

SPAIN

2021

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Acknowledgements

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Acronyms commonly used in this report

ALTADIS	Alliance Tobacco Distribution
BAT	British American Tobacco
BOE	Boletín Oficial del Estado (Official State Gazette)
CETARSA	Compañía Española de Tabaco en Rama SA (Spanish Raw Tobacco Company)
COP	Conference of the Parties to the WHO FCTC
CSR	Corporate Social Responsibility
EU	European Union
FCTC	Framework Convention on Tobacco Control
JTII	Japan Tobacco International Iberia
PMI	Philip Morris International
PMS	Philip Morris Spain
TMC	Tobacco Market Commission of the Ministry of Finance
TPD	Tobacco Products Directive
WHO	World Health Organization

Introduction

Smoking in Spain

Tobacco use continues to pose a threat to health in Spain. According to the latest Eurobarometer conducted in August-September of 2020, 24% (22% among men and 27% among women) of the Spanish adult population are current smokers¹. According to the latest European Health Interview Survey conducted in Spain in 2020, 23.3% of adult males and 16.4% of adult females reported daily smoking, showing a decreasing trend compared to the previous survey conducted in 2017 (Figure 1)². This survey also compared the smoking prevalence before and after the announcement of the state of alarm due to the COVID19 pandemic, and it showed that smoking decreased slightly.

Daily tobacco use

Adult population and youth*. Evolution 1993-2020.

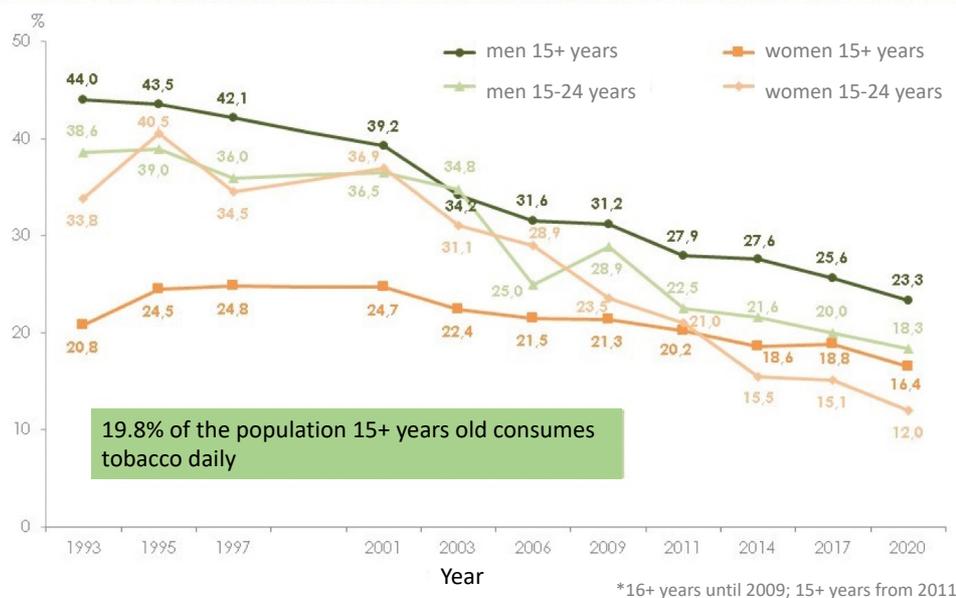


Figure 1. Prevalence of daily tobacco use in Spain (1993-2020).

Tobacco control in Spain

¹ Attitudes of Europeans towards tobacco and electronic cigarettes. Special Eurobarometer 506. Factsheet Spain. <https://europa.eu/eurobarometer/surveys/detail/2240>. Accessed May 28, 2021.

² Encuesta Europea de Salud en España (EESA) 2020. Secretaría General de Salud Digital, Información e Innovación del SNS Subdirección General de Información Sanitaria. https://www.msbs.gob.es/estadEstudios/estadisticas/EncuestaEuropea/EncuestaEuropea2020/EESE2020_inf_evol_princip_result.pdf. Accessed May 28, 2021.

Spain became a Party to the WHO Framework Convention on Tobacco Control (FCTC) on 11 April 2005. It also became a Party to the Protocol to Eliminate Illicit Trade in Tobacco Products on 23 December 2014.

Tobacco control is fundamentally regulated by Law 28/2005 (as amended by Law 42/2010)³ and the European Union (EU) Directives on excise duty applied to manufactured tobacco⁴ and on tobacco products (TPD)⁵ that has been transposed into Spanish law^{6,7,8,9} and on taxation. In summary, the tobacco control legislation presently establishes the following obligations.

Smoking is prohibited in all indoor public places and workplaces and on public transportation. However, the law allows designated hotel guest rooms. Smoking is also banned in some outdoor public places, such as in terraces depending on the type of enclosure, playgrounds, and open spaces in health and educational facilities. Sub-national jurisdictions may enact smoke-free laws that are more stringent than the national law. For example, in the Basque Country, the regional law bans smoking in all types of outdoor sports facilities. Regional governments are in charge of enforcing smoke-free environments. A 2018 study by the Organización de Consumidores y Usuarios (Consumers and Users Organisation OCU), one of the leading consumers' defence associations, indicated that compliance with the law is high in enclosed environments. However, it is deficient in semi-open areas of the hospitality sector, such as terraces, where smoking is banned.¹⁰

As one of the measures to combat the COVID-19 pandemic, in August 2020, the Ministry of Health recommended that regional governments prohibit smoking in open spaces, including all terraces of hospitality venues, when a safety distance of 2 meters between the smoker and other people could not be guaranteed¹¹. All regional governments have introduced such a restriction. An EU directive regulates tobacco taxes. Since its implementation, the real prices of cigarettes have been increasing. However, the affordability of the most sold brand of cigarettes has been decreasing since 2014. WHO calculated that buying 100 packs of the most sold brand was equivalent to 1.91% of per capita gross domestic product in 2018, down from 2.15% in 2014.¹²

³ BOE. Ley 42/2010, De 30 De Diciembre, Por La Que Se Modifica La Ley 28/2005, De 26 De Diciembre, De Medidas Sanitarias Frente Al Tabaquismo y Reguladora De La Venta, El Suministro, El Consumo Y La Publicidad De Los Productos Del Tabaco. Madrid: Boletín Oficial del Estado núm. 318, de 31/12/2010; 2010. <https://www.boe.es/eli/es/l/2010/12/30/42/con>. Accessed June 12, 2020.

⁴ Council Directive 2011/64/EU Of 21 June 2011 on the Structure and Rates of Excise Duty Applied to Manufactured Tobacco. Brussels: European Commission; 2011. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>. Accessed June 9, 2020.

⁵ Directive 2014/40/EU Of the European Parliament And Of The Council Of 3 April 2014 On The Approximation of The Laws, Regulations And Administrative Provisions Of The Member States Concerning The Manufacture, Presentation And Sale Of Tobacco And Related Products And Repealing Directive 2001/37/EC. Vol 2014/40/EU. Brussels: EU; 2014.

⁶ BOE. Real Decreto 579/2017, De 9 De Junio, Por El Que Se Regulan Determinados Aspectos Relativos A La Fabricación, Presentación Y Comercialización De Los Productos Del Tabaco Y Los Productos Relacionados.. Madrid: Boletín Oficial del Estado núm. 138, de 10 de junio de 2017, páginas 48127 a 48158; 2017:32. <https://www.boe.es/eli/es/rd/2017/06/09/579>. Accessed June 9, 2020.

⁷ BOE. Corrección De Errores Del Real Decreto 579/2017, De 9 De Junio, Por El Que Se Regulan Determinados Aspectos Relativos A La Fabricación, Presentación Y Comercialización De Los Productos Del Tabaco Y Los Productos Relacionados. Madrid: Boletín Oficial del Estado; Number: 210/2017 ; Publication date: 2017-09-01 ; Page: 86372-86373; 2017:2. <https://www.boe.es/boe/dias/2017/09/01/pdfs/BOE-A-2017-10090.pdf>. Accessed June 9, 2020.

