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CIRCULAR

Circular of August 3, 2011 concerning measures for tobacco control set forth in Law n° 2009-879 of July 21, 2009 concerning reform of hospitals and relating to patients, health and the territories

NOR: ETSP1103804C

Paris, August 3, 2011.

To the Minister of Labor, Employment and Health, the Minister of the Interior, Overseas Territories, Local Governments, and Immigration, the Secretary of State in charge of health for the Minister of Labor, Employment and Health, to the Honorable Ladies and Gentlemen Regional Prefects, the Honorable Ladies and Gentlemen Departmental Prefects, the Honorable Ladies and Gentlemen Directors General of Regional Health Agencies

Reference texts:

— Law n° 2009-879 of July 21, 2009, concerning reform of hospitals and relating to patients, health and the territories (HPST), Articles 94 (IV and V), 98, 99 and 100;

— Decree n° 2009-1764 of December 30, 2009, concerning the composition of scented cigarettes whose sale, distribution or giving away for free is prohibited;

— Decree n° 2010-545 of May 25, 2010, concerning the sanctions set forth for the sale and provision of tobacco products;

— Edict of May 28, 2010, establishing the model for the poster indicated in Article D. 3511-15 of the Code of Public Health;

— Circular of January 22, 2009, concerning the transfer of commercial establishments for on-site beverage consumption and protected areas adapted for implementation of the provisions of Law n° 2007-1787 of December 20, 2007, concerning simplification of the law.

Texts rescinded:

— Article L. 3512-1-1 of the Code of Public Health;

— Circular DGS/SD 6B n° 2005-217 of May 3, 2005, concerning the prohibition of the sale of tobacco to minors under the age of 16.

Texts modified:

- Articles L. 3511-2, L. 3511-2-1, L. 3511-2-2 and L. 3512-4 of the Code of Public Health;
- Articles R. 3511-8, D. 3511-15, D. 3511-16 and R. 3512-3 of the Code of Public Health;
- Article R. 48-1 of the Code of Penal Procedure;
- Article 568 bis of the General Tax Code.

Validated by the National Steering Council of Regional Health Agencies of July 29, 2011
— Visa CNP 2011-209.

Attachment:

- Summary table of “Tobacco” measures set forth in the HPST Law (Annex)

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With 60,000 deaths that can be attributed to tobacco each year, it remains the primary cause of avoidable death in our country. It is also the primary cause of cancer and one of the main causes of cardiovascular disease. The offensive against tobacco conducted within the double framework of the 2003-2008 cancer plan, and the Law on Public Health Policy of August 9, 2004 (including strengthening of the prohibition of smoking in places subject to common use), has had lasting effects, particularly on the target publics, which are young people and women. However, France remains, with about 30% regular smokers, far from the goal of a prevalence below 20%, as defined by the WHO for the region of Europe.

One of the ways of reducing the consequences of tobacco use is to prevent its being taken up by younger people. Accordingly, the 2009-2013 cancer plan (Measure 10.4) calls for the implementation of measures to protect minors from tobacco use. These measures were adopted in Law n° 2009-879 of July 21, 2009 concerning reform of hospitals and relating to patients, health and the territories, called the “HPST.”

The purpose of this Circular is to review and specify the key provisions of the HPST Law with respect to tobacco control.

Engagement on the part of all the actors involved is one of the necessary conditions for the long term efficacy of their implementation.

I. – The measures

I-1. Prohibition of the sale of tobacco to minors

Young people remain a favorite target of the tobacco industry, and prevent them from starting smoking is a public health priority. Many smokers become addicted in adolescence, which indicates the importance of prohibiting sale to minors.

This is why Article 98 of the HPST Law has modified Article L. 3511-2-1 of the Code of Public Health, and has raised the age of prohibiting the sale of tobacco products to 18 years old, as opposed to 16 years old, previously.

Raising the age for the sale of tobacco products also enables France to comply with Article 16 of the Framework Convention on Tobacco Control (FCTC) of the World Health Organization (WHO), the first international treaty on the subject of health, ratified by France in October, 2004.

