

1. General Instruments

HEAD OF STATE

21261 ACT 28/2005, dated 26 December, on health and hygiene measures against smoking and regulating the sale, supply, consumption and advertising of tobacco products.

JUAN CARLOS I
KING OF SPAIN

To all concerned:

The Spanish Parliament has approved and I authorise the following law.

Preamble

I

In Spain, as in other developed countries, smoking is the first sole cause of avoidable death and sickness. The scientific evidence of the risks of smoking for public health is conclusive.

It is estimated, according to data from the World Health Organisation (WHO), that smoking is responsible for 80 per cent of deaths from lung cancer, 95 per cent of deaths from chronic obstructive lung diseases, 50 per cent of deaths from cardiovascular diseases and 30 percent of deaths from any type of cancer. In Spain, every year 16 per cent of all deaths in the population aged above thirty-five are caused by smoking. There is also scientific evidence that tobacco smoke in the environment (passive or involuntary smoking) causes death, disease and disability. The WHO International Agency for Cancer Research has determined that exposure to air contaminated with tobacco smoke is carcinogenic in humans.

Smoking, as a factor leading to different diseases and a known cause of death and of important social and health problems is one of the main public health problems. It is therefore necessary to adopt measures to prevent it, limit supply and demand and regulate advertising, promotion and sponsorship.

These measures must be fully aligned with the actions laid down in the European Strategy for Tobacco Control 2002 for the European Region and with the WHO Framework Convention on Tobacco Control, done in Geneva on 21 May 2003 and ratified by Spain on 30 December 2004.

The European Union, too, is concerned about the phenomenon of smoking and has aimed to combat it through various regulatory measures, especially the European Parliament and Council Directive 2003/33/EC dated 26 May 2003 relating to the

approximation of the legal, regulatory and administrative regulations of the Member States regarding the advertising and sponsorship of tobacco products which, by means of this Act, is thus included in our legislation.

The Spanish Constitution recognises the right to health protection in its article 43 and, in its section 2, charges the public authorities with the organisation and safeguarding of public health by means of preventive measures. In order to contribute to making this right effective, the Act 14/1986 of 25 April, the General Health Law, established the obligation for public health Administrations to give priority to health promotion and the prevention of disease, to avoid activities and products which, directly or indirectly, might have negative consequences for health and to regulate their advertising and marketing.

The existing legislation on general aspects of smoking is disperse and not systematic. It includes, among others, Royal Decree 192/1988 dated 4 March and the subsequent amendment laid down in Royal Decree 1293/1999 dated 23 July on limitations for the sale and use of tobacco for the purpose of protecting public health; Royal Decree 510/1992, dated 14 May, regulating the labelling of tobacco products and establishing certain limitations in commercial aircraft; Royal Decree 1185/1994 dated 3 June, on the labelling of tobacco products apart from cigarettes and prohibiting certain types of tobacco for oral use and updating penalties relating to tobacco; Royal Decree 1079/2003 dated 18 October, regulating maximum content of nicotine, tar and carbon monoxide in cigarettes, the labelling of tobacco products and measures regarding the ingredients and designations of tobacco products, and Royal Decree 2198/2004 dated 25 November determining the groups targeted by cohesion policies for the purpose of funding from the Cohesion Fund for health during 2004. The current legislation also regulates aspects of tobacco advertising, although it only prohibits television advertising. The current regulations are laid down basically in Acts 34/1988, dated 11 November, the General Advertising Law, and 25/1994 dated 12 July incorporating into Spanish legislation Directive 89/552/EEC on the coordination of the legal, regulatory and administrative instruments of the Member States regarding television broadcasting activities, and Act 22/1999 dated 7 June amending the latter.

Regarding the Autonomous Communities, regarding their statutory powers in the field of public health, the need was felt early on for regulating these matters. An example is Act 20/1985 dated 25 July of the Autonomous Community of Catalonia, on prevention and care in relation to substances that can lead to addiction. Today, almost all the Autonomous Communities have now enacted legislation, either by approving specific regulations on smoking, as in Galicia with Decree 75/2001, dated 22 March, on the health and hygiene control of advertising, promotion, supply, sale and consumption of tobacco products, or the Comunidad Foral de Navarra, with approval of its Act 6/2003, dated 14 February, for the prevention of smoking, the protection of clean air and the promotion of health with regard to tobacco, or in the framework of broader regulations generally linked to drug-dependency phenomena and other addictive disorders as in the other Autonomous Communities – Andalusia, Aragon, the Canary Islands, Cantabria, Castilla-La Mancha, Castilla y León, Catalonia, Extremadura, Madrid, Region of Murcia, La Rioja, Valencian Community and Basque Country.

The above considerations make it necessary to adopt new measures in two directions. Firstly, measures on consumption and sales, increasing smoke-free areas, limiting

availability and access to tobacco products, especially for young people, and guaranteeing that the right of the non-smoking population to breathe air that is free from contamination by tobacco smoke prevails over that of smokers. It is both appropriate and necessary to introduce new measures regarding the sale and consumption of tobacco to correct the limitations and defects in the existing legislation which time, increasing scientific evidence, greater social awareness and the proliferation and diversification of strategies to sell and promote smoking products have made clear.

In addition, measures relating to the advertising and promotion of tobacco products, both direct and indirect, and the sponsorship of various activities, have a proven influence over personal conduct and social habits, so these induce and promote smoking, especially amongst children and young people. It is therefore necessary to limit it in all types of advertising and media – printed, broadcast, televised, electronic or cinematographic.