⁸ BOE. Real Decreto-Ley 17/2017, De 17 De Noviembre, Por El Que Se Modifica La Ley 28/2005, De 26 De Diciembre, De Medidas Sanitarias Frente Al Tabaquismo Y Reguladora De La Venta, El Suministro, El Consumo Y La Publicidad De Los Productos Del Tabaco, Para Transponer La Directiva 2014/40/UE Del Parlamento Europeo Y Del Consejo, De 3 De Abril De 2014.. Madrid: Boletín Oficial del Estado núm. 280, de 18 de noviembre de 2017, páginas 111191 a 111195; 2017:5. <https://www.boe.es/eli/es/rdl/2017/11/17/17>. Accessed June 9, 2020.

⁹ BOE. Orden HAC/1365/2018, De 12 De Diciembre, Por La Que Se Aprueban Las Normas Técnicas Relativas A La Trazabilidad Y Las Medidas De Seguridad De Los Productos Del Tabaco, En Desarrollo De Los Artículos 21 Y 22 Del Real Decreto 579/2017, De 9 De Junio, Por El Que Se Regulan Determinados Aspectos Relativos A La Fabricación, Presentación Y Comercialización De Los Productos Del Tabaco Y Los Productos Relacionados.. Madrid: Boletín Oficial del Estado núm. 308, de 22 de diciembre de 2018, páginas 125813 a 125819; 2018:7. <https://www.boe.es/eli/es/o/2018/12/12/hac1365>. Accessed June 9, 2020.

¹⁰ <https://www.ocu.org/organizacion/prensa/notas-de-prensa/2015/ley-antitabaco>

¹¹ Fernández E, Martínez C. Spain: COVID-19 prompts smoking regulation in streets and terraces. BMJ Journals Covid-19: Blog, 2020. <https://blogs.bmj.com/covid-19/2020/09/25/spain-covid-19-prompts-smoking-regulation-in-streets-and-terraces/>. Accessed: May 28, 2021.

¹² WHO. WHO Report On The Global Tobacco Epidemic 2019: Offer Help To Quit Tobacco Use; Appendix IX, Table 9.6 Affordability. Geneva, Switzerland: World Health Organization; 2019. https://www.who.int/docs/default-source/global-tobacco-report-2019/table-9-6-affordability.xls?sfvrsn=beb2519c_4. Accessed June 16, 2020.

This is in line with the recent assessment of the EU directive indicating that, although the directive has been moderately effective in raising tobacco tax rates and prices in the EU Member States, the overall benefits have reduced over time.¹³ An analysis of the tobacco market in 2005-2011 identified significant loopholes in the taxation of cigarette products: the loopholes originate from applying a minimum tax on quantity only on cigarettes rather than on all tobacco products.¹⁴ In Spain, the tobacco excise taxes and the Value Added Tax (VAT) collected on tobacco sales represented 3.4% of all fiscal revenue to the state in 2019.

The law prohibits tobacco advertising and promotion, with limited exceptions. Such exceptions include advertising and promotion at the point of sale, although with some restrictions. Besides, the law permits tobacco advertising in publications edited or printed in countries outside the EU if these publications are not aimed primarily at the European market and not aimed at minors. All forms of financial or other tobacco sponsorship are prohibited. However, the tobacco industry activities related to corporate social responsibility (CSR) are rampant and have been strategically utilised by the industry over the past years. Philip Morris Spain (PMS), for example, strategically focuses its CSR in reducing the unemployment rate in Spain, particularly in Andalusia, Canary Islands, and Extremadura, where over 90% of tobacco crop in the country is grown, and illicit trade is prevalent.

Rotating pictorial health warnings must occupy 65 per cent of the front and 65 per cent of the back of most smoked tobacco product packaging. For smokeless tobacco product packaging, one text-only health warning must occupy 30 per cent of the front and 30 per cent of the back of the package. Misleading packaging and labeling, which could include terms such as “light” and “low tar” and other signs, is prohibited. Despite the efforts of the tobacco control movement,¹⁵ the Spanish Government is not considering plain packaging yet.

It is difficult to measure the actual size of the black tobacco market in Spain. According to the latest wave of the Survey of Empty Cigarette packs by IPSOS, about 9% of cigarettes bought in Spain were sold illegally in 2019.¹⁶ The Eurobarometer 482 of December 2018 measures the proportion of adults that have been offered illicit cigarettes as a proxy to the penetration of black market cigarettes.¹⁷ In Spain, 9% indicated that they had been offered illicit cigarettes at least once a month. This is three percentage points above the figure for the overall EU. The Spanish government made progress in reducing the illicit trade of tobacco, which resulted in a decline in sales of tobacco products and smoking prevalence until the mid-2010s. However, since then, the proportion of illicit cigarettes sold in Spain seems to have increased and stabilised around 9%.

While several laws exist regulating the code of ethics of public employees and political appointees, there is no specific law governing the conduct of government officials involved in tobacco control, regulation, and legislation.

¹³ Commission Staff Working Document. Evaluation of The Council Directive 2011/64/EU Of 21 June 2011 On The Structure And Rates Of Excise Duty Applied To Manufactured Tobacco. Brussels: European Commission; 2020:75. https://ec.europa.eu/taxation_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report.pdf. Accessed June 9, 2020.

¹⁴ López-Nicolás A, Cobacho MB, Fernández E. The Spanish tobacco tax loopholes and their consequences. *Tob Control*. 2013;22:e21.

¹⁵ Comité Nacional de Prevención del Tabaquismo. The Madrid Declaration. <http://ensp.network/declaration-of-madrid-2018/>

¹⁶ Evolución De La Incidencia Del Tabaco No Doméstico En España. Mesa del Tabaco; 2019. <http://www.mesadelatabaco.es/userfiles/Evolucion%20incidencia%20NDP%20en%20Espana%202009-2018%20Q4.pdf>. Accessed June 11, 2020.

¹⁷ European Commission. Special Eurobarometer 482. Public perception of illicit tobacco trade. Brussels: European Commission; 2019. https://ec.europa.eu/anti-fraud/sites/antifraud/files/eurobarometer_2019_summary_en.pdf. Accessed June 9, 2020.

The Tobacco Market Commission (TMC),^{18,19,20} which is an autonomous agency of the Ministry of Finance, supervises the tobacco market in Spain. The law indicates that its primary functions are to:

- Dialogue with, monitor, and inspect individual market operators (manufacturers, importers, wholesalers, and retail sellers).
- Issue state license to retail sellers and owners of vending machines, except in the Canary Islands.
- Refer alleged violations of the principles and the rules of free competition in the market of tobacco to the competent bodies for processing and resolution.
- Monitor the quality of the tobacco products offered, those used in their design, and additives or embedded substances, safeguarding the confidentiality of industrial production.
- Monitor the content and budgets of promotional activities and advertising of tobacco companies.
- Monitor the implementation of health criteria on advertising, consumption, and quality of tobacco in collaboration with the other competent public administrations.
- Store and safeguard the seized tobacco contraband and destroy it.
- Collect statistics, prepare reports and formulate proposals in matters within the scope of its competences

The government appoints all personnel of the TMC among public employees. The TMC, however, has an advisory committee in which, by law, the operators of each phase of the production, manufacture, and distribution process of tobacco are represented, along with government officials and a consumer representative. The membership of the advisory committee is not public.

The National Committee for the Prevention of Tobacco Use (CNPT from its acronym in Spanish) is the coalition of 40 health organizations working on tobacco control in Spain.²¹

¹⁸ BOE. Ey 13/1998, De 4 De Mayo, De Ordenación Del Mercado De Tabacos Y Normativa Tributaria As Amended In 2017. Madrid: Boletín oficial del Estado núm. 107, de 05/05/1998.; 2017. <https://www.boe.es/eli/es/1/1998/05/04/13/con>. Accessed June 10, 2020.

