

SPAIN

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TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Acknowledgements

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Acronyms commonly used in this report

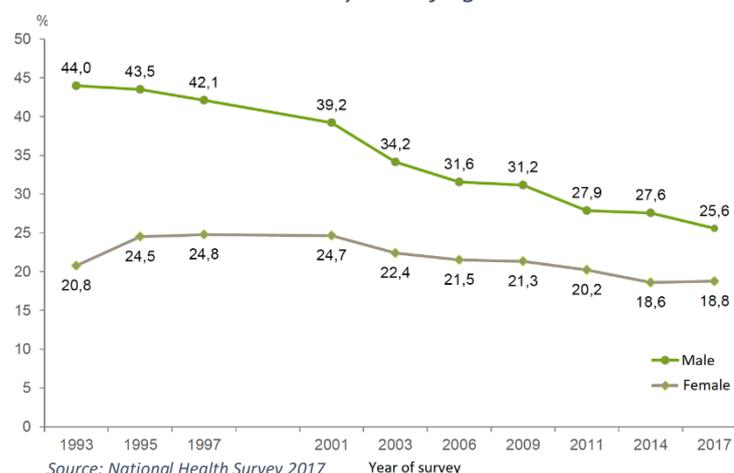
ALTADIS	Alliance Tobacco Distribution
BAT	British American Tobacco
BOE	Boletín Oficial del Estado (Official State Gazette)
CETARSA	Compañía Española de Tabaco en Rama SA (Spanish Raw Tobacco Company)
COP	Conference of the Parties to the WHO FCTC
CSR	Corporate Social Responsibility
EU	European Union
FCTC	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

Background

Smoking in Spain

Tobacco use continues to pose a threat to health in Spain. According to the latest National Health Survey, 25.6% of males and 18.8% of females were daily smokers in 2017,¹ which is the lowest figures since recording smoking prevalence systematically through the National Health Interview Surveys (Figure 1). Among daily smokers, 33% of males and 20% of females smoke one or more packs of cigarettes a day. Almost one in four daily smokers have tried to quit at least once during the 12 months before the survey.

Figure 1. Prevalence of daily smoking in Spain 1993-2017 15+ years of age



Tobacco control in Spain

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)² and the European Union (EU) Directives on excise duty applied to manufactured tobacco³ and on tobacco products (TPD)⁴ that has been transposed into Spanish law^{5,6,7,8} and on taxation. In summary, the tobacco control legislation so far, establish 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 at 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.⁹

Tobacco taxes are regulated under the EU directive to this effect. Since its implementation, real prices of cigarettes have been increasing. However, 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 2014.¹⁰ This is in line 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 overtime.¹¹ An analysis of the tobacco market in 2005-2011 identified important 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.¹² In Spain, the tobacco excise taxes and the Value Added Tax (VAT) collected on tobacco sales represent 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 labelling, which could include terms such as “light” and “low tar” and other signs, is prohibited. Despite the efforts of the tobacco control movement,¹³ the Spanish Government is not considering plan packaging yet.

It is difficult to measure the real 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 2019.¹⁴ 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.¹⁵ In Spain, 9% indicated that they had been offered illicit cigarettes at least once a month. This three percentage points above the figure for the overall EU. The Spanish government made progress in reducing 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 the cigarettes sold in Spain that are of illicit origin 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.

The tobacco market in Spain is supervised by the Tobacco Market Commission (TMC),^{16,17,18} which is an autonomous agency of the Ministry of Finance. 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.