The adoption of the proposed measures is also necessary to offer support and regulatory coverage to educational, preventive and health care actions taken throughout the State. From this point of view, it is also necessary to create a legal basis to facilitate the existence and efficiency of such actions, especially amongst children and young people, the main sector of the population addressed by the regulation of smoking products.

While the establishment of smoke-free areas is a priority for protecting the health of the general public, it is even more so for minors. Stress must be placed on the role model of teachers and health professionals in their work to educate, create awareness, prevent and encourage tobacco-free lifestyles.

With the same objective, the prohibition of direct and indirect advertising and of the sponsorship of tobacco products is one of the main measures for protection, addressing children and young people, and points to the responsibility of the public authorities for limiting access and availability of a product which generates addiction, disability, sickness and death.

Moreover, it has to be recognised that the phenomenon of smoking does not appear in the same way in men and women. Clear differences have been noted in the causes for starting to smoke, in smoking patterns, in the continuation of the addiction, in the response to treatments, in the difficulty for quitting and in the rates of relapse, and it is clear that the negative impact is greater for women's health.

It is therefore necessary to adopt a gender approach in any strategies adopted to deal with smoking in order to eliminate any factors leading to unequal opportunities for enjoying health, or for becoming disabled or dying from preventable causes.

Moreover, the interaction with women's physiology and reproductive processes adds specific risks. For several decades, it has been known that nicotine and carbon monoxide during pregnancy are responsible for a greater propensity towards miscarriage and perinatal death, as well as for lower birth weight. Exposure of pregnant women as passive smokers to tobacco smoke in the atmosphere can be damaging for the foetus.

For all the above reasons, and in view of the regulations and the regulatory rank of the instruments mentioned, it has become advisable to enact a general rule to systematise regulations with a rank that is appropriate for its purpose, for which reason it is to be a law.

II

The Law comprises five chapters dealing respectively with the regulation of the general instruments, limits on the sale, supply and consumption of tobacco products, the regulation of tobacco advertising, promotion and sponsorship, measures to prevent smoking, promote health and help people stop smoking, and the regime for offences and penalties.

Chapter I deals with the general instruments, defines the object and clarifies, using definitions, the basic concepts contained in the Law.

Chapter II regulates limitations on the sale, supply and consumption of tobacco products. Regarding limits on sales and supply, in line with the regulations governing the tobacco market, the Law states that the retail sale and supply of tobacco may only be carried out through the State network of tobacco and stamp retail outlets or through vending machines holding the necessary administrative licences, so is therefore strictly prohibited in any other place or medium.

Moreover, the Law prohibits the sale or delivery to minors aged under eighteen of tobacco products or any other product imitating it and encouraging them to smoke. Also prohibited is the sale of tobacco by minors aged under eighteen. Under all circumstances, the Law prohibits the sale and supply in certain places, such as centres and premises forming part of the Public Administrations and public law entities, centres for health care or social services and their premises, teaching centres, cultural centres, sports centres and facilities, centres for the care and leisure of minors, and any other place, centres or establishment where smoking is prohibited.

Regarding limits on smoking, the Law makes a distinction between places where there is a total prohibition on smoking and places where smoking is prohibited but where smoking areas can be set aside providing they meet certain requirements such as proper signs, physical separation from other premises and the provision of independent ventilation systems.

Chapter III incorporates into Spanish legislation Directive 2003/33/EC of the European Parliament and Council, dated 26 May 2003, regarding the approximation of the legal, regulatory and administrative instruments of the Member States in the field of tobacco product advertising and sponsorship.

The Law is not limited, however, to the mere transposition of the Community regulation but also regulates the prohibition of free or promotional distribution of products, goods or services or any other action for which the goal or direct or indirect effect, either principal or secondary, is to promote a tobacco product, and of any type of advertising,

promotion and sponsorship of tobacco products in all the media, including the services of the information society, although with some exceptions.

This chapter closes with rules on brand-sharing, which refers to the names, brands, symbols or any other distinguishing sign used for tobacco products and, simultaneously, for other goods or services that were sold or offered by the same company or group of companies prior to the entry into force of the Law.

Chapter IV includes measures to prevent smoking by promoting health education and information actions.

It also covers the promotion of programmes to assist smokers in breaking their habit through the health care network of the Spanish National Health System.

The Observatory for the Prevention of Smoking is created, as well as the coordination measures needed within the Inter-Territorial Board of the National Health System to strengthen enforcement of the Law.

The Law closes with a precise regime of offences and penalties in Chapter V which not only classifies the different types of illegal conduct and allocates the corresponding penalties, but identifies who is responsible even in the case of offences committed by minors, and clearly defines powers for imposing penalties.

All these measures, in the context of the public health policies which the Public Administrations must promote, may be complemented with programmes to prevent and control smoking.

CHAPTER I

General provisions

Article 1. Object

The object of this Law is:

- a) To establish, in a basic way, limitations in retail operations for the sale, supply and consumption of tobacco products and to regulate the advertising, promotion and sponsorship of such products in order to protect public health.
- b) To promote the necessary mechanisms for the prevention and control of smoking.