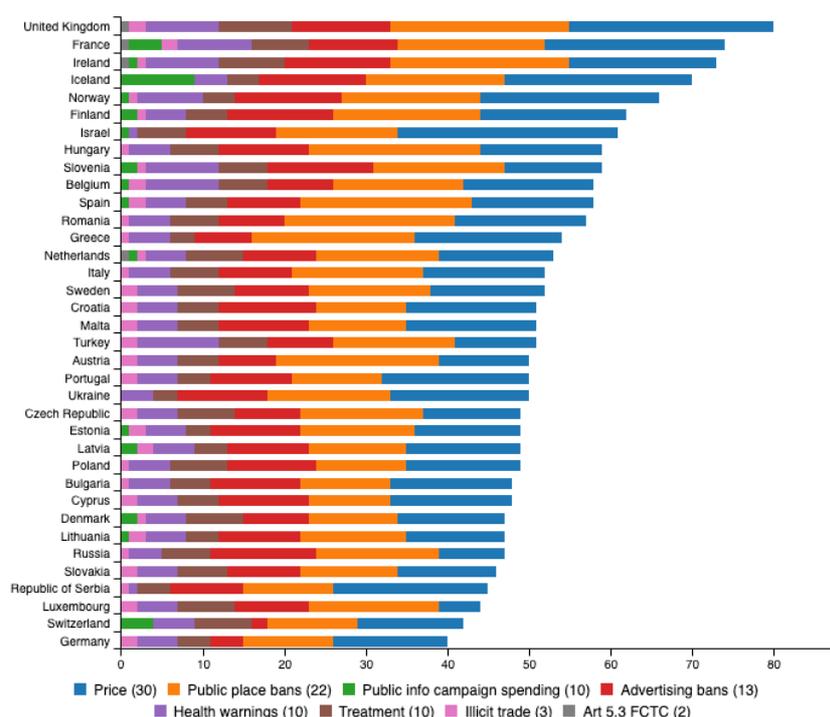
¹⁹ Subsecretaría - Memoria 2018. Madrid: Ministerio de Hacienda; 2018:331. https://www.hacienda.gob.es/Documentacion/Publico/GobiernoAbierto/Informes%20y%20Memorias/Memoria%20Subsecretar%C3%ADa/MEMORIA_SUBSE_2018.pdf. Accessed June 10, 2020.

²⁰ CMT. 2018-2021 Carta de Servicios. Madrid: Comisionado del Mercado de Tabacos; 2020:13. <https://www.hacienda.gob.es/Documentacion/Publico/Tabacos/WEB/CARTA%20DE%20SERVICIOS2.pdf>. Accessed June 10, 2020.

²¹ CNPT | Comité Nacional para la Prevención del Tabaquismo. Cnpt.es. <https://www.cnpt.es/index.asp>. Published 2020. Accessed June 16, 2020.

Overall, tobacco control efforts ranked Spain as the 10th country in Europe in the tobacco control scale for 2019 (Figure 2).²² The policy domain where Spain's efforts scored highest was smoke-free environments. Tobacco advertising, promotion, and sponsorship bans fared in second place with a notable but not highest score. However, the policy domain of countering the tobacco industry interference received the lowest score possible. WHO considered that in Spain, the following policies were implemented at the highest level of achievement in 2018: monitoring the epidemic, smoke-free environments, tobacco advertising, promotion and sponsorship, and tobacco taxes.²³

Figure 2 Tobacco Control Scale for Europe in 2019. Country ranking (total score and domains)



The tobacco industry in Spain

The tobacco industry in Spain was a state monopoly whose origins date back to 1636. In 1945 it adopted the name of Tabacalera S.A. This company manufactured tobacco products. It also bought all raw tobacco produced in Spain from tobacco growers, all of which operated under a state license. The accession of Spain to the European Economic Community (EEC) required the liberalisation of the tobacco sector. Therefore, Tabacalera S.A. merged with SEITA in 1999 to form a private company called Alliance Tobacco Distribution (ALTADIS). In 2008, Imperial Tobacco bought ALTADIS. The agricultural part of the tobacco state monopoly was transformed in a company called the Spanish Tobacco Company in Rama S.A., S.M.E. (CETARSA) as a state company under private law, with the state holding about 70% of its capital and ALTADIS about 20%.

Import and wholesale distribution are liberalised, although operators must obtain a license from the Tobacco Market Commission. There are several companies devoted to the wholesale distribution of tobacco products. However, only one is dominant in this market: Logista. Imperial Brands holds a majority share of the business through its subsidiary ALTADIS. Distributors have to supply all national retailers, where there is still a state monopoly through the approximately 13,000 tobacco outlets that are the primary sales channel. In 2019, the National Commission of Markets and Competition (CNMC) sanctioned the major tobacco companies - ALTADIS, Philip Morris Spain (PMS), and Japan Tobacco International Iberia (JTII), and the distribution company Logista – for violation of information exchange to eliminate market uncertainty with 57.7 million

²² Tobacco Control Scale in Europe: Results 2019. Tobaccocontrolscale.org. <https://www.tobaccocontrolscale.org/results-2019/>. Published 2019. Accessed June 10, 2020.

²³ WHO. WHO Report On The Global Tobacco Epidemic 2019: Offer Help To Quit Tobacco Use; Geneva, Switzerland: World Health Organization; 2019. <https://www.who.int/publications/i/item/who-report-on-the-global-tobacco-epidemic-2019-offer-help-to-quit-tobacco-use>. Accessed June 16, 2020.

euros: Logista, 21 million euros; Philip Morris Spain, 15.3 million; ALTADIS, 11.426 million; and JT International Iberia, 10 million.²⁴

However, the Audiencia Nacional (National High Court) overturned in January 2021 a sanction imposed in 2018 by the Minister of Economy against PMS for violating the legal prohibition of advertising and promotion of tobacco products through the IQOS website. The court has agreed with PMS that IQOS is not a tobacco product subject to Article 9.1 of Law 28/2005, which prohibits all kinds of advertising and promotion of tobacco products in all media and supports, including vending machines and electronic media. The magistrates followed the criteria of the Commissioner for the Tobacco Market, who considers that IQOS is not tobacco.²⁵

Manufactured cigarettes represented 84% of all sales of tobacco products in March 2021.²⁶ Four major tobacco companies control 95% of the manufactured cigarette market in Spain, namely: ALTADIS, British American Tobacco (BAT), PMS, and JTII. In March 2021, the share of the cigarette market by company was PMS 30.3%, ALTADIS 28.1%, JTII 26.4%, and BAT 9.3%. The cigarette brands with more than a 5% market share were Marlboro (PMS) 13.5%, Camel (JTII) 10.8%, Winston Classic (JTII) 8.2% Chesterfield (PMS) 7.9%, Fortuna (ALTADIS) 7.6%, and Lucky Strike (BAT) 6.2%.

The roll-your-own cigarettes represented 9.8% of all sales of tobacco products in March 2021. Seven companies control 95% of this market: ALTADIS/Imperial 26.8%, JTII 26.0%, Poschl Tabak 15.1%, PMS 10.0%, Flandria N.V. 8.8%, Von Eicken 6.1% and BAT 3.2%.

PMI is leading the market for heated tobacco products with IQOS which was launched in 2017, while BAT just recently launched its Glo device in 2020. ALTADIS is selling its electronic nicotine delivery system Myblu since 2018. While Juul's were marketed in Spain since 2019, the company has recently announced that will leave five European countries, including Spain²⁷ (35% Juul's stake is owned by Altria Group, formerly PM Companies Inc.).

²⁴ La CNMC sanciona a las principales empresas fabricantes de tabaco y a Logista por una infracción consistente en un intercambio de información estratégica | CNMC. Cnmc.es. <https://www.cnmc.es/en/node/374435>. Published 2019. Accessed June 10, 2020.