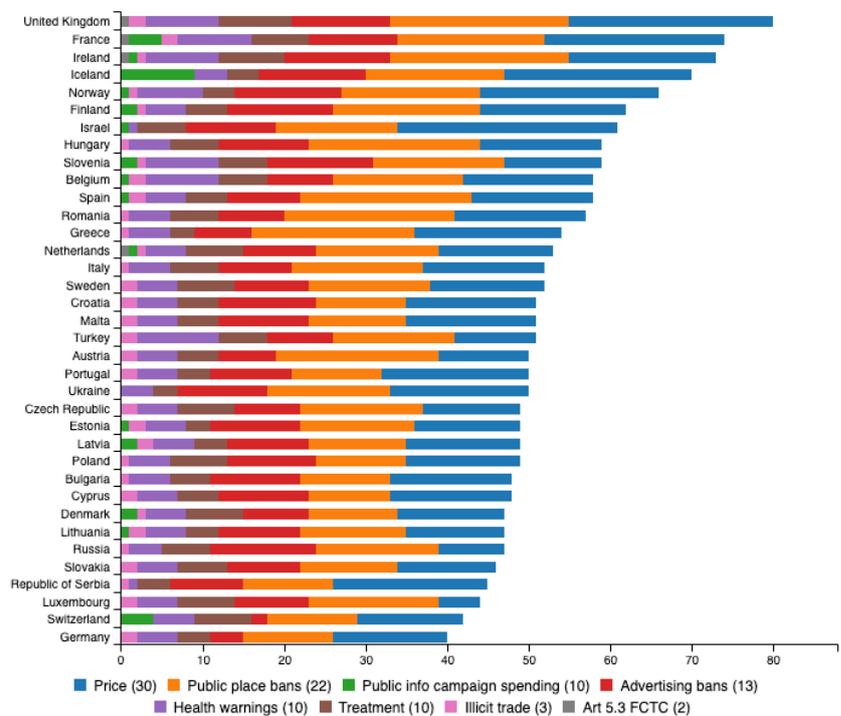
- Store and safeguard the seized tobacco contraband and destruct it.
- Collect statistics, prepare reports and formulate proposals in matters within the scope of its competences

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.¹⁹

Overall, tobacco control efforts ranked 10th in Europe in the tobacco control scale for 2019 (Figure 2).²⁰ The policy domain where Spain 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.²¹

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. Last year, 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 euros: Logista, 21 million euros; Philip Morris Spain, 15.3 million; ALTADIS, 11.426 million; and JT International Iberia, 10 million.²²

Manufactured cigarettes represented 86% of all sales of tobacco products in 2019.²³ Four major tobacco companies control 95% of the manufactured cigarette market in Spain, namely: ALTADIS, British American Tobacco (BAT), PMS, and JTII. On December 2019, the share of the cigarette market by company was PMS 30.7%, ALTADIS 28.0%, JTII 24.5% and BAT 11.8%. The cigarette brands with more than a 5% market share were Marlboro (PMS) 13.8%, Camel (JTII) 9.6%, Winston Classic (JTII) 8.0% Chesterfield (PMS) 8.0%, Fortuna (ALTADIS) 7.4%, Lucky Strike (BAT) 7.3%, and Winston (JTII) 5.2%.

The roll-your-own cigarettes represented 8.8% of all sales of tobacco products in 2019. Seven companies control 95% of this market: ALTADIS/Imperial 27.4%, JTII 25.9%, Poschl Tabak 14.8%, PMS 9.2%, Flandria N.V. 8.4%, Von Eicken 5.2% and BAT 4.3%.

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 Spain²⁴ (35% Juul's stake is owned by Altria Group, formerly PM Companies Inc.).

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.²⁵ 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, where five indicates the highest level of industry interference, and one is low or no interference. Hence the lower the score, the better for the country's efforts to counter the tobacco industry's interference.

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, and as a consequence, the state has kept some reminiscences. The most significant concern is the fact 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 to discuss and report on central issues in the agricultural and industrial tobacco economy, informing the government, through the Commissioner, the opinion of the sector on such issues. Besides, the TMC controls 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 as forms of tobacco advertising, promotion and sponsorship. In Spain, the law bans tobacco advertising, promotion and sponsorship. However, the different governments of Spain have been oblivious to the obligations under the FCTC regarding CSR activities of the tobacco industry. The government rarely receives CSR contributions from the tobacco industry, but these activities receive the support and even the partnerships of the government. We have documented a pervasive collaboration at the national, regional, provincial and municipal level of the government.