Article 2. Definitions

For this purpose of this Law, the following terms shall be understood as follows:

- a) Tobacco products: those designed to be smoked, inhaled, sucked or chewed which are made up, even if only partly, of tobacco.
- b) Advertising: any form of communication, recommendation or commercial action whose aim, whether direct or indirect, is to promote a tobacco product or the use of tobacco, including advertising which, even if a tobacco product is not mentioned

- directly, tries to get round the prohibition of advertising by using names, brands, symbols or other distinguishing elements for tobacco products.
- c) Sponsorship: any type of contribution, whether public or private, to an event, activity or individual whose purpose or direct or indirect effect is to promote a tobacco product or the use of tobacco.
 - d) Promotion: any stimulation of the demand for tobacco products, such as advertisements, advertising and special acts, including those aiming to draw the attention and spark the interest of consumers.

CHAPTER II

Limitations on the sale, supply and consumption of tobacco products

Article 3. Sale and supply of tobacco products

1. The retail sale and supply of tobacco products may only take place through the network of tobacco and stamp retailer outlets or through vending machines located in establishments having the appropriate administrative licences for machine sales, and shall be expressly prohibited in any other place or medium.
2. It shall be prohibited to sell or deliver to minors under the age of eighteen tobacco products or any other product imitating it and encouraging smoking. In particular, the sale of sweets, refreshments, toys and other objects having the shape of tobacco products that might be attractive for minors shall be prohibited. Also prohibited is the sale of tobacco by minors under the age of eighteen.

The packaging of tobacco products shall include an express reference to the prohibition of sales to minors under the age of eighteen.

3. In all establishments in which the sale and supply of tobacco products is authorised, posters shall be displayed in a visible place, in accordance with the characteristics laid down by the Autonomous Community regulations for the respective territorial area, in Spanish and any co-official languages, regarding the prohibition of selling tobacco to minors under the age of eighteen and warning of the damage to health that can be caused by smoking. Such establishments shall require that any purchasers, unless it is obvious that they are of age, accredit their age by showing an official document.
4. The marketing, sale and supply of cigarettes and cigarrillos without a natural wrapper singly or in packets of less than 20 units shall be prohibited.
5. In the exercise of a commercial or business activity, the delivery, supply or distribution of samples of any tobacco product, whether free or not, shall be prohibited, as shall the sale of tobacco products with a discount.

It is assumed that the delivery, supply or distribution of samples takes place in the exercise of a commercial or business activity when it is carried out directly by the manufacturer, producer, distributor, importer or seller.

6. The sale and supply of tobacco products by any method other than direct personal sale or through vending machines meeting the conditions laid down in the following article shall be prohibited. The indirect or non-personal retail sale or supply of tobacco products, through distance sales or similar procedures, shall be expressly prohibited.

Article 4. Sale and supply through vending machines

The sale and supply through vending machines shall be carried out in compliance with the following conditions:

- a) Use: minors under the age of eighteen shall be prohibited from using tobacco product vending machines.
- b) Location: tobacco product vending machines may only be located inside rooms, centres or establishments in which smoking is not prohibited, and in those referred to under letters b), c) and d) of article 8.1 in a location in which it is possible for the person in charge of the place or its workers to carry out direct, permanent supervision of usage. They may not be placed in attached areas or places leading to the rooms, such as windbreaks, porches, doorways, the passages of shopping centres, halls, landings, staircases, archways or similar places which may form part of a building but do not constitute the inside part of it.
- c) Health warning: the front surface of machines shall display, clearly and visibly, in Spanish and the co-official languages of the Autonomous Communities, a health warning on the damage to health that can be caused by smoking, especially for minors, in accordance with the characteristics laid down in the Autonomous Community regulations for their respective territorial area.
- d) Characteristics: in order to guarantee correct use of such machines, they shall include appropriate technical mechanisms to prevent access by minors.
- e) Incompatibility: products apart from tobacco may not be supplied from these machines.
- f) Register: tobacco product dispensing machines shall be noted in a special register held by the Commission for the Tobacco Market.

Article 5. Prohibition of sale and supply in certain places

Without prejudice to the provisions of the above articles, the sale and supply of tobacco products shall be prohibited in the following places:

- a) Centres and premises of the Public Administrations and public law entities.
- b) Health or social services centres and their premises.
- c) Educational centres, irrespective of the age of pupils and the type of teaching.
- d) Cultural centres.
- e) Sports centres and facilities.
- f) Care, leisure and entertainment centres for minors.
- g) Any other place, centre or establishment in which smoking is prohibited, and in the open-air areas laid down in article 7.
- h) In places where it is allowed to set aside smoking areas, tobacco may not be sold except in the cases laid down in letters b), c) and d) of article 8.1, in which it may be sold through duly authorised vending machines.

Article 6. Limitations on the consumption of tobacco products

Tobacco products must be consumed exclusively in those places or areas in which smoking is not totally prohibited or in those which are specially set aside for this purpose. A distinction is made between places in which smoking is totally prohibited and those others in which, in spite of the prohibition, areas may be set aside for tobacco consumption.