²⁵ Cruz Peña J. Philip Morris (Marlboro) tumba una sanción de Economía por publicitar el IQOS. El Confidencial. https://www.elconfidencial.com/empresas/2021-01-19/duena-malboro-tumba-sancion-economia-publicitar-iqos_2911963/. Published 2021. Accessed May 28, 2021.

²⁶ Comité consultivo. Informe del comité consultivo del comisionado para el mercado de tabacos correspondiente al mes de marzo 2021. Madrid: Comisionado para el Mercado de Tabacos; 2021. <https://www.hacienda.gob.es/Documentacion/Publico/Tabacos/Informes%20Comite%20Consultivo/INFORMES2021/Informe-Mercado-marzo-21.pdf>. Accessed May 28, 2021.

²⁷ EL Economista. El gigante del cigarrillo electrónico Juul se va de España ante las fuertes trabas. [https://www.economista.es/empresas-finanzas/noticias/10521465/05/20/El-gigante-del-cigarrillo-electronico-Juul-se-va-de-Espana-ante-las-fuertes-trabas.html#:~:text=Javier%20Valle%20\(Juul\)%3A%20Dos,se%20produjo%20el%20a%C3%B1o%20pasado](https://www.economista.es/empresas-finanzas/noticias/10521465/05/20/El-gigante-del-cigarrillo-electronico-Juul-se-va-de-Espana-ante-las-fuertes-trabas.html#:~:text=Javier%20Valle%20(Juul)%3A%20Dos,se%20produjo%20el%20a%C3%B1o%20pasado.). Published 2020. Accessed June 11, 2020.

Summary Findings

This report assesses Spain's implementation of Article 5.3. It uses the questionnaire developed by the Southeast Asia Tobacco Control Alliance based on the Article 5.3 guidelines. This report only uses information available in the public domain. A scoring system is applied to make the assessment. The score ranges from zero to five for each of 20 questions, where five indicates the highest level of industry interference, and one is low or no interference. Hence the lower the score, the better the country's efforts to counter the tobacco industry's interference.

The current report covers January 1st, 2020, until March 31st, 2021, and it is the second report for Spain. The total score is now 55, while in the previous period, it was 63. The principal improvement came from the reduction in unnecessary interactions of government officials with the tobacco industry. Contrary to the previous report, no instances of collaboration between the governmental bodies and the tobacco industry to combat against illicit trade of tobacco were recorded. Another improvement came from the decrease of CSR activities with the participation of government officials, although CSR activities without them did not drop. Moreover, for the first time, the Public Health Commission of the National Health System reached an agreement with the health authorities of the Regional governments to remind the National Health System of the obligations derived from the Framework Convention and its article 5.3. Therefore, the current report shows some improvement in the total score compared to the previous period; however, the score is still considerably high and comprehensive measures to eliminate tobacco industry interference are necessary.

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

The government of Spain does not actively allow the tobacco industry to sit in interagency meetings and advisory groups that set public health policies. However, the state-owned tobacco monopoly was liberalised in 1999. As a consequence, the State has kept some reminiscences. The most significant concern is that the tobacco industry is required by law to sit in the Consultation Committee of the Tobacco Market Commission (TMC) of the Spanish Ministry of Finance. Although the TMC is not strictly speaking a public health body, some of its functions are discussing and reporting the sector's opinion on issues related to the agricultural and industrial tobacco economy, informing the government through the Commissioner. Besides, the TMC controls the advertisement and promotion of tobacco products. In this regard, we consider the presence of the industry in the Consultation Committee as a risk for public health.

2. INDUSTRY CSR ACTIVITIES

The WHO FCTC considers Corporate Social Responsibility (CSR) as a form of tobacco advertising, promotion, and sponsorship. In Spain, the law bans tobacco advertising, promotion, and sponsorship. Compared to the previous reporting period, there are fewer instances of support to the industry's CSR from some levels of government. Most of the CSR activities were conducted without the participation of government officials. We have documented some collaboration at the national but not at the regional, provincial, and municipal levels of

government. Some other CSR activities are reported, though as they did not involve government participation, those are documented but are not considered for the scoring.

3. BENEFITS TO THE INDUSTRY

The government has not given the tobacco industry any privileges, incentives, exemptions, or benefits but in the Canary Islands. This region with 2.1 million inhabitants is subject to a special tax regime to stimulate their distant offshore economy in line with EU regulations. The special tax regime also affects tobacco products and is regulated by the regional government of the Canary Islands. As a result, tobacco product prices are lower in the Canary Islands than in the rest of Spain.

4. UNNECESSARY INTERACTION

There were a few instances of unnecessary interaction between the government and the tobacco industry documented between January 2020 and March 2021. The main policy domain in which this happens is tobacco growing. In the report, we have documented a meeting between the Minister of Agriculture and the tobacco growers' organisations. At the regional level, a meeting of the president of the Region of Extremadura with the tobacco industry was also recorded. The government of this Spanish region signed in 2016 an agreement with Philip Morris on a few collaborations; the agreement is still in force. Moreover, many national and regional government officials attended news briefings sponsored, among other businesses, by Altadis. We did not find any evidence of continuing partnership of law enforcement agencies and customs with the TI in combating smuggling and counterfeiting of tobacco products.

5. TRANSPARENCY

The transparency of the interactions, when indispensable, between the government and tobacco companies, is limited. The government requires the registration of all economic operators, including importers, distributors, manufacturers, and retailers of tobacco products, but not lobbyists. Also, the national government ministers make their daily agenda of meetings available online, but not other national government officials.

6. CONFLICT OF INTEREST

The law permits, with limitations, legal contributions to political parties, including candidates and campaigns, from private individuals but not private companies, businesses, or foundations. The law, however, does not regulate contributions from corporations to foundations of political parties, provided that such contributions serve only the purposes of the foundations. Moreover, there have been striking cases of retired senior government officials working for the tobacco industry. Lastly, the economic interest of the State in the tobacco market through CETARSA and the permeable TMC creates an apparent conflict of interests.

7. PREVENTIVE MEASURES

The government has formulated, adopted, and implemented a code of conduct for public officials, not specifically prescribing the standards they should comply with in their dealings with the tobacco industry. Also, such a code of conduct for public employees and political appointees is insufficient to deal with the range of the tobacco industry's typical interference activities. For example, public employees and political appointees may own up to 10% of companies of the tobacco industry, under some circumstances and without a precise enforcement mechanism. Conflict of interest is loosely defined in the law as having a personal interest that may unduly influence the exercise of their functions and responsibilities, and it only applies to links held during the two years before the appointment.

No procedure has been found by which the national government should disclose the records of the interaction with the tobacco industry and its representatives. Regarding the periodic submission of the information by the tobacco industry, this includes tobacco production, manufacture, revenues, and market share; however, it does not include the data on marketing expenditures, lobbying, philanthropy, or political contributions. Also, no publicly available information has been found indicating that the national or regional governments are raising awareness within their departments on policies relating to FCTC Article 5.3 Guidelines.

Recommendations

Given the vested interest of the state-owned tobacco-growing company CETARSA and the porousness of the regulatory body of the tobacco market (TMC) to the influence of the tobacco industry, a firewall should be built around those bodies to safeguard the political and policy independence of the government on matters related to tobacco.

It is urgent to establish criteria to limit interactions with the tobacco industry to the indispensable level and ensure the total transparency of the interactions that occur. At a minimum, the agenda, minutes, and agreements reached during said meetings should be made public.

The regulation needs to be improved to define better and penalise conflicts of interest for government officials and employees, specifically with the tobacco industry. To this effect, it is indispensable to raise awareness about tobacco industry interference in the national and regional governments, particularly in departments usually involved in CSR activities of the industry, such as finance, development, health, environment, and women's issues. Civil society should be involved in these efforts through the CNPT. Also, an act of political resolve should legally preclude the government from participating in any CSR effort of the tobacco industry and its allies.

