

# Smokefree bars and restaurants: Don't be duped by the 'Spanish Solution'

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# Overview

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- Introduction
  - International relevance of the Spanish Model
  - Tobacco Industry programs
    - “Courtesy of Choice” / “Traditional Hospitality” (PM)
- The Spanish Anti-Tobacco Law (Ley 25/2005)
  - National and regional Exemptions
  - Practical implementation
  - Situation of hospitality workers
- Conclusions



# International relevance

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- In the public discourse in
  - Austria, Germany, Switzerland, Romania, Turkey
- **Used to counter 100% smoke-free legislation**
- **Based on TI Accommodation-Programs**
  - „Courtesy of Choice“
  - „Traditional Hospitality“
- Extensively promoted by pro tobacco forces
  - Tobacco industry and retail
  - Hospitality industry
  - Liberal political parties & politicians



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## **Protestaufruf gegen das totale Rauchverbot in Bayern seit 01.01.2008 !**

### **Warum keine liberale Regelung?**

Die CSU Fraktion hat in der Gastronomie in Bayern das härteste Nichtraucherschutzgesetz in ganz Europa eingeführt und das, **