Article 7. Total prohibition on smoking

Smoking shall be totally prohibited, in addition to those places or areas laid down in the Autonomous Community regulations, in:

- a) Public and private workplaces, except in open air areas.
- b) Centres and premises of the Public Administrations and public law entities.
- c) Health centres, services or establishments.
- d) Educational and training centres, irrespective of the age of pupils and of the type of teaching.
- e) Sports facilities and places where public shows are given, provided they are not in the open air.
- f) Areas for dealing directly with the public.
- g) Shopping centres, including large retail outlets and shopping malls, except in open air spaces. In the inside of and separated from the other rooms of bars, restaurants and other hotel and catering establishments, smoking shall not be allowed, whatever the surface area, unless smokers' areas are designated in compliance with the terms of this Law.
- h) Social service centres for minors under the age of eighteen.
- i) Leisure or entertainment centres, in which minors under eighteen are allowed, except in open air spaces.
- j) Cultural centres, reading rooms, exhibition rooms, libraries, lecture rooms and museums.
- k) Night clubs or places for use by the general public, during the hours or intervals when minors under the age of eighteen are allowed to enter.
- l) Areas or establishments where foods are prepared, processed, cooked, tasted or sold.
- m) Lifts and elevators.
- n) Telephone booths, automatic cash dispenser booths and other small-sized areas for public use.
A small-sized area for public use shall be understood as not occupying more than five square metres.
- Ñ) Vehicles or means of urban and inter-urban public transport, company vehicles, taxis, ambulances, funicular railways and cable cars.
- o) Any areas of suburban transport (trains, platforms, passages, staircases, stations, etc.) except for areas that are completely in the open air.
- p) Railway and maritime means of transport, except for open air areas.
- q) Aircraft both departing and landing within the national territory and in all flights of Spanish airlines, including those sharing flights with foreign companies.
- r) Service stations and similar.
- s) In any other place in which, according to this Law or other rule or by the decision of its owner, smoking is prohibited.

Article 8. Designation of smoking areas.

1. Smoking shall be prohibited in the following areas or places, although smoking areas may be designated:
 - a) Social care centres
 - b) Hotels, hostels and similar establishments.
 - c) Bars, restaurants and other closed catering establishments, having a floor space for customers or visitors of one hundred square metres or more, unless located inside centres or premises in which smoking is prohibited according to the terms of article 7.
 - d) Night clubs, gambling establishments or establishments for use by the general public, during the hours or the interval when minors under the age of eighteen are not allowed to enter, except in open air spaces.
 - e) Theatres, cinemas and other closed public entertainment establishments. In such cases, smokers' areas shall be located outside the performance or projection hall.
 - f) Airports.
 - g) Bus stations.
 - h) Maritime and railway stations.
 - i) Any other place in which, even if smoking is not prohibited, the owner so determines.
 - j) In any place or area allowed by the regulations of the Autonomous Communities, outside the stipulations laid down in article 7.

2. Smoking areas may be designated only in the places laid down in the above section, provided they meet, at least, the following requirements:
 - a) They must properly and visibly display signs in Spanish and in the co-official language, and must meet the requirements of the appropriate Autonomous Community regulations.
 - b) They must be physically separated from the other rooms in the centre or entity and must be completely partitioned off, and must not be necessary passage-ways for non-smoking persons, unless the latter are workers or employees in them and are aged over sixteen.
 - c) They must have separate ventilation systems or other devices or mechanisms to guarantee the removal of smoke.
 - d) Under all circumstances, the floor space of the designated smoking area shall be less than 10 per cent of the total area for customers or visitors in the centre or establishment, except for the cases referred to in letters b), c) and d) of the above section, in which a maximum of 30 per cent of the common areas may be allocated to smokers. Under no circumstances may the whole of the smoking areas in each space or place referred to in section 1 of this article have a surface area in excess of three hundred square metres.

In the places designated under letter b) of section 1 of this article, 30 per cent of rooms may be reserved for smoking guests.
 - e) In establishments in which two of the activities mentioned in this article are carried out, in separate spaces, the floor space shall be calculated for each of them separately, excluding from the calculation any common or passage areas in which, under no circumstances, shall smoking be allowed.

In all cases in which it is not possible to fit these areas with the necessary requirements, the smoking prohibition shall be maintained throughout the premises.

3. In smoking areas in the establishments referred to in this article, minors under the age of sixteen shall not be allowed.

CHAPTER III

Regulation of advertising, promotion and sponsorship of tobacco products

Article 9. Limitations on advertising, promotion and sponsorship of tobacco products

1. The sponsorship of tobacco products shall be prohibited, as shall any type of advertising and promotion of such products in all media and supports, including vending machines and the services of the information society, with the following exceptions:
 - a) Publications that exclusively target professionals involved in the tobacco trade.
 - b) Presentations of tobacco products to professionals in the sector in the framework of Act 13/1998, dated 4 May, on the regulation of the tobacco market and tax regulations, and the promotion of such products in State tobacco and stamp retail outlets, provided they do not address minors nor involve the free distribution of tobacco or of goods and services relating exclusively to tobacco products or to the smoking habit or are associated with names, brands, symbols or any other distinguishing sign used for tobacco products. Under all circumstances, the value or price of such goods or services may not be in excess of five per cent of the price of the tobacco products being promoted.
Under no circumstances may such activities be carried out in shop windows nor may they extend outside such establishments, nor be directed externally.
 - c) Publications containing tobacco product advertising, published or printed in countries that do not belong to the European Union, provided that such publications do not mainly address the Community market, unless they mainly address minors.
2. The free or promotional distribution of products, goods or services or any other action, whose aim or direct, indirect, principal or secondary effect is the promotion of a tobacco product shall be prohibited outside the State network of tobacco and stamp retail outlets.

Article 10. Rules applicable to brand-sharing

The use of names, brands, symbols or any other distinguishing sign used to identify tobacco products in trade and, simultaneously, other goods or services that are sold or offered by a single company or group of companies shall be prohibited.