2021 Tobacco Industry Interference Index Results and Findings

	0	1	2	3	4	5
INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ²⁸ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ²⁹ in setting or implementing public health policies in relation to tobacco control ³⁰ (Rec 3.1)	X					
There is no evidence that the government has accepted or endorsed any offer for assistance by or in collaboration with the tobacco industry when setting or implementing public health policy.						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)	X					
There is no evidence that the government has accepted or endorsed any offer for assistance by or in collaboration with the tobacco industry when setting or implementing public health policy.						
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)						X
Spain does not generally allow the tobacco industry to sit in interagency meetings and advisory groups that set public health policies. However, the tobacco industry is required by law to sit in the Consultation Committee of the Tobacco Market Commission (TMC) of the Spanish Ministry of Finance. Although TMC is not strictly speaking a public health body, some of its functions are to discuss and report on central issues in the agricultural and industrial tobacco economy, informing the government, through the Commissioner, the sector's opinion on such issues. In addition, the TMC controls the advertisement and promotion of tobacco products. In this regard, we consider the presence of the industry as a risk for public health.						
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) ³¹ (Rec 4.9 & 8.3)		X				

²⁸ The term “government” refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

²⁹ The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

³⁰ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

³¹ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

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The government did not nominate or allow tobacco industry representatives in the delegation to COP 8. ³²						
INDICATOR 2: Industry CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)						
B. The government (its agencies and officials) receives contributions ³³ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)					X	
<p>Compared to the previous reporting period, there are fewer instances of support to the industry's CSR from some levels of government. At the national level, in May 2020, the prime minister's office presented the results of the European project ADIM to advance the management of Lesbian, Gay, Bisexual, and Transgender (LGBT) diversity in the public and private sectors.³⁴ The project for Spain and Portugal is funded by the European Commission, with the participation of 8 universities and 16 companies, among which is Altadis, an Imperial Brands company.³⁵ The results include a Guide for the inclusion of sexual diversity and gender identity in companies and organisations,³⁶ which includes the logo of Altadis along with that of the Government of Spain, the European Union (EU), and the state University Complutense of Madrid. We did not find any instances involving the government agencies at regional or municipal levels. However, at the provincial level, we found some evidence of the collaboration of middle-level government authorities and law enforcement officers in support of the TI activities related to illicit trade.³⁷ Also, we found that Altadis³⁸ and PMI had an agreement with the State University of Extremadura.</p> <p>Most of the CSR activities were conducted without the participation of government officials. The TI offered and publicised the donation of protective gear to tobacco retailers,³⁹ and the retailers of one region donated coffee pods to health personnel of one hospital.⁴⁰ In fact, during the COVID-19 pandemic, tobacco retailers have made donations to food banks to emphasise their solidarity with those suffering the economic consequences of the pandemic.⁴¹</p>						

³² Convention Secretariat. List of Participants to the Eighth Session of the Conference of the Parties to the WHO Framework Convention On Tobacco Control. Geneva: Convention Secretariat of the WHO FCTC; 2018. https://www.who.int/fctc/cop/sessions/cop8/LOP_Final.pdf?ua=1. Accessed June 9, 2020.

³³ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

³⁴ La Moncloa. Nota de Prensa: 13/05/2020. Presentados los resultados del Proyecto Europeo Avanzando en la gestión de la diversidad LGBT en el sector público y privado. Lamoncloa.gob.es. <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/igualdad/Paginas/2020/130520-lgbt.aspx>. Published 2020. Accessed April 14, 2021.

³⁵ <https://www.altadis.com/>

³⁶ La Moncloa. Guía ADIM LGBT+. Lamoncloa.gob.es. <https://bit.ly/2RAQVSO>. Published 2020. Accessed April 14, 2021.

³⁷ Europa Press. El comercio ilegal de tabaco en España representa cerca del 12% de las ventas. europapress.es. <https://www.europapress.es/economia/noticia-economia-consumo-comercio-ilegal-tabaco-espana-representa-cerca-12-ventas-20130925123440.html>. Published 2020. Accessed April 17, 2021.

³⁸ Altadis. Estado de Información No Financiera del ejercicio 2020. p. 82. Altadis.com. <https://www.altadis.com/uploads/contenidos/altadis-estados-financieros-2020-054558.pdf>. Published 2020. Accessed April 16, 2021.

³⁹ Crisis del Covid-19 en el tabaco. Todos a una - Retailers for the future. Retailers for the future.

<https://retailersforthefuture.com/editorial/crisis-del-covid-todos-a-una/>. Published 2020. Accessed April 16, 2021.

⁴⁰ Los estancoeros de Cantabria apoyan a los sanitarios de la UCI de Valdecilla. Mundo Estanco. 2020;(251) page 15.

https://union-estancoeros.com/mundoestanco/251/index_20.html#page=15. Accessed April 16, 2021.

⁴¹ Cadiz Solidaria. La Asociación de Estancoeros de Cádiz dona más de 2.500 kilos de productos al Banco de Alimentos. CadizSolidaria.es. <https://www.lavozdigital.es/cadizsolidaria/noticias/la-asociacion-de-estancoeros-de-cadiz-dona-mas-de-2-500-kilos-de-productos-al-banco-de-alimentos/?ref=https%3A%2F%2Fwww.google.com%2F>. Published 2020. Accessed May 19, 2021.

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Also, during 2020 and 2021 PMI has been falsely touting that the FDA had approved their HTP as a reduced risk product and conducted a well-organized campaign to promote their concept of a smoke free future through the press ^{42,43,44,45,46} or through CSR campaigns. ^{47,48,49} They also have engaged some clinicians, ⁵⁰ academics ⁵¹ , and former health officials ^{52,53} in this campaign.						
INDICATOR 3: Benefits to the Tobacco Industry						
6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)	X					
There is no evidence that the government has accommodated requests from the tobacco industry for a longer time frame for implementation or postponement of the tobacco control law.						
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)						X
The government has not given the tobacco industry any privileges, incentives, exemptions or benefits nationwide, except in the Canary Islands. This region with 2.1 million inhabitants is subject to a special tax regime aimed to stimulate their distant offshore economy in line with EU regulations. The special tax regime also affects tobacco products. The main differences between the Canary Islands and the rest of Spain are two. In the Canary Islands, retailers are						

⁴² La Vanguardia. Médicos coinciden en que calentar el tabaco reduce el riesgo de cáncer y otras enfermedades. <https://www.lavanguardia.com/local/canarias/20200910/483396206198/medicos-coinciden-en-que-calentar-el-tabaco-reduce-el-riesgo-de-cancer-y-otras-enfermedades.html>. Published 2020. Accessed April 16, 2021.

⁴³ PÉREZ P, MELENDEZ C. Las alternativas al cigarrillo tradicional, a debate. La Razón. <https://www.larazon.es/salud/20200205/4plieibwzna3jkkjbxituvczm.html>. Published 2020. Accessed April 16, 2021.

⁴⁴ Bonilla R. ¿Qué es reducir el daño, la nueva estrategia frente al tabaquismo?. La Razón. <https://www.larazon.es/sociedad/20201108/cepmljkygfaz5hve3r7ouwl3y.html>. Published 2020. Accessed April 16, 2021.

⁴⁵ Dos Santos M. En busca de una mirada objetiva sobre los productos con nicotina. La Razón. <http://En busca de una mirada objetiva sobre los productos con nicotina>. Published 2020. Accessed April 16, 2021.

⁴⁶ Europa Press. Expertos convienen que eliminar la combustión reduce "infinitamente" el daño a salud de fumadores y ahorra gasto público. <https://www.europapress.es/islas-canarias/noticia-expertos-convienen-eliminar-combustion-reduce-infinitamente-dano-salud-fumadores-ahorra-gasto-publico-20201217125415.html>. Published 2020. Accessed April 16, 2021.

⁴⁷ Europa Press. Philip Morris continúa con su apoyo a los establecimientos de Canarias para alcanzar un mundo sin humo. <https://www.europapress.es/islas-canarias/noticia-philip-morris-continua-apoyo-establecimientos-canarias-alcanzar-mundo-humo-20210218173639.html>. Published 2021. Accessed April 15, 2021.