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 aimed to stimulate their distant offshore economy in line with EU regulations. The special tax regime also affects the tobacco products and is regulated by the regional government of the Canary Islands. As a result, tobacco products prices are lower in the Canary Islands than in the rest of Spain.

4. UNNECESSARY INTERACTION

There are instances of unnecessary interaction between the government and the tobacco industry. The main policy domains in which this happens are the combat against illicit tobacco trade and tobacco growing. The tobacco industry gave to the Guardia Civil (Civil Guard), which is the Spanish police force in charge of combatting illicit trade, equipment and participates actively in the training of national and local law enforcement agents. In appreciation for the services provided, the Civil Guard awarded PMS the Cross of the Order of Merit. There is also a history of agreements signed by the Ministry of Agriculture with the tobacco manufacturers to ensure the sale of Spanish tobacco leaf. The state has a stake in the market of tobacco leaf because the state "inherited" the agricultural part of the tobacco state monopoly which is now a company where the state holds 70% of its capital.

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 of lobbyists. Also, the Ministers of the national government make their daily agenda of meeting available online, but not other officials of the national government.

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 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 with which they should comply in their dealings with the tobacco industry. Also, such 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 has put in place a procedure for disclosing the records of the interaction with the tobacco industry and its representatives. Also, no publicly available information has been found indicating that the national or regional governments are raising awareness within its 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. The civil society should be involved in these efforts through the CNPT. Also, an act of political resolve should preclude the government from participating in any CSR effort of the tobacco industry and their allies.

Results and Findings

	0	1	2	3	4	5
INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ^a accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ^b in setting or implementing public health policies in relation to tobacco control ^c (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 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 opinion of the sector on such issues. Besides, the TMC controls 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) (Rec 4.9 & 8.3)		x				
The government did not nominate or allowed tobacco industry representatives in the delegation to the COP 8. ²⁶						
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 ^d (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)						x

^a 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

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

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

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

There are instances of support to the industry’s CSR from all levels of government. At the national level, the Ministry of Health, Social Services and Equality presented in April 2018, the European project ADIM to advance the management of Lesbian, Gay, Bisexual, and Transgender (LGBT) diversity in the public and private sectors. The European Social Fund funds this project. With the presence of the Secretary of State for Social Services and Equality and the director of the Institute for Women and for Equal Opportunities, 17 companies and eight universities in Spain and Portugal signed the participation agreement in ADIM, among which was ALTADIS.²⁷

At the regional level, in May 2018, the President of the regional government of Canarias spoke at a ceremony where Philip Morris awarded scholarships to the winners of their competition of novel Entrepreneurs. He recognised the contribution of PM scholarships to the development of the region.^{28,29} In 2019, the government of the Canary Islands was represented again in 2019 edition of the fellowships. This time the regional minister for Economy and Knowledge participated.³⁰

At the provincial level, the Foundation for the development of Córdoba (FUNDECOR) granted in 2019 so call awards for Innovation and Transformation in Circular Economy in Andalusia funded by Philip Morris. FUNDECOR is a foundation of the government of the province of Córdoba in the region of Andalusia and the state University of Córdoba.³¹

At the municipal level, in October 2018, the Santander City Council, ALTADIS and the city's tobacconists started a public awareness campaign to tackle the impact of cigarette butts on the environment and urban cleanliness. The city's tobacconists will distribute portable ashtrays and informative diptychs among their clients in order to make citizens aware of the importance of depositing this waste in the right place. The Councilor for the Environment of the Santander City Council, the Director of Corporate and Legal Affairs of ALTADIS, and the President of the Association of Tobacco and Stamps Vendors of Cantabria, have presented at a press conference this campaign, which starts in Santander and will continue in other Spanish cities.³²