For this purpose, companies belonging to a group shall be considered as those which constitute a single decision-making unit because one of them exercises or may exercise, directly or indirectly, control over the others, or because such control is carried out by one or several persons who systematically act in agreement. It shall be assumed that under all circumstances there is a single decision-making unit when one of the conditions applies which is laid down in section 1 of article 42 of the Commercial Code and in article 4 of Act 24/1988, dated 28 July, on the Stock Exchange.

CHAPTER IV

Measures to prevent smoking, promote health and help smokers stop smoking

Article 11. Actions and programmes

The appropriate Public Administrations shall promote, both directly and in collaboration with scientific associations, social agents and non-governmental organisations, health education actions and programmes, health information and the prevention of smoking.

Article 12. Programmes to help smokers stop smoking.

The appropriate Public Administrations shall promote the creation of health programmes to help smokers stop smoking within the health care network, especially in primary care. Programmes to encourage smokers to stop smoking shall also be promoted in teaching institutions, health centres, work centres and sports and leisure venues. The creation of units for giving up smoking shall be encouraged and promoted within the Inter-Territorial Board of the National Health System.

Article 13. Adoption of measures

In the adoption of measures referred to in this chapter, special attention shall be paid to gender considerations and social inequality. In addition, the appropriate Public Administrations shall promote the necessary measures to protect health and educate minors, in order to prevent them from starting smoking and to help them give up their addiction. The creation of programmes of action shall be encouraged in paediatric care with specific information for parents who smoke and campaigns on the damage caused to minors by exposure to smoke.

Article 14. Criteria and protocols of units for the prevention and control of smoking.

The Ministry of Health and Consumer Affairs shall establish, in coordination with the Autonomous Communities and the appropriate scientific associations, defining criteria and protocols for units for the prevention and control of smoking.

Article 15. Collaboration with the public authorities

In compliance with the objectives of this Law, the Government, in collaboration with the Autonomous Communities, and within the Inter-Territorial Board of the National Health System, shall propose initiatives, programmes and activities to improve compliance with this law and shall coordinate inter-sector and inter-territorial actions.

Article 16. Observatory for the Prevention of Smoking.

The Observatory for the Prevention of Smoking shall be created within the Ministry of Health and Consumer Affairs and in collaboration with the Autonomous Communities, scientific associations, consumers' associations and non-governmental organisations. Its functions shall include the following:

- 1) To propose initiatives, programmes and activities for achieving the objectives of the law.
- 2) To establish objectives to reduce the prevalence of smoking.
- 3) To draw up an annual report on the situation, enforcement, results and compliance with this Law.

Article 17. Use of any fines imposed

The appropriate Administrations may use, either totally or partially, any amounts collected from the imposition of fines as laid down in this Act, for drawing up programmes for research, education, prevention or control of smoking and for helping smokers stop smoking.

CHAPTER V

Regime of offences and penalties

Article 18. *General instruments.*

1. The power to impose penalties laid down in this Act shall be exercised, for anything not specified in it, in compliance with the provisions of Act 30/1992, dated 26 November, on the Legal Regime for Public Administrations and Common Administrative Procedure, and in Act 14/1986, dated 25 April, the General Health Law, irrespective of any civil, penal or other liabilities involved.
2. In penalisation procedures for serious or very serious offences, it will be possible to adopt, according to Act 30/1992, dated 26 November, on the Legal Regime for Public Administrations and Common Administrative Procedure, and its implementing regulations, and irrespective of any regulations established by the Autonomous Communities, any measures of a provisional nature laid down in such regulations that are considered necessary to guarantee the effectiveness of whatever resolution is eventually passed, to achieve the aim of the procedure, to avoid maintaining the effects of the offence and to meet the requirements of public interest. In particular, the following may be agreed:
 - a) In the case of very serious offences, the temporary suspension of the offender's activity and, where appropriate, the provisional closure of the offender's establishments.
 - b) The sealing, deposit or seizure of tobacco products.
 - c) The sealing, deposit or seizure of computer records, media and archives and any documents in general, as well as computer equipment of any type.
 - d) Warning the public of the existence of possible illegal conduct and of the commencement of the penalisation procedure, and of the measures adopted to put an end to such conduct.

In the adoption and enforcement of such measures, under all circumstances, respect shall be shown for the guarantees, rules and procedures laid down in legislation to protect the rights to personal and family privacy, to the protection of personal details, to freedom of expression and freedom of information, if these might be affected.

In urgent cases and to achieve immediate protection of the interests involved, the provisional measures laid down in this article may be agreed before commencement of the penalisation procedure. The measures shall be confirmed, amended or lifted in the agreement for the commencement of the procedure, which shall be carried out within a period of 15 days after they are adopted and may be subject to appeal. Under all circumstances, such measures shall have no effect if the penalisation procedure is not commenced within this period or if the agreement to commence does not contain an express mention of them. The administrative body with competence for deciding on the penalisation procedure may impose corrective fines for an amount of no more than 6,000 euros for each day that the agreed provisional measures are not complied with.

3. Very serious offences shall lapse after three years; serious offences after two years, and light offences, after six months. Any penalties imposed for very serious offences shall lapse after three years, those imposed for serious offences after two years, and those imposed for light offences after one year.