It has been demonstrated that prohibition of the sale of tobacco to minors brings about a reduction in tobacco consumption, but that this reduction can be multiplied by a factor of 10 if measures are taken for its effective implementation.

Henceforth, the sale or giving away for free of tobacco products and their ingredients, in tobacco shops or any stores or public places, is forbidden to minors under the age of 18.

The products affected by this prohibition of sale or provision are indicated in Article L. 3511-1 of the Code of Public Health. They encompass all tobacco products (cigarettes, rolling tobacco, tobacco for water pipes, pipe tobacco, cigars, cigarillos, etc.) but also ingredients, including tobacco leaf and filters.

In this regard it should be recalled that in Metropolitan France, tobacco, particularly through the application of Article 568 of the General Tax Code, may not be sold except by tobacco retailers or by licensed dealers or wholesale brokers whose job it is to provide processed tobacco exclusively for retailers. Upholding of the prohibition is thus the particular responsibility of these professions.

With regard to provision, it is prohibited not only in places that usually sell tobacco, but also in any stores or public places. It is important to ensure that the prohibition of sale may not be circumvented through the purchase of tobacco by an adult on behalf of minors, to whom he would then give the products purchased. Such thwarting of the law can be sanctioned, without the matter becoming involved in private or family law, which has nothing to do with this prohibition.

Pursuant to Article D. 3511-15 of the Code of Public Health, a poster stating the prohibition of the sale of tobacco to minors must be displayed in view of the public in places where these products are sold. An Edict of May 28, 2010, establishes the model for the poster. This model can be downloaded from the website of the Ministry of Health, as well as that of the Office of Customs. It is incumbent upon the retailers and merchants involved to print it out or request it from their usual providers of signs.

In case of uncertainty regarding the age of a prospective buyer, the vendor is entitled to refuse sale to him for a legitimate reason, as set forth in Article L. 122-1 of the Consumer Code. It is then up to the client to prove that he is entitled to have the product in question sold to him. To this end, Article R. 3512-3, sub-paragraph 2 states that the person responsible for selling the tobacco products may demand that the

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interested parties prove their adulthood by producing an identity document or any other official document with a photograph.

The official documents that enable the purchaser to establish his adulthood, provided that they include a photograph, pursuant to Article R. 3512-3 of the Code of Public Health, are as follows:

- national identity card;
- passport;
- high school student ID;
- student ID card;
- driver's license;
- residency card;
- identity card or circulation permit issued by the military authorities;
- discount card issued by a public transportation authority;
- professional ID card issued by a government office;
- civil or military disability card;
- hunting license.

You will note that this list has already appeared in Circular DGS/SD6B n° 2005-217 of May 3, 2005, concerning the prohibition of the sale of tobacco to minors under the age of 16, which is superseded by this Circular.

Following the publication of Decree n° 2010-545 of May 25, 2010, concerning the sanctions indicated for the sale and provision of tobacco products, failure to comply with the prohibition of the sale or provision of tobacco to minors is punished, pursuant to Article R. 3512-3 of the Code of Public Health, as a 4th class offense, which can be settled on the spot (as per Article R. 48-1 of the Code of Penal Procedure).

However, the offense is not established if the offender proves that he was misled about the age of the minor (Article R. 3512-3, sub-paragraph 1). This qualification is intended to protect vendors acting in good faith; it should be pointed out that it is not to be used by individuals to evade their responsibility.

In conclusion we call your attention to the fact that, for purposes of consistency, the aforementioned Decree n° 2010-545 amends Article R. 3511-8 of the Code of Public Health. Access to areas reserved for smokers, which may be set up in places subject to common use where smoking is prohibited pursuant to Article L. 3511-7 and Decree n° 2006-1386 of November 15, 2006, is henceforth prohibited to minors.

The signs for prohibiting smoking and identifying areas reserved for smokers pursuant to the Edict of December 1, 2010, superseding the Edict of January 22, 2007,

establishing the models for signs indicated in Article R. 3511-6 of the Code of Public Health (JORF of December 11, 2010), can be downloaded at the following link:
<http://www.tobacco.gouv.fr/rubrique-65314.php>.

