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Summary: Decree of 16-6-2004 approving the Regulation governing certain aspects of the sale and consumption of **tobacco** products.

Decree

approving the Regulation governing certain aspects of the sale and consumption of **tobacco** products

Exposé of motives

The use of **tobacco** products constitutes one of the world's public health problems. The right to health protection recognised in article 30 of the Constitution, which by legal requirement of article 40 of the same fundamental rule must be regulated by law, has already been the subject of attention in the General Health Law, passed by Parliament on 20 March 1989. The objective of Article 1 of this latter Law mentioned is to establish the standard and organisational bases of the health system.

In accordance with article 54(a) of the General Health Law, the preparation and implementation of health policies are in the competence of the Government; and one of the health objectives to which the Government must direct its actions is, in accordance with article 9(b) of that Law, the prevention of illness, with specific programmes addressed to high risk groups.

Control of the promotion, sale and consumption of **tobacco** is a preventive measure designed to prevent the development of illnesses related with **tobacco**, and especially included in the groups at risk are children and young people.

In application of the provisions, competences and powers established by the General Health Law, and in the exercise of the regulating power which article 72(2) of the Constitution attributes to it, the Government may adopt regulating provisions adequate for the protection of health in this ambit. And this even though it could be considered that these provisions could affect – to some degree – the freedom of trade in the framework of the market economy and in accordance with the laws recognised by article 28 of the Constitution, so that the provision contained in article 40 of the Constitution, in the sense that regulation of the exercise of the economic, social and cultural rights and principles recognised in Chapter V of Title II can only be carried out by law, is complied with through the General Health Law in force, which can be invoked as part of the Andorran legal ordinance, as article 39(3) of the Constitution establishes.

In this sense, then, it is necessary to reduce the consumption of **tobacco** and the damage it causes through provisions directed to:

Protecting non-smokers from exposure to **tobacco** smoke.

Ensuring that the public is adequately informed on the risks of consumption of **tobacco** and passive exposure to **tobacco** smoke, and on the benefits of giving up smoking.

Promoting an ambience in which the fact of no smoking and the absence of the promotion of **tobacco** is the norm.

For all this, on the proposal of the Minister of Health and Welfare, the Government, in the session of 16 June 2004, approved this Decree with the following content:

Sole Article

The Regulation governing certain aspects of the sale and consumption of **tobacco** products is approved and will come into force fifteen days after being published in the Official Bulletin of the Principality of Andorra.

Regulation

governing certain aspects of the sale and consumption of **tobacco** products

Article 1

For the purpose of this Regulation **tobacco** product is understood to mean any substance or manufactured product composed wholly or partially of **tobacco** which includes **tobacco** leaves and/or **tobacco** concentrates.

Article 2

Tobacco products are declared to be harmful to the people's health. In consequence, in the case of conflict, the right to health of non-smokers will prevail over the right of smokers to consume **tobacco** products in the places and under the circumstances provided in this Regulation.

Article 3

1. It is prohibited to sell, offer for sale or deliver to persons under 18 years of age **tobacco** products or other products which imitate or induce the habit of smoking and are harmful to health.
2. For compliance with what is established in the preceding section, the vendor may require purchasers to show documentation justifying their age.

Article 4

Tobacco products may not be sold or offered for sale, under the responsibility of the person, entity or institution the owner of the establishment, in the following places:
Health centres and establishments.

Teaching centres and kindergartens.

Establishments with a mostly young clientele, aged under 18 years, such as amusement parks, cinemas and sports facilities.

Article 5

1. Sales by automatic vending machines:

Can only take place inside establishments.

Cannot take place in any of the places indicated in article 4.

2. The use of automatic vending machines is prohibited to persons under 18 years. The owners of the establishments where they are situated must supervise compliance with this prohibition.

Article 6

The owners of premises where **tobacco** products are distributed or sold must put up in a visible place a notice advising of the prohibition to which article 3 refers, and display information referring to the damaging health effects of **tobacco**, in accordance with the notice supplied by the ministry responsible for health.

Article 7

No one may smoke or keep **tobacco** alight in the following places:

- a) health and social-health centres and establishments;
- b) teaching centres and kindergartens;
- c) public passenger transport;
- d) closed sports facilities;
- e) establishments of the public and para-public authorities;
- f) factories;
- g) offices for attention to the public;
- h) lifts and elevators;
- i) shopping malls and hypermarkets;

- j) any employment area where pregnant women are working;
- k) centres for social care destined to those under 18 years;
- l) rooms for public use in general, reading and exhibition rooms;
- m) premises where foods are assembled, processed, prepared or sold, except those places destined principally to the consumption of food. The prohibition of smoking is maintained for people handling foods in accordance with article 7(1) of the Regulation establishing standards relative to persons handling food, of 6 November 2002.

Article 8

In the centres, establishments and places referred to in the preceding article, the owners, managers or persons in charge must display notices which will be supplied to them by the ministry responsible for health, indicating clearly that smoking is prohibited.

Article 9

The prohibition of smoking referring to the centres, establishments and places listed in article 7 does not apply in areas which may be made suitable for smoking.

These areas are determined by the owner of the public or private premises, taking into account their volume, layout, conditions of use, airing and ventilation and the need to guarantee protection for non-smokers. The ministry responsible for health can inspect at any time to verify the suitability, under the criteria mentioned and the principle of protection of non-smokers, of areas authorised for smoking in the centres, establishments and places where they are available.

Article 10

Non-compliance with any of the provisions established in this Regulation will be considered as a serious infringement of a health nature and will be sanctioned in accordance with the terms of the General Health Law, of 20 March 1989.

Repeal provision

The Decree regulating the consumption and sale of **tobacco** in certain circumstances, of 10 October 1991, published in the Official Bulletin of the Principality of Andorra number 42, of 16 October 1991, is repealed, and all regulations of equal or inferior rank which oppose or contradict what is established in this Regulation.

Final provision

This Regulation will come into force fifteen days after its publication in the Official Bulletin of the Principality of Andorra.

Which is made public for general knowledge.

Andorra la Vella, 16 June 2004

Marc Forné Molné

Prime Minister