Article 19. *Offences*

1. Offences for non-compliance with the terms of this Law shall be classified as light, serious and very serious.
2. The following shall be considered light offences:
 - a) Smoking in places where there is a total prohibition or outside the designated smoking areas.
 - b) Not having or not displaying in a visible place in establishments where the sale of tobacco products is authorised posters stating that it is prohibited to sell tobacco to minors under the age of eighteen and warning about the health risks of smoking.
 - c) Vending machines do not have the necessary health warning or do not comply with the legal requirements.
 - d) Not informing at the entry to establishments as to whether or not smoking is prohibited, and of the existence of designated smoking and non-smoking areas or not complying with the other formal obligations referred to in this Law.
 - e) Not correctly marking designated smoking areas.
 - f) The sale or marketing of tobacco products by minors.
3. The following shall be considered serious offences:
 - a) Designating smoking areas in establishments and places where this is not allowed or where the places do not meet the legal requirements for separation from other areas, ventilation and floor space.
 - b) Allowing smoking in places in which there is a total prohibition, or outside the areas designated for this purpose.
 - c) The accumulation of three of the offences laid down in section 2.a) of this article.
 - d) The marketing, sale and supply of cigarettes and cigarillos with no natural wrapper in sales packets containing less than 20 units, and individually.
 - e) The individual sale and supply of cigars and cigarillos with a natural wrapper in places where this is not allowed.
 - f) The delivery or distribution of samples of any tobacco product, whether free of charge or not.
 - g) The installation or location of tobacco vending machines in places where this is expressly prohibited.
 - h) The supply or dispensing through tobacco vending machines of non-tobacco products.
 - i) The sale and supply of tobacco products by distance sales or similar procedures, except sales from vending machines.
 - j) Free or promotional distribution, outside the State network of tobacco and stamp retail outlets, of products, goods or services with the aim or direct or indirect effect of promoting a tobacco product.
 - k) The sale of tobacco products with a discount.
 - l) The sale or delivery to minors under the age of eighteen of tobacco products or of products imitating tobacco products and inducing smoking, and of sweets, refreshments, toys and other objects in the shape of tobacco products that might be attractive for minors.

- m) Allowing minors under the age of eighteen to use tobacco product vending machines.
 - n) When vending machines do not have the correct mechanism for the owner of the establishment to start them up.
 - Ñ) Free or promotional distribution of products, goods or services with the aim or direct or indirect effect of promoting a tobacco product to minors under the age of eighteen.
 - o) The sale of goods or services using names, brands, symbols or other distinguishing signs already used for a tobacco product under different conditions to those allowed in article 10 and in the second transitory provision.
 - p) The sale of tobacco products using the name, brand, symbol or any other distinguishing sign of any other good or service under different conditions to those allowed by this Law.
 - q) The sale, assignment or supply of tobacco products failing to comply with the other prohibitions or limitations laid down in this Law.
 - r) The distribution free of charge in the State tobacco and stamp retail outlets of goods and services that relate exclusively to tobacco products or the smoking habit or that are associated with names, brands, symbols or any other distinguishing signs used for tobacco products.
- 4) Very serious offences are the advertising, promotion and sponsorship of tobacco products in all the media, including the services of the information society, except for those circumstances laid down in article 9.1.

Article 20. *Penalties*

1. The light offences as laid down in article 19.2 a) shall be penalised with a fine of up to 30 euros if the illegal conduct is carried out in isolation, and with a fine of 30 to 600 euros in other cases; serious offences, with a fine from 601 euros to 10,000 euros, and very serious offences from 10,001 euros to 600,000 euros.
2. The amount of the fine imposed, within the above limits, shall be scaled taking into account the health risk generated, the economic capacity of the offender, the social effects of the offence, the benefit received by the offender for the conduct being penalised and whether or not one or more offences under this Law have been committed previously. The penalties shall be divided, within each category, in three degrees – minimum, medium and maximum. The maximum degree of penalties shall be imposed for acts when the person damaged or affected is a minor and in cases in which the offending conduct is carried out habitually or continually, unless the habit or continuity form part of the type of offence. Penalties shall be of the minimum degree when committed by a minor, without prejudice to the provisions of article 21.8.
3. Under all circumstances, when the amount of the fine is less than the benefit obtained for committing the offence, the fine shall be increased up to double the amount by which the offender has benefited.
4. If a single act or omission constitutes two or more offences, as classified in this and other Laws, consideration shall be given only to the one which incurs the largest penalty.
5. When, in the opinion of the Administration, the offence might constitute a crime, the administrative body shall transfer it to the Department for Public Prosecutions and shall abstain from pursuing the penalisation procedure until such time as the judicial authority passes a decision. The criminal penalty shall exclude the imposition of the administrative penalty.

6. The requirement for administrative liability shall be compatible with any civil or other liability incurred.
7. The amounts of fines shall be periodically reviewed and updated by the Government by means of a Royal Decree.