I-2. Prohibition of scented cigarettes

Field surveys have revealed the fact that very young adolescents (13 years old) regularly smoke sugar-flavored cigarettes, which published international studies have shown are clearly sold to a young public. The sweetness of the taste and the style of the packs have a reassuring effect on junior high school and high school students who believe that perfumed cigarettes are “less dangerous than others.”

However, these cigarettes contain as much, if not more, nicotine and tar as traditional cigarettes. The sugary aromas (vanilla or chocolate) make it possible to mask the harshness of the first cigarettes and thus encourage addiction to nicotine.

Yet the National Institute of Health and Medical Research (INSERM) has shown that the earlier tobacco use begins, the higher the risk of addiction.

This is why Article 98 of the HPST Law has amended Article L. 3511-2 at the end of the Code of Public Health to prohibit the sale, distribution or giving away for free of cigarettes whose taste has been modified in order to appeal especially to a young public.

Decree n° 2009-1764 of December 30, 2009, concerning the composition of scented cigarettes whose sale, distribution or giving away for free are prohibited, has specified the criteria making it possible to characterize the products under consideration. Pursuant to the terms of Article D. 3511-16 of the Code of Public Health, the maximum content of ingredients giving a sugary or tangy taste to scented cigarettes is determined as follows:

1° Vanillin: 0.05 % of the mass of tobacco;

2° Ethylvanillin: 0.05 % of the mass of tobacco;

3° Sweeteners applied to the seam of the cigarette: analytical threshold of detection.

Article L. 3512-2 of the Code of Public Health states that failure to comply with this prohibition (which applies above all to manufacturers and distributors) is punishable by a fine of 100,000 euros. In accordance with Article L. 3512-3, juridical persons may, moreover, be declared criminally liable and incur under this heading a fine of 500,000 euros.

According to technical analyses or the statement of ingredients provided by manufacturers, to date it has been possible to identify the following references as not being in compliance with the thresholds set by Article D. 3511-16: Vogue superslims,

rose and orange scent; Barclay Original taste; Pink Elephant; Black Devil Special Flavour; Black Devil Finest Flavour; DJARUM super, cherry and black.

In the context of the provision of information required below, it is incumbent upon you to indicate the presence of these references on the market, as well as any appearance of new products that seem to you to attempt to sidestep or thwart the prohibition.

I-3. Prohibition of setting up places in protected areas

Article 99 of the HPST Law makes it possible to specify the regulation of the supply of tobacco. It introduces a new Article, L. 3511-2-2, into the Code of Public Health, which is intended to prohibit the setting up of places for the sale of processed tobacco in so-called "protected" areas which currently exist for commercial establishments for the on-site consumption of beverages.

Apart from tobacco shops, whether common or special, these places for the sale of tobacco also include dealers and wholesalers.

Article L. 3335-1 of the Code of Public Health states that it is incumbent upon the local government to issue the administrative orders to determine, without impairment to acquired rights, the distances within which commercial establishments for the on-site consumption of beverages may not be opened in the vicinity of the following buildings, the listing of which is restrictive:

- 1 Buildings for any kind of religious worship whatsoever;
- 2 Cemeteries;
- 3 Health care institutions, homes for the elderly, and any public or private establishments for prevention, cure and care involving hospitalization, as well as departmental dispensaries;
- 4 Public educational institutions and private academic institutions, as well as all training or recreational establishments for young people;
- 5 Public or private stadiums, swimming pools, and athletic fields;
- 6 Correctional institutions;
- 7 Barracks, camps, arsenals and all buildings occupied by the army, navy and air force;
- 8 Buildings dedicated to the operations of public transportation firms.

It should, moreover, be borne in mind that Article L. 3335-1 states that administrative orders must be issued addressing the buildings mentioned in 3 "Health care institutions, homes for the elderly, and any public or private establishments for prevention, cure and

care involving hospitalization as well as departmental dispensaries,” and 5 “Public or private stadiums, swimming pools, and athletic fields.”

The extension of this measure to places for the sale of processed tobacco is geared towards reducing the supply of tobacco, and appears to be particularly relevant in the vicinity of educational, health care and athletic facilities.

