enable incoming Commission officials, MEPs and policy-makers to identify the next logical steps in addressing tobacco at EU level.

It is clear that the industry and associated interests will continue to actively and aggressively fight attempts to control tobacco. Therefore the report must comprehensively cover successes and failures, explain the history and complex background to the issues and all the arguments and tactics developed to thwart tobacco control.

The document must underpin ambitious health objectives for the Union with a range of practical and workable suggestions for legislation and policy based on the experience gained in the previous two decades.

As longstanding advocates of tobacco control, the consortium members can provide a systematic analysis of all EU policies and legislation that involve tobacco and can therefore ensure that the recommendations will contribute to a comprehensive tobacco control strategy.

## 1.2 Objectives

The objectives of this report will be to:

- Give a through overview of all aspects of tobacco use, prevalence, morbidity, mortality, policy and legislation across the 29 countries covered by the tender.
- The ultimate aim will be to establish key recommendations for action by the EU 25 plus EFTA states and the new European Commission and Parliament over the next ten years. For more information see "Methodology of the work."

### 1.3 Key issues

The key issues will be to give:

- A clear statement of harm caused by tobacco use and the supporting evidence
- An overview of Community and Member State policy in this area since 1985
- The challenges for EU tobacco control over the next ten years

### 1.4 Risk and assumptions

#### 1.4.1. Risks:

- Legal challenge to the 2nd Tobacco Advertising Directive succeeds at the European Court of Justice
- FCTC is not ratified and implemented
- That the WHO will not finalise translation of European tobacco control legislation before the end of the contract period.

#### 1.4.2. Assumptions:

- EU commitment to tobacco control remains firm.

## 2. Tobacco control: Scientific background and the role of NGOs

The ERS, EHN and ENSP represent three of the leading and most active health organisations campaigning on tobacco control at EU and Member State level.

Within their ranks they contain some of the top European scientists and policy analysts in the field. All of them have also been active in the formulation of EU and national policy and are uniquely placed to comment on the history of tobacco control in the Community over the reference period.

And although it is not formally a member of the Consortium, the Associations of European Cancer Leagues is represented in the project by Andrew Hayes.

## 3. Methodology of the Work

### 3.1 Organisation of the work

Tobacco control is an extremely diverse field. For that reason it is not possible to find expertise in just one or two organisations. Accordingly, the members of the Consortium will seek assistance in the preparation of the report from a panel of leading experts in the field from Europe and beyond, from a variety of relevant organisations and institutions. The appropriate contractual guarantees will be obtained from all parties. The Consortium will also be assisted by a network of national counterparts. For details of the members of the Expert Committee and network of national counterparts, see below.

## 3.2 Organisation of the report

The report will be split into seven chapters as outlined below. Each chapter will address the situation in the current EU Member States, the 10 Acceding Countries and the EFTA countries.

### Introduction

#### **Chapter co-coordinator: to be decided**

The introduction will give a brief overview of the history of EU tobacco control, a short assessment of where we stand at the end of 2003 and the challenges facing the EU in tobacco control over the next 10 years. These will include ongoing legal challenges to EU legislation, the rising demand for smokefree places throughout Europe, tobacco subsidies, the relationship between tobacco and other policy areas such as taxation, as well as the continuing influence of the tobacco industry on EU and Member State policy.

### Chapter 1

#### **Tobacco use and effects on health**

#### **Chapter co-ordinator: Ann McNeill**

This chapter will provide a comprehensive scientific overview of the evidence base for all aspects of smoking and passive smoking. In particular, the chapter will focus on the effect of tobacco both on **human health** (i.e., the science of tobacco and the physiological consequences for individual smokers, with particular emphasis on cancer, respiratory disease and Cardio Vascular Disease) and **public health** (i.e., consumption patterns and morbidity/mortality trends of smoking-related disease etc.). This chapter will also outline the evolution of tobacco use across Europe over time so as to provide an appropriate historical perspective. It will also describe why people smoke and the role of nicotine in tobacco use.

### Chapter 2

#### **The economic aspects of tobacco use in Europe**

#### **Chapter co-ordinator: Hana Ross**

Tobacco is big business. The annual turnover of Philip Morris alone is bigger than the GDP of many of the Acceding Countries. The taxation of tobacco products is an important source of revenue for national economies but the treatment of tobacco related disease costs health and social affairs ministries billions of Euros per year. Smuggling of tobacco products is also a huge problem and costs the EU and its Member States billions of Euros in lost revenue. This chapter will therefore look at key economic aspects of tobacco in the enlarged EU, including taxation policy, the economic burden of smoking, tobacco subsidies and smuggling. The effect of ongoing litigation in the US brought by the EU against several large tobacco companies will also be analysed.

### **Chapter 3**

#### **Past and present tobacco control policy of the European Union**

##### **Chapter co-ordinator: Andrew Hayes**

This chapter will focus on EU tobacco control policy in the framework of the 'Europe against Cancer' programme. In particular, it will look at the legislative output of the EAC, including all the EU directives from 1989 to 2003, as well as the "soft" law over the same period. The limitations of the legal basis of EU legislation in this area will be analysed and their impact on the effectiveness of Community action considered. Political challenges to effective legislation will also be identified. Resources and capacity within the EC during this time period will be described. The role of health organisations active in tobacco control will be considered.