Article 21. Persons responsible

1. For the different offences, the person responsible shall be the wrong-doer, that is, the person or legal entity committing the acts classified as offences.
2. In the case of the offences classified in article 19.2.b), d), e) and f) and 19.3.a), the persons responsible shall be the owners of the establishments in which the offence is committed.
3. For the offences classified in article 19.2.c) and 19.3.n), the manufacturer, the importer and, if applicable, the distributor and the operator of the machine shall be jointly and severally responsible.
4. For the offences classified in article 19.3.g) and h), the operator of the machine shall be responsible.
5. In the case of article 19, sections 3.b) and 3.l, in the case of the sale of tobacco products to minors under the age of eighteen and of article 19.3.m), the responsible person shall be the owner of the premises, centre or establishment in which the offence is committed or, otherwise, the employee who was in charge of the establishment or centre at the time the offence was committed. If the owner of the premises, centre or establishment is a public Administration, this Administration shall be responsible, without prejudice to its requiring that its authorities and other staff in its services take any responsibility incurred.
6. In the case of the offence classified in article 19.3.l) of the delivery to minors under the age of eighteen of tobacco products, the person who delivers the product to the minor shall be responsible.
7. In the case of offences in the field of advertising, joint and several responsibility shall be held not only by the advertising company but also the beneficiary of the advertising, this being understood as the owner of the brand or product advertised, and the owner of the establishment or area in which the advertisement is made.
8. When responsibility for the acts committed is declared to be held by a minor, the parents, tutors, foster parents and legal or de facto guardians in this order shall be responsible for failing to meet their obligation which includes their duty to prevent the administrative offence the minors are charged with. The joint and several responsibility will refer to the pecuniary responsibility resulting from the fine imposed. With the consent of the above-mentioned people and once the minor has been heard, the economic penalty of the fine may be replaced by whatever re-educational measures are determined by the Autonomous Community regulations.

Article 22. Powers for inspection and penalisation

1. The General Administration of the State shall exercise the functions of inspection and control, ex officio or on request, and shall deal with penalisation procedures and the imposition of fines within the scope of air, maritime or land transport when these take place beyond the scope of the Autonomous Communities or internationally, and in any premises, places or media which, because of their characteristics, fall outside the area of competence of the Autonomous Communities and Cities with an Autonomy Statute.

2. The competent bodies of the Autonomous Communities and Cities with an Autonomy Statute, where appropriate, shall deal with the functions of control and inspection, ex officio or on request, and the examination of penalisation procedures and the imposition of fines.
3. The powers for imposing penalties of the bodies referred to in this article shall be without prejudice to those corresponding to the Commission for the Tobacco Market in compliance with Act 13/1998, dated 4 May, on the Organisation of the Tobacco Market and Tax Regulations.
4. In the case of offences committed via radio or television, the Autonomous Communities shall exercise control and inspection in order to guarantee compliance with the terms of this Law and, where appropriate, shall deal with any penalisation procedures and shall impose any penalties with regard to television and radio broadcasting services whose areas of coverage, whatever the means of transmission used, do not go beyond their respective territorial limits. They shall also be competent for television and radio broadcasting services provided directly by them or by entities to which they have granted powers within the Autonomous Community.
The State, through the Ministry of Industry, Tourism and Trade, shall be competent to guarantee the enforcement of the provisions of this Law in other television and radio services. In such cases, the provisions of Chapter V of Act 25/1994, dated 12 July, on the transposition to Spanish legislation of Directive 85/552/EEC, on the coordination of the legal, regulatory and administrative instruments of the Member States regarding the exercise of radio and television broadcasting activities shall not be applicable.
5. Any offences committed via services or devices of the information society shall be penalised by the authorities referred to in article 43 of Act 34/2002, dated 11 July, on services of the information society and e-commerce.

Article 23. *Exercise of individual and group actions*

1. The holder of an affected right or legitimate interest may demand that administrative and jurisdictional bodies of any type observe and comply with the provisions of this Law.
2. Regarding advertising, any affected person or legal entity and, in general, anyone holding a subjective right or a legitimate interest may request cessation of any advertising that goes against this Law, in the terms laid down, as appropriate, in Acts 34/1988, dated 11 November, the General Law on Advertising, 25/1994, dated 12 July which transposes to Spanish legislation Directive 89/552/EEC, on the coordination of the legal, regulatory and administrative instruments of the Member States regarding the exercise of radio and television broadcasting activities, and 34/2002, dated 11 July, on services of the information society and e-commerce.
3. When the illegal advertising affects the group or individual interests of consumers and users, joint action may be taken to stop it under the provisions mentioned in section 2.

First additional provision. *Manual sale of cigars and cigarrillos with a natural wrapper.*

Irrespective of the provisions of articles 3.1. and 5.g), with regard to the sale via the network of tobacco and stamp retail outlets and vending machines, the manual sale of cigars and cigarrillos with a natural wrapper shall be allowed in the establishments

referred to under letter c) of section 1 of article 8, providing they have the administrative authorisation from the Commission for the Tobacco Market.

Second additional provision. *Special regime for small hotel and catering establishments in which smoking is allowed.*

Hotel and catering establishments in which there is no legal prohibition on smoking, because they are closed establishments, which serve food and/or drinks for consumption, having a floor space for customers and/or visitors of less than one hundred square metres, shall inform, in the way laid down in the Autonomous Community regulations, in Spanish and in the co-official language, about the decision as to whether smoking shall or shall not be permitted inside them. In addition, the Autonomous Community shall regulate the information to be included in advertisements, propaganda and other media in which the establishment is advertised or information is given on it.

Third additional provision. *Centres or premises in which there is a legal prohibition on smoking.*

In centres or premises in which there is a legal prohibition on smoking, signs shall be posted in a visible place at the entrance announcing the prohibition on smoking and the places in which, if appropriate, there are areas designated for smoking in accordance with article 8.2.

Fourth additional provision. *Special regime for the Autonomous Community of the Canary Islands.*

The provisions of this Law shall be without prejudice to the special characteristics of the Economic and Fiscal Regime of the Canary Islands regarding commercial freedom for tobacco products in commercial establishments located in the Canary Islands, but this exception shall not amount to a limitation on the application of the other prescriptions given in this Law, especially the provisions of letters a), b), c), d), e) and f) of article 5 and, under all circumstances, those relating to the protection of minors.