This is why we ask you, with respect to products whose sale to minors is prohibited, to see to the protection by Edicts, not only to the facilities subject to mandatory protection in items 3 and 5 of Article L. 3335-1, but also of the facilities mentioned in 4 “Public educational institutions and private academic institutions as well as all training or recreational establishments for young people.”

The last sub-paragraph of Article L. 3335-1, moreover, reserves for you the right in places where there are more than one commercial establishment for on-site consumption of beverages, after providing notification to local authorities, to authorize the setting up of such an establishment in a protected area, when requirements of tourism or local stimulus justify doing so. By extension, this same provision is applicable to places for the sale of tobacco.

We ask, however, that you see to it that the setting up of a place for the sale of processed tobacco is not authorized based on invocation of this last sub-paragraph in locations close to educational institutions or facilities for the training and recreational activities of young people.

It shall be incumbent upon you, in accordance with the manner indicated for beverage establishments, to determine by edict the distances for the setting up of places for the sale of tobacco in relation to certain facilities and buildings.

The applicable rules for calculation are those set forth in detail with regard to beverage establishments, in the Circular of the Ministry of the Interior on January 22, 2009, taken for the implementation of Article L. 3335-1 in its text issued in Law n° 2007-1787 of December 20, 2007, concerning the simplification of the law.

Distances are to be calculated on a straight line on the ground from the closest entranceway of the protected institution to the point of sale of processed tobacco. The measurement is to be taken on public thoroughfares, following the axis of the latter, between and directly below entrance and exit doorways of the protected establishment and the point of sale of processed tobacco, a measure increased by the distance on a straight line on the ground between the aforementioned entrance ways and the axis of the thoroughfare.

The edicts that you will issue concerning the places for the sale of tobacco may either render applicable the protective perimeters indicated for commercial establishments for on-site beverage consumption, or, on the basis of local circumstances, determine different protective perimeters.

It should be noted that the Law specifies that this provision applies without impairment to acquired rights, and thus has no intention to bring about the closing of existing places of sale. On the other hand, any new opening resulting from a new setting up of a facility (whether through a license transfer or a call for applications), or a movement within the district pursuant to Decree n° 2010-720 of June 28, 2010, relating to the exercise of a monopoly on the retail sale of processed tobacco, must be prohibited.

I-4. Prohibition of sale of tobacco in shopping malls of hyper- and supermarkets in the overseas departments (DOM - *départements d'outre-mer*)

In accordance with the existing model in Metropolitan France, Article 100 of the HPST Law is to extend the prohibition of setting up tobacco shops in malls of hypermarkets and supermarkets to the overseas departments (DOM).

This extension is intended to interface with the concomitant setting up of a licensing system for the sale of tobacco in the DOM, as stated in Article 568 bis of the General Tax Code.

A Decree shall specify the procedures for the implementation of Article 568 bis.

II. — Enforcement

For greater effectiveness, actions for prevention and raising awareness ought to be conducted in tandem with enforcement operations, which should harmonize public learning with sanctions for offenses.

Accordingly we ask you from the outset to address the matter at the local level with venues of the professions most concerned by the measures in question (retailers and wholesalers of tobacco, retailers of beverages concerned with the prohibition of smoking...) in order to explain the regulation, and to insist on the need for its proper implementation.

With the termination of this phase of raising awareness, which has already partly taken place in the context of the meetings that you had to organize in the Fall of 2009, it shall be incumbent upon you to conceive and implement a plan for enforcement so as to ensure compliance with the provisions set forth in this Circular.

We remind you that the officers and agents of the judiciary police (OPJ and APJ – *officiers et agents de police judiciaire*) are primarily responsible for enforcing the ban on smoking, in accordance with the general police authority vested in them by the Code of Penal Procedure. On the other hand, exclusively within the context of their respective competencies, the personnel indicated in the Circular of November 29, 2006, concerning the ban on smoking in places of common use may participate in enforcement.

It would be appropriate to work in collaboration with the public prosecutors of the Republic on the guidelines and results of plans for enforcement.