Also, several state-owned universities collaborate with the tobacco industry’s CSR efforts. The President of the state-owned University of La Laguna in the Canary Islands hosted in October the ceremony of accreditations to the 15 students of the academic institution. They have won the scholarships that the company Philip Morris offers each year to help defray the costs of enrolled students. Each of these grants amounts to 1,568.81 euros. In addition to the president and vice-president of the university, the Director of Corporate Affairs of Philip Morris Canarias, was in attendance.³³ In another instance, the President of the state-owned University of Extremadura and the director of Corporate Affairs of ALTADIS signed in June 2018 a collaboration agreement that runs until the end of 2019. Both institutions will collaborate to develop a line of research on recycling used filters of cigarettes as acoustic materials. The ALTADIS representative proclaimed during the signing ceremony that “One of the main objectives of ALTADIS with this agreement is to make society aware of the need to reduce the harmful effects that cigarette butts have on the environment. Achieving this purpose and also making cigarette butts useful as acoustic noise reducers.”³⁴

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					
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There is no evidence that the government has accommodated requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law.						
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)						x
<p>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 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 free to set tobacco products 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 products 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 with a combined minimum of 55 € for the sum of specific and <i>ad valorem</i> taxes per 1,000 cigarettes.³⁵ During the four following years, the tax rate was increased several times. However, none of these changes applied to the Canary Islands. In the period 2006-2010, the inflation-adjusted price for cigarettes increased by 1.5% in the Canary Islands and 35.7% in the rest of Spain.³⁶ Anecdotal evidence shows that Marlboro red is about 15% cheaper in the Canary Islands and other cigarettes brands may approximately be up to half the price that of mainland Spain.</p> <p>Another exemption is related to the entry of duty-free of tobacco products for personal use. Travellers from the EU are allowed to 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.</p>						
INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ^e) 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)						x
<p>In October 2019, the Civil Guard awarded the Cross of the Order of Merit to the head of Prevention of Illicit Tobacco Trade of Philip Morris Spain. The award recognises the company's awareness work, and its cooperation in different areas, materialised, among other actions, in the dismantling of some illegal tobacco factories.³⁷ This Cross is a distinction to reward actions or behaviours of extraordinary importance for the Civil Guard and the country.</p> <p>In July 2019, the Mesa del Tabaco, received the institutional support, both from the Ministry of Agriculture and from the Extremadura Regional Government, regarding the cultivation of tobacco leaves due to the new reform of the Common Agrarian Policy (CAP), which reinforces its commitment to the defence of the interests of the sector. During the meeting, the Mesa del Tabaco also received the support from the government of the Canary Islands, the National Mint and the Commission for Tobacco Markets of the Ministry of Finance.³⁸ The Mesa del Tabaco</p>						

^e Includes immediate members of the families of the high-level officials

In 2015, the Director-General of the Civil Guard and the Director-General of Philip Morris Spain, signed “an agreement for the contribution of means for the fight against tobacco smuggling.” The program has continued until June 2018.⁴⁴ The collaboration between the government and the tobacco industry against illicit trade extends to other tobacco companies. Through this agreement, Philip Morris gave the Civil Guard "aquatic cameras, night vision systems, two vans with scanners, and up to 100 mobile devices that have integrated a system to verify the authentication and tracking of tobacco products." This material, according to that agreement, seeks to help agents in their "actions against the smuggling of tobacco products." This agreement provoked the reaction of WHO and civil society organisations,⁴⁵ which denounced it as a violation of the WHO FCTC and the Protocol for the Elimination of Illicit Trade. The government also collaborates in building capacity to combat illicit tobacco trade of the National Tax Agency, Civil Guard, National Police, and local police of the region of Murcia.⁴⁶

10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>				x		
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In 2007, PMI and the Ministry of Agriculture signed a multiyear agreement to improve the quality of Spanish tobacco from Extremadura. PMI renewed the agreement in 2013, increasing its purchase of Spanish tobacco leaf by 33%, and with an approximate 5% annual increase for the following two years. It seems that the agreement extended through 2018 and 2019 since PMI announced that they would stop buying raw tobacco in 2020.⁴⁷ Aside from this, PMI also carries out collaboration with the local universities in delivering its training and leadership programs to address unemployment in Spain and Europe. The University of Extremadura, a public university, has trained more than 100 tobacco growers from the region in partnership with PMI.⁴⁸

In 2016, the regional government of Extremadura signed an agreement with Philip Morris.⁴⁹ 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 “heat-not-burn” products visibility among the adult smoker population who does not want to quit.⁵⁰ The agreement is still in force.