Fifth additional provision. *Tax-free shops.*

The so-called “tax-free shops” authorised in ports and airports and referred to in section 1) of the seventh additional provision of Act 13/1998, dated 4 May, on the Organisation of the Tobacco Market and Tax Regulations, may continue to carry out the sale of tobacco, in compliance with the terms of this provision.

Sixth additional provision. *Special regime for prisons.*

An exception is made from the provisions of article 5.a) for the tobacco and stamp retail outlets referred to in the seventh.2 additional provision of Act 13/1998, dated 4 May, on the Organisation of the Tobacco Market and Tax Regulations.

Smoking areas may be designated in prisons.

Seventh additional provision. *Regulations on the prevention of accidents at work.*

The terms of this Law shall be without prejudice to other limitations and prohibitions on smoking given in the regulations on the prevention of accidents at work.

Eighth additional provision. *Psychiatric centres, services or establishments.*

In psychiatric centres, services or establishments, areas may be designated for patients as decided by doctors.

Ninth additional provision. *Private smoking clubs.*

The provisions of this Law regarding the prohibition on smoking, advertising, promotion and sponsorship shall not be applicable to private smokers' clubs that are legally constituted as such, provided such activities are carried out inside their premises and that they exclusively address members.

First transitory provision. *Transitory regime for certain retail outlets and vending machines.*

1. The State tobacco and stamp retail outlets existing at the time of the entry into force of this Law which are affected by the limitation laid down in article 5.6) may continue selling tobacco until the end of their licence period. The owners of the other retail outlets referred to in article 5 shall have a period of one year, starting from the entry into force of this Law, to request a change of location in compliance with the terms of article 39 of Royal Decree 1199/1999, dated 9 July, which implements Act 13/1998, dated 4 May, on the Organisation of the Tobacco Market and Tax Regulations and regulates the licensing status of the network of tobacco and stamp retail outlets. After this period, tobacco products may not longer be sold in these places.
2. The manufacturers, owners and licensees of tobacco product vending machines shall have a period of one year starting from the entry into force of this Law to adapt machines to the requirements and technological requisites referred to in article 4.d). New machines shall incorporate these requirements as from the date of entry into force of this Law.

Second transitory provision. *Transitory regime for brand-sharing.*

The shared brands referred to in article 10 which were sold prior to the entry into force of this Law may continue to be used, although the names, brands, symbols or distinguishing signs shall be clearly different in appearance to that used on the tobacco product and shall not include any other distinguishing sign already used for this product. As from the date of entry into force of this Law, no good or service placed on the market may use names, brands, symbols or other distinguishing signs that are already used for a tobacco product.

Third transitory provision. *Transitory regime applicable to the designation of smoking areas.*

The requirements for designating smoking areas referred to in section 2 of article 8 shall be enforceable after a period of eight months starting from the entry into force of this

Law. During this period, at least, smoking and non-smoking areas must display proper signs and must be separated.

Fourth transitory provision.

Sales may continue for up to three months after the entry into force of this Law of cigarette packaging units and for up to six months after the entry into force of packaging units for other tobacco products which do not comply with the provisions of this Law.

Fifth transitory provision.

The prohibition of advertising or the sponsorship of tobacco products in all media shall not include, for a period of three years starting from the entry into force of this Law, the advertising and sponsorship used by teams participating in motor competitions and sporting events having cross-border effects on their clothing, complements, instruments, equipment, prototypes and/or vehicles.

Single abrogatory provision. *Regulatory abrogation.*

In addition to any instruments of the same or inferior rank that oppose the terms of this Law, the following shall hereby be abrogated:

- a) Section 9 of article 4 of Act 13/1998, dated 4 May, on the Organisation of the Tobacco Market and Tax Regulations.
- b) Article 8.5 of Act 34/1988, dated 11 November, the General Advertising Law, regarding tobacco advertising.
- c) Royal Decree 709/1982, dated 5 March, regulating tobacco advertising and consumption.
- d) Royal Decree 192/1988, dated 4 March, on limitations on the sale and use of tobacco for protecting public health, in the wording given by Royal Decree 1293/1999, dated 23 July.
- e) Article 32 of Royal Decree 1199/1999, dated 9 July, implementing Act 13/1998, dated 4 May, on Organisation of the Tobacco Market and Tax Regulations and regulating the licensing status of the network of tobacco and stamp retail outlets.

First final provision. *Constitutional basis.*

1. This Law is passed as a basic law under article 149.1.1, 16, 19 and 27 of the Constitution.
Article 10 is exempted from the above, being covered by article 149.1.9 of the Constitution.
2. The Autonomous Communities shall, in their respective territorial areas, be responsible for approving regulations to implement this Law.

Second final provision. *Authorisation of the Government.*

The Government, in the area of its powers, shall determine any instruments needed to implement this Law.

Third final disposition. *Entry into force.*

This Law shall enter into force on 1 January 2006, except for the rules given in Chapter III, and those in Chapter V with regard to penalising offences committed under the circumstances referred to in Chapter III, which shall enter into force on the day they are published in the “Official State Bulletin”.

Therefore,

I order all Spanish people, both private persons and authorities, to observe this law.

Madrid, 26 December 2005.

JUAN CARLOS R.

Prime Minister

JOSE LUIS RODRÍGUEZ ZAPATERO