The enforcement plan should enable you to ascertain very specifically the implementation of the measures for banning the sale of tobacco to minors, the restriction on setting up new places for the sale of tobacco in protected areas, and the banning of smoking in places subject to common use, particularly with regard to café terraces.

On this last point, you may find it useful to refer to Circulars DGS/MC2/2007/370 of October 9, 2007 concerning the entry into force of the second phase of the ban on smoking in places of common use, DGS/MC2/2008/292 of September 17, 2008, on procedures for the implementation of the second phase of the ban on smoking in places of common use, and DACG 2007-2/G4 of January 26, 2007, concerning guidelines for penal policy on tobacco control.

Each departmental prefect is to draw up a balance sheet as of September 30, 2011, on the implementation of the measures of the HPST Law concerning tobacco, enforcement measures put into effect and registered offenses, and will arrange for its delivery in due course to the regional prefect, in order for the latter to forward to us in the three months following the publication of this text, under the letterhead of the General Administration of Health (Sub-Department for the Promotion of Health and the Prevention of Chronic Illnesses, Bureau of Addiction Practices), a regional summary with a detailed breakdown of the situation by department.

We ask that you kindly undertake in person to enact, promote and effectively implement these new provisions. It is up to you to closely coordinate the action of all of the departments involved in terms of raising awareness and of enforcement, as well as regular assessment of the effectiveness of the measures taken.

Annex

A N N E X

THE FIVE MEASURES ON TOBACCO IN LAW N° 2009-879 OF JULY 21, 2009

CONCERNING REFORM OF HOSPITALS AND RELATING TO PATIENTS, HEALTH AND THE TERRITORIES (HPST)

ARTICLE OF LAW	MEASURE	SUPPLEMENTS TO THE MEASURE	APPLICABLE SANCTIONS
Article L. 3511-2-1 of the CSP, as amended by Article 98 of the HPST Law	Prohibition of sale of tobacco products or ingredients to minors: extension of prohibition from 16 to 18 years of age	Decree n° 2010-545 of May 25, 2010, concerning sanctions indicated for the sale and provision of tobacco products (JORF of May 27, 2010)	Failure to comply with the prohibition of the sale of tobacco products or ingredients to minors is punishable as a 4 th class offense (up to 750 €).
		Edict of May 28, 2010 establishing the model for the poster indicated in Article D. 3511-15 of the Code of Public Health (CSP) (JORF of June 3, 2010).	
Article L. 3511-2 of the CSP, as amended by Article 98 of the HPST Law	Prohibition of scented cigarettes Prohibition of the sale, distribution or giving away for free of scented cigarettes, for which the content of ingredients imparting a sugary or tangy flavor exceeds the thresholds set by Decree.	Decree n° 2009-1764 of December 30, 2009 concerning the composition of scented cigarettes, whose sale, distribution or giving away for free is prohibited (JORF of 31 December).	Failure to comply with this prohibition is punishable by a fine of 100,000 € (the maximum fine may be increased by 50 % of the amount of expenses disbursed for the illegal operation). Furthermore, juridical persons may be subject to criminal liability.
Article L. 3511-2-2 Inserted into the CSP by Article 99 of the HPST Law	Prohibition of setting up tobacco shops in so-called protected areas, that currently applies to commercial establishments selling beverages		
Article L. 568 of the General Tax Code,	Prohibition of sale of tobacco in the malls of	Conditions for the implementation of	

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<p>as amended by Article 100 of the HPST Law</p>	<p>the hypermarkets and supermarkets in the overseas departments (DOM).</p>	<p>Article 568 bis, chiefly the number of licenses that can be issued in each department, as well as the procedures for cessation of activities are to be defined by Decree.</p>	
<p>Article L. 3512-4 of the CSP, as amended by Article 94 of the HPST Law</p>	<p>Strengthening of the powers of enforcement agents for tobacco measures</p>		
<p>The Minister of Labor, Employment and Health, Xavier Bertrand The Minister of the Interior, Overseas Departments, Local Governments and Immigration, Claude Guéant Secretary of State in charge of health for the Minister of Labor, Employment and Health, Nora Berra</p>			