⁴⁸ Gomera Noticias. Philip Morris apoya a las empresas para convertir a El Hierro en una isla libre del humo de tabaco - Gomeranoticias. <https://www.gomeranoticias.com/2020/03/05/philip-morris-apoya-a-las-empresas-para-convertir-a-el-hierro-en-una-isla-libre-del-humo-de-tabaco/>. Published 2020. Accessed April 15, 2021.

⁴⁹ La Provincia. El concurso de jóvenes artistas impulsado por Philip Morris ya tiene ganadores. La Provincia - Diario de Las Palmas. <https://www.laprovincia.es/sociedad/2020/02/20/concurso-jovenes-artistas-impulsado-philip-8303562.html>. Published 2020. Accessed April 15, 2021.

⁵⁰ Negrete B. El cirujano oncológico que 'receta' cigarrillos electrónicos para dejar de fumar. Voz Populi. <https://www.vozpopuli.com/sanidad/cigarrillos-electronicos-fumar.html>. Published 2021. Accessed April 16, 2021.

⁵¹ DOS SANTOS M. "No cerremos la puerta a las alternativas sin humo". La Razón. <https://www.larazon.es/sociedad/20200531/klymudfotretcpn53dlndy3vq.html>. Published 2020. Accessed April 16, 2021.

⁵² 20 minutos. El ex consejero canario de Sanidad Baltar "no" ve "honesto" obviar la "tercera vía" de los nuevos productos de tabaco. [www.20minutos.es - Últimas Noticias. https://www.20minutos.es/noticia/4508421/0/el-ex-consejero-canario-de-sanidad-baltar-no-ve-honesto-obviar-la-tercera-via-de-los-nuevos-productos-de-tabaco/?autoref=true](https://www.20minutos.es/noticia/4508421/0/el-ex-consejero-canario-de-sanidad-baltar-no-ve-honesto-obviar-la-tercera-via-de-los-nuevos-productos-de-tabaco/?autoref=true). Published 2020. Accessed April 15, 2021.

⁵³ Europa Press. Ex director de Sanidad de Canarias cree que la política española sobre tabaco se alinea con los "negacionistas." <https://www.20minutos.es/noticia/4514959/0/ex-director-de-sanidad-de-canarias-cree-que-la-politica-espanola-sobre-tabaco-se-alinea-con-los-negacionistas/?autoref=true>. Published 2020. Accessed April 16, 2021.

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<p>free to set tobacco product prices, while in the rest of Spain, prices are approved by the government after consultation with the manufacturers. Also, the government of the Canary Islands approves their own tobacco excise tax rates, which are lower than in the rest of Spain and the EU. As a result, tobacco product prices are lower in the Canary Islands than in the rest of Spain.</p> <p>As a way of illustration, the Government of Spain increased tobacco taxes by a combined minimum of 55 € for the sum of specific and ad valorem taxes per 1,000 cigarettes.⁵⁴ During the four following years, the tax rate was increased several times. However, none of these changes were applicable to the Canary Islands. In the period 2006-2010, the inflation-adjusted price for cigarettes increased 1.5% in the Canary Islands and 35.7% in the rest of Spain.⁵⁵ Anecdotal evidence shows that Marlboro red is about 15% cheaper in the Canary Islands, and other cigarette brands may approximately be up to half price that of the rest of Spain.</p> <p>Another exemption is related to the entry of duty-free tobacco products for personal use. Travellers from the EU can bring into Spain duty-free 800 cigarettes or 400 cigarillos or 200 cigars or 1kg of loose tobacco. Non-EU travellers can bring duty-free into Spain 200 cigarettes or 100 cigarillos or 50 cigars or 250gms of loose tobacco. Any traveller, EU and non-EU, can bring these same amounts into mainland Spain from the Canary Islands.⁵⁶</p>						
INDICATOR 4: Forms of Unnecessary Interaction						
<p>8. Top level government officials (such as President/ Prime Minister or Minister⁵⁷) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)</p>			x			
<p>The Minister of Agriculture met in March 2021 with the tobacco growers' organisations linked to the "Tobacco Board." They demand that the minister defends tobacco growing to maintain tobacco as part of the European Strategic Plan. They also want Spain's government to take on the subsidies for tobacco growing from the European Union that expired in 2020. According to the Tobacco Board, the meeting took place due to the pressure generated by the agrarian sector protests that were interrupted to allow dialogue with the ministry.⁵⁸</p> <p>In September 2020, the president of the Extremadura region's government met with the general director of the "Tobacco Board," which is the grouping of all sectors involved in the tobacco industry in Spain. At this meeting, the Tobacco Board complained about the tobacco</p>						

⁵⁴ BOE. Real Decreto-Ley 2/2006, De 10 De Febrero, Por El Que Se Modifican Los Tipos Impositivos Del Impuesto Sobre Las Labores Del Tabaco, Se Establece Un Margen Transitorio Complementario Para Los Expendedores De Tabaco Y Timbre Y Se Modifica La Ley 28/2005, De 26 De Diciembre, De Medidas Sanitarias Frente Al Tabaquismo Y Reguladora De La Venta, El Suministro, El Consumo Y La Publicidad De Los Productos Del Tabaco. Madrid: Boletín Oficial del Estado núm. 36, de 11 de febrero de 2006; 2006:3. <https://www.boe.es/eli/es/rdl/2006/02/10/2>. Accessed June 12, 2020.

⁵⁵ Lopez-Nicolas A, Badillo-Amador L, Cobacho-Tornel M. Will the European Union's New Tobacco Tax Legislation Lead to Reductions in Smoking Prevalence? Evidence From a Quasi-Experiment in Spain. *Nicotine & Tobacco Research*. 2013;15(12):1963-1970. doi:10.1093/ntr/ntt038

⁵⁶ Ley 38/1992, De 28 De Diciembre, de Impuestos Especiales. <https://www.boe.es/eli/es/l/1992/12/28/38/con>. Madrid: Boletín Oficial del Estado; 2020.

⁵⁷ Includes immediate members of the families of the high-level officials

⁵⁸ El sector del tabaco extremeño se reunirá con Planas para reclamarle que se posicione y defienda al cultivo ante la nueva PAC. *Agroinformacion*. <https://agroinformacion.com/el-sector-del-tabaco-extremeno-se-reunira-con-planas-para-reclamarle-que-se-posicione-y-defienda-al-cultivo-ante-la-nueva-pac/>. Published 2021. Accessed April 16, 2021.

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sector's over-regulation and the temporary ban on smoking in the street and terraces if the two-meter safety distances cannot be met due to the COVID-19 pandemic. ⁵⁹											
During the period 2020-2021, numerous officials of the national and regional governments attended news briefings organised by the news agency Europa Press. ⁶⁰ These events were sponsored, among other businesses, by Altadis. This is the list of events:											
Date	Name	Position									
29/03/2021	Pablo Hernández de Cos	Governor of the Bank of Spain									
08/03/2021	José Manuel Rodríguez	Minister of Culture and Sports of the Government of Spain									
30/11/2020	Juan Carlos Campo	Minister of Justice of the Government of Spain									
05/11/2020	José Luis Escrivá	Minister of Inclusion, Social Security and Migrations of the Government of Spain									
29/10/2020	Nadia Calviño	Third Vice president and Minister of Economy and Digital Transformation of the Government of Spain									
22/07/2020	Reyes Maroto	Minister of Industry, Commerce and Tourism of the Government of Spain									
13/07/2020	Juan Carlos Campo	Minister of Justice of the Government of Spain									
08/07/2020	Arancha González Laya	Minister of Foreign Affairs, European Union and Cooperation of the Government of Spain									
03/03/2020	María Chivite	President of the Government of Autonomous Region of Navarra									
13/02/2020	Concha Andreu	President of the Government of the Autonomous Region of La Rioja									
12/02/2020	Alfonso Fernández Mañueco	President of the Government of the Autonomous Region of Castilla y León									
16/01/2020	Isabel Díaz Ayuso	President of the Government of the Autonomous Region of Madrid									
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)						X					
We did not find any evidence of continuing partnership of law enforcement agencies and customs with the TI in combating smuggling and counterfeiting of tobacco products.											
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.									X		
In 2016, the regional government of Extremadura signed an agreement with Philip Morris. ⁶¹ The agreement has the purpose of: a) jointly monitoring the health effects of tobacco products, b) making tobacco-growing sustainable with PM committing to provide tobacco growers advice and tools, c) implementing industrial initiatives related to technological innovation and development in the tobacco sector and innovative products with the potential to reduce the risk associated with smoking, and d) giving heated tobacco products visibility among the adult smoker population who does not want to quit. ⁶² <u>The agreement is still in force.</u>											

⁵⁹ El presidente de Extremadura recibe a la Mesa del Tabaco, preocupada por el exceso de regulación del sector - Mesa del Tabaco. Mesa del Tabaco. <https://mesadeltabaco.com/el-presidente-de-extremadura-recibe-a-la-mesa-del-tabaco-preocupada-por-el-exceso-de-regulacion-del-sector1>. Published 2020. Accessed April 16, 2021.

⁶⁰ Europa Press E. Desayunos Informativos |. Europapress.es. <https://www.europapress.es/desayunos/informativos/>. Published 2021. Accessed April 14, 2021.

⁶¹ Junta de Extremadura. La Junta de Extremadura y Philip Morris Spain firman un acuerdo para el desarrollo tecnológico e innovación en el sector del tabaco. Nota de prensa. <http://www.juntaex.es/comunicacion/noticia?idPub=20973#.XujsrEUzZd>. Published 2017. Accessed June 11, 2020.

⁶² The agreement has not been published but was obtained through a request for public information.

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INDICATOR 5: Transparency						
11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)				X		
<p>The government does not publicly disclose meetings or interactions with the tobacco industry. Only the president, ministers, and vice ministers of the government make their daily agenda of meetings available online,⁶³ but the minutes of the meetings are not disclosed. The daily agenda of other government officials is not available. Parliamentarians are obligated to publish their daily agendas, but most of them do not.⁶⁴</p> <p>In December 2020, the Minister of Health, Salvador Illa, met with the representatives of the tobacco sector to inform them about the government's intention to extend the current smoke-free regulations and regulate the use of electronic cigarettes. This meeting received extensive coverage in the press,^{65,66} though no minutes of the meeting were made public.</p>						
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)		X				
<p>The government requires the registration of all economic operators, including importers, distributors, manufacturers, and retailers of tobacco products. However, it does not require the registration of lobbyists.</p>						
INDICATOR 6: Conflict of Interest						
13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)						X
<p>The economic resources of political parties are regulated through Article 2 of the Organic Law 8/2007, of July 4, on Financing of Political Parties as updated in 2015.⁶⁷ The law permits legal contributions to political parties, including candidates and campaigns, from private individuals but not private companies, businesses, or foundations. Legal donations to political parties can be made including in cash or in-kind and are subject to the following limitations:</p> <ul style="list-style-type: none"> • They cannot be anonymous, returnable, or for a specific purpose 						

⁶³ Presidencia del Gobierno. La Moncloa. index [Gobierno/Agenda]. Lamoncloa.gob.es.

<https://www.lamoncloa.gob.es/gobierno/agenda/Paginas/index.aspx>. Accessed: May 28, 2021.

⁶⁴ Europa Press. El 90% de los diputados incumple el código ético al no publicar su agenda en la web del Congreso. europapress.es. <https://www.europapress.es/nacional/noticia-90-diputados-incumple-codigo-etico-no-publicar-agenda-web-congreso-20210411121946.html>. Published 2021. Accessed April 17, 2021.

⁶⁵ El Mundo. Salvador Illa trasladó a la Mesa del Tabaco que ampliará las restricciones para fumar. <https://www.elmundo.es/ciencia-y-salud/salud/2020/12/29/5feaf440fdddfc86d8b45b0.html>. Published 2020. Accessed April 24, 2021.

⁶⁶ El Plural. El Gobierno avanza nuevas prohibiciones al tabaco y limitaciones al cigarrillo electrónico. https://www.elplural.com/politica/espana/gobierno-avanza-prohibiciones-tabaco-limitaciones-cigarrillo-electronico_256218102. Published 2020. Accessed April 24, 2021.

⁶⁷ Ley Orgánica 8/2007, de 4 de julio, sobre financiación de los partidos políticos. - Documento consolidado BOE-A-2007-13022. Boe.es. <https://www.boe.es/eli/es/lo/2007/07/04/8/con>. Published 2015. Accessed June 8, 2020.

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<ul style="list-style-type: none"> • Individuals having links with any local, regional or national government cannot donate • They cannot exceed 50,000 per year per party • They must be reflected in the accounting system of the party and submitted to the Court of Auditors (The national agency in charge of auditing the public sector and prosecuting violations). <p>The law, however, does not regulate contributions to foundations of political parties. Such foundations may receive contributions only for the purposes established for such foundations and not electoral activities.</p>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)						X
<p>Logista is Spain's largest logistics tobacco distributor (it was the logistics branch of Tabacalera SA before the privatisation of the tobacco monopoly). Logista's Board of Directors has 12 members, of whom 4 represent Imperial Brands, and three directors have been members of the government of Spain.⁶⁸ These are:</p> <ul style="list-style-type: none"> - María Echenique, Secretary of Logista. Between 2008 and 2012, she was Deputy Director-General of Procurement and Asset Management of the Ministry of Culture (Spain). As such, she was responsible for the processing of all the files of contracting works, services, and supplies of museums, archives, and libraries of state ownership and responsible for the patrimonial management related to the properties of the Ministry of Culture. - Cristina Garmendia, Member of the Logista Board of Directors. She was Minister of Science and Innovation between 2008 and 2011. - Pilar Platero, Member of the Logista Board of Directors. Between 2012 and 2016, she was Undersecretary of Finance and Public Administrations. Subsequently, and until 2018, she was president of the State Society of Industrial Participations (SEPI), an entity attached to the Ministry of Finance and Public Function. 						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)			X			
<p>CETARSA (Compañía Española de Tabaco en Rama S.A.) was created by Royal Decree 573/1987, of April 10, as a state company under private law. CETARSA is part of the holding of public companies Sociedad Estatal de Participaciones Industriales (SEPI). SEPI, which is the state, owns 79.18% of the capital of CETARSA. Altadis-Imperial Tobacco owns the remaining 20.82% of the capital. CETARSA's objective is to acquire, ferment, process, conditioning, and market raw tobacco. SEPI is an entity of Public Law whose activities conform to the private legal system, attached to the Ministry of Finance and Public Function, reporting directly to the Minister. The Board of Directors of CETARSA is made up of representatives of Altadis and of government officials from five ministries: Finance; Presidency, Relations with the Parliament and Democratic Memory; Agriculture, Fishing and</p>						

⁶⁸ LOGISTA. Consejo de Administración. Logista.com. <https://www.logista.com/es/home/investors-shareholders/corporate-governance/board-of-directors.html>. Published 2021. Accessed April 16, 2021.

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Food; Industry, Trade and Tourism; and Education and Vocational Training. ⁶⁹ The board of Directors of SEPI is made up of high-level government officials from nine ministries: Defense; Finance; Ecological Transition and the Demographic Challenge; Economics and for the Digital Transformation; Transportation, Mobility and the Urban Agenda; Employment and Social Economy; Industry, Trade and Tourism; Agriculture, Fishing and Food; Presidency, Relations with the Parliament and Democratic Memory. ⁷⁰						
INDICATOR 7: Preventive Measures						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)						X
No procedure has been found by which the national government should disclose the records of the interaction (such as attendees, minutes, and outcomes) with the tobacco industry and its representatives, except for the agendas of top government officials.						
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)			X			
<p>We understand that public officials refer here to all public employees and political appointees of the national, autonomous, and local governments. In Spain, two laws regulate the code of conduct of public employees and one that of political appointees.</p> <p>Public employees.</p> <p>The code of conduct of public employees in Spain is regulated by Articles 52 to 54 of the Royal Legislative Decree 5/2015, of October 30th, which approves the revised text of the Law on the Basic Statute of Public Employees⁷¹. It applies to all public employees of the General State Administration, the Administrations of the autonomous communities and the cities of Ceuta and Melilla, the administrations of local entities, public bodies, agencies, and other public law entities with their own legal personality, linked or dependent on any of the Public Administrations and public universities. According to this law, public employees must, among other obligations:</p> <ul style="list-style-type: none"> ● pursue the satisfaction of the general interests of citizens ● abstain from intervening in those matters in which they have a personal interest, as well as any private activity or interest that may pose a risk of posing conflicts of interest with their public office ● not contract economic obligations or intervene in financial operations, patrimonial obligations, or legal business with persons or entities when it may pose a conflict of interest with the obligations of their public office 						

⁶⁹ CETARSA. Consejo de Administración. Cetarsa.es. <http://www.cetarsa.es/nosotros/organos-de-gobierno/consejo-de-administracion/>. Published 2020. Accessed June 8, 2020.

⁷⁰ SEPI. Board of Directors. Sepi.es. <http://www.sepi.es/en/get-know-sepi/about-sepi/management-team>. Published 2020. Accessed June 8, 2020.

⁷¹ Real Decreto Legislativo 5/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto Básico del Empleado Público. Documento consolidado BOE-A-2015-11719 updated as of 07/03/2019. Boe.es. <https://www.boe.es/eli/es/rdlg/2015/10/30/5/con>. Published 2019. Accessed June 2, 2020.

- not accept from individuals or private entities any preferential treatment, favours or situations that imply a privilege or unjustified advantage
- not influence the treatment or resolution of any administrative procedure without just cause and, in no case, when it entails a privilege for the benefit of the holders of public offices or their immediate family and social environment or when it suppresses the interests from third parties
- keep secret the classified or other matters whose dissemination is legally prohibited, and will maintain due discretion on those matters of which they are aware of due to their position, without being able to use the information obtained for their own benefit or that of third parties, or to the detriment of the public interest.

In addition, public employees may not hold other jobs or perform other functions except those authorized by Law 53/1984, of December 26th.⁷² With regards to the private sector, a public employee cannot belong to the board of directors of any entity that is related to the public agency for which s/he works; nor can s/he hold positions in companies that are public works contractors in which he has a stake that exceeds 10%.

Political appointees. - Law 3/2015, of March 30th, regulating the exercise of the high position of the General State Administration.⁷³ These are the main applicable points of this law.

☛ Political appointees must avoid that their personal interests unduly influence the exercise of their functions and responsibilities. By personal interest, the law means gains of an economic or professional nature affecting the appointee, his or her relatives, and friends, or legal persons or private entities to which the appointee has been linked by employment or professional relationship of any kind in the two years prior to the appointment. This law also indicates that political appointees, while in office, cannot have another remuneration or job, with a few exceptions for other public office concurrent appointments. However, the following functions are authorised:

- The management of personal or family assets.
- Those of literary, artistic, scientific, or technical production and creation and the publications derived from them, as well as collaboration and occasional and exceptional attendance as a speaker at meetings or professional courses, provided that they are not the consequence of an employment or service provision relationship or they impair the strict fulfilment of their duties.
- The participation in non-profit cultural or charitable entities or in foundations, provided that they do not receive any type of remuneration.

☛ Political appointees may not own, by themselves or by a third party, more than 10% of companies that have agreements or contracts of any nature with any national, regional, or local government or receive subsidies from any Public Administration. If they own less than 10%, they cannot hold any preminent position of influence in the said company.

☛ The law also prohibits political appointees from providing services in private entities two years after leaving office, but only if such companies have been affected by decisions in which

⁷² Ley 53/1984, de 26 de diciembre, de Incompatibilidades del Personal al Servicio de las Administraciones Públicas.- Documento consolidado BOE-A-1985-151 updated as of 31/10/2015. Boe.es.

<https://www.boe.es/eli/es/l/1984/12/26/53/con>. Published 2015. Accessed June 2, 2020.

⁷³ Ley 3/2015, de 30 de marzo, reguladora del ejercicio del alto cargo de la Administración General del Estado. Documento BOE-A-2015-3444. Boe.es. <https://www.boe.es/eli/es/l/2015/03/30/3>. Published 2015. Accessed June 2, 2020.

	0	1	2	3	4	5
<p>they have participated. Exceptions to this rule can be requested, and it is not unusual to obtain exemptions during the two-year period prescribed by law.</p> <p>In summary, the government has formulated, adopted, and implemented a code of conduct for public officials, not specifically prescribing the standards they should comply with in their dealings with the tobacco industry. Also, such a code of conduct for public employees and political appointees is clearly insufficient to deal with the range of the tobacco industry's typical interference activities.</p>						
<p>18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)</p>			X			
<p>According to the TPD, the tobacco retailers and manufacturers should report the information on the tobacco products in the national market to the common entry gate (EU-CEG).⁷⁴ However, EU-CEG does not require to introduce the data on market share, revenues, etc. The government, through the National Commission for the Tobacco Market,⁷⁵ requires the tobacco industry to periodically submit information on tobacco production, manufacture, revenues, and market share, which is published monthly⁷⁶ and annually.⁷⁷ However, it does not require the tobacco industry to submit information on marketing expenditures, lobbying, philanthropy, or political contributions.</p>						
<p>19. The government has a program / system/ plan to consistently⁷⁸ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)</p>					X	
<p>The latest report of the government Spain to the COP⁷⁹ indicates that an agreement was reached within the Public Health Commission of the National Health System together with the health authorities of the Autonomous Communities to remind the National Health System of the obligations derived from the Framework Convention and its article 5.3. Nevertheless, there is no clear indication that the national or regional governments have any program, system, or plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines.</p>						

⁷⁴ BOE. Real Decreto 579/2017, De 9 De Junio, Por El Que Se Regulan Determinados Aspectos Relativos a La Fabricación, Presentación Y Comercialización De Los Productos Del Tabaco Y Los Productos Relacionados. Madrid: Boletín Oficial del Estado núm. 138, de 10/06/2017.; 2017. <https://www.boe.es/eli/es/rd/2017/06/09/579/con>. Accessed June 12, 2020.

⁷⁵ Real Decreto 2668/1998, de 11 de diciembre, por el que se aprueba el Estatuto del Organismo autónomo Comisionado para el Mercado de Tabacos. - Documento consolidado BOE-A-1998-29658 updated as 13/07/1999. Boe.es. <https://www.boe.es/eli/es/rd/1998/12/11/2668/con>. Published 1999. Accessed June 2, 2020.

⁷⁶ Informes del Comité Consultivo del Comisionado para el Mercado de Tabacos: Ministerio de Hacienda. Hacienda.gob.es. <https://www.hacienda.gob.es/es-ES/Areas%20Tematicas/CMTabacos/Paginas/comiteconsultivo.aspx>. Published 2020. Accessed June 2, 2020.

⁷⁷ Información estadística sobre el Mercado de Tabacos: Ministerio de Hacienda. Hacienda.gob.es. <https://www.hacienda.gob.es/es-ES/Areas%20Tematicas/CMTabacos/Paginas/EstadisticassobreelMercadodeTabacos.aspx>. Published 2020. Accessed June 2, 2020.

⁷⁸ For purposes of this question, "consistently" means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

⁷⁹ Government of Spain. Parties' Reports. Untobaccocontrol.org. https://untobaccocontrol.org/impldb/wp-content/uploads/Spain_2020_WHOFACTreport.pdf. Published 2020. Accessed April 24, 2021.

	0	1	2	3	4	5
20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)						X
No proof has been found indicating that the national or regional governments have put in place a policy disallowing the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives.						
TOTAL						55