The project funding, information exchange and networking activities of the EAC programme (e.g., experience of BASP, ENSP), as well as the provisions of the Tobacco Fund Regulation will also be presented and analysed.

Finally, this chapter will examine the inter-relationship between the tobacco control policies of the Community and its 25 current and future member states, and the WHO, both at the European regional and global levels. Particular attention will be devoted to the negotiations on the WHO Framework Convention on Tobacco Control (FCTC) and the Tobacco Free Initiative (TFI) and the implications of these initiatives for tobacco control in Europe.

### **Chapter 4**

#### **Policy Impact**

##### **Chapter co-ordinator: Luk Joossens**

While Community action in the field of tobacco control has had a major impact on EU Member States, Community policy has been greatly influenced by national policies. This chapter will describe tobacco control policies in the Member States since 1985 as well as their impact on behavior and attitudes. This chapter will also investigate the complex relationship between Community, Member State, EFTA and Acceding country tobacco control strategies, analyse the effects of EU regulation on national policies and examine how the Community and its Member States can work more closely and effectively together. Attention will also be paid to the linkages between Community and WHO European regional policy making in tobacco control.

### **Chapter 5**

#### **Tobacco industry influence on EU policy**

##### **Chapter co-ordinator: Gerard Hastings**

In the late 1990s litigation against the tobacco industry in the US forced the tobacco companies to open their archives and publish millions of documents

on the internet. Whilst research of these documents has only just begun to uncover the depth and breadth of tobacco industry influence on the legislative process, it has already become apparent that the industry has sought to, and often been successful in, influencing key politicians, civil servants, scientists and sections of the media with the aim of blocking effective tobacco control measures and policy around the world. Europe is no exception. Accordingly, this chapter will look at attempts by the tobacco industry to influence EU and Member State policies on smoking in public places, taxation and advertising. The chapter will focus predominantly on Germany, the UK, the Netherlands and one of the Acceding countries, probably Hungary.

## **Chapter 6**

### **A Roadmap for EU tobacco control policy 2005-2015**

#### **Chapter co-ordinator: Fiona Godfrey**

With the adoption of the FCTC in May 2003 and EU enlargement in May 2004, the EU 25 plus EFTA countries will have a unique opportunity to take a global lead in building a comprehensive tobacco control policy. As the biggest economic block in the world the EU will be in a position to set global standards for product regulation based on sound science, best practice and a clear vision of what needs to be done. Taking its lead from the requirements laid down in Article 11 of the 2001 Tobacco Products Directive, this chapter will give a comprehensive overview of the regulatory issues facing the Community over the next ten years. Particular attention will be paid to tobacco product regulation and smoking in public places. Reference will be made to initiatives to limit or ban smoking in working places within the context of health and safety at work regulations and suggestions will be made for EU action or coordination of national policies. A review of legislative action in other jurisdictions will be made with the aim of identifying best practice and the scientific basis for further legislation at EU level. The chapter will also consider past and current legal challenges to EU legislation. ECJ case law will be taken into account when putting forward recommendations for further EU action.

## **Chapter 7**

### **Conclusions**

#### **Chapter co-ordinator(s) to be identified**

The concluding chapter will draw together the different aspects of tobacco control policy in Europe outlined in earlier chapters. It will particularly highlight the lessons learned in the legislative process and base recommendations for future EU initiatives on what is workable and can be achieved within the new legal, political and economic framework of an enlarged Union. The goal will be to clearly state the overall objective of tobacco control, backed up with economic, social, legal and health arguments. An EU tobacco control strategy will be articulated and particular gaps in current legislation and loopholes or omissions will be identified and proposals made for completing the strategy.

## **Annex**

An English language translation of the titles of the relevant tobacco legislation of the 29 countries covered by the report, plus a one-page summary of their contents.

### 3.3 Special note: Translation of national legislation

The tender specifications call for the translation into English of all tobacco legislation from all 29 countries identified in this report. The bidding consortium attempted to establish, via the national networks of the ENSP, the total number of pages of legislation for each country and an estimate of translation costs. This proved impossible to accomplish within the deadline available. However, the WHO has stated that it is working on informal translations of English language texts of the relevant legislation of all 29 countries for use by its national counterparts. In preparation for this tender we attempted to obtain a timeline and written assurance of this from WHO EURO in Copenhagen. They declined to give this written assurance and could not give a date for finalisation of this project.

In the circumstances, the bidding consortium cannot commit itself to providing an official English language translation of the national legislation of 29 countries. This could run into several thousand pages and could not be brought within the budget of this particular tender.

Moreover, other investigations have revealed that owing to the translation workload generated by enlargement, translators into English from the Acceding Country languages are in short supply and accordingly, we would not be in a position to guarantee delivery of a quality translation of these texts before the expiry of the contract.

Instead, we are able to guarantee an English language translation of the titles of the relevant tobacco legislation of the 29 countries covered by the report, plus a one page summary of their contents.

Should the WHO complete its translation task before the report is finalised, we will endeavour to make the texts available on a CD-Rom attached to the report. The full texts will not be published in the body of the report as this alone would run to several hundred pages.

### 3.4 Methodology

Each chapter will be allocated a **chapter co-ordinator**. The co-ordinator will be a member of the Expert Committee and will be responsible for writing the chapter, with extensive input from other Expert Committee Members. It is anticipated that there will be two initial drafts and a final draft of each chapter.

### 3.5 Timetable of activities (see timeline chart attached)