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		
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The government does not publicly disclose meetings or interactions with the tobacco industry. Only the ministers of the government make their daily agenda of meeting available online⁵¹ but the minutes of the meetings are not disclosed. The daily agenda of other government officials is not available.

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			
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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.						
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 2015.⁵² 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 kind and are subject to the following limitations:</p> <ul style="list-style-type: none"> • Cannot be anonymous, returnable or for a specific purpose • Individuals having links with any local, regional or national government • Cannot exceed 50,000 per year per party <p>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> <p>The law, however, does not regulate contributions from corporations 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>In 2018, José María Aznar, the former Prime Minister (1996-2004) and President (2004-2016) of Spain became a consultant for PMI for Latin America.⁵³ Through this consultancy, Aznar promoted electronic cigarettes to Chile and Peru.⁵⁴</p> <p>Former Minister Cristina Garmendia occupies a seat in the board of directors at Logista, formerly the logistics branch of the state-owned tobacco monopoly and now Spain's largest logistics firm and tobacco distributor. Before this, former Minister Eduardo Zaplana and former Minister of Economy Luis de Guindos were also part of the company. Imperial Brands, the fourth-largest tobacco company in the world, is the majority shareholder (50%) of Logista.⁵⁵</p>						
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 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 marketing in the national and international markets of 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 5 ministries: Finance; Presidency, Relations with the Parliament and Democratic Memory; Agriculture, Fishing and Food;</p>						

	0	1	2	3	4	5
Industry, Trade and Tourism; and Education and Vocational Training. ⁵⁶ 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. ⁵⁷						
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 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.						
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 mean here 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 Employees⁵⁸. Its 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 legal personality, linked or dependent on any of the Public Administrations and public universities. According to this law, public employees must, among others:</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 • 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.

Also, public employees may not hold other jobs or perform other functions except those authorised by Law 53/1984, of December 26th.⁵⁹ 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.⁶⁰ These are the main applicable points of this law.

☛ Political appointees must avoid that their personal interests may 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 before 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. It also includes the collaboration and occasional 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 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 the any national, regional or local government, or receive subsidies from of any Public Administration. If they own less than 10%, they cannot hold any preeminent position of influence in the said company.

☛ The law also prohibits political appointees from providing services in private entities during two years after leaving office but only if such companies have been affected by decisions in which they have participated. Exceptions to this rule can be requested, and it is not unusual to obtain exemptions during the two years prescribed by law.

In summary, the government has formulated, adopted and implemented a code of conduct for public officials, not specifically prescribing the standards with which they should comply in their dealings with the tobacco industry. Also, such code of conduct for public employees and political appointees is insufficient to deal with the range of the tobacco industry`s typical interference activities.

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)				x		
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According to the Tobacco Products Directive, tobacco retailers and manufacturers should report the information on the tobacco products in the national market to the common entry gate.⁶¹ However, EU-CEG does not require to introduce the data on market share and revenues. The

	0	1	2	3	4	5
government, through the TMC, ⁶² requires the tobacco industry to periodically submit information on tobacco production, manufacture, revenues and market share, which is published monthly ⁶³ and annually. ⁶⁴ However, it does not require the tobacco industry to submit information on marketing expenditures, lobbying, philanthropy, or political contributions.						
19. The government has a program / system/ plan to consistently ^f raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)						x
No publicly available information has been found indicating 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.						
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 publicly available information has been found indicating that the national or regional governments have 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.						
TOTAL						58

^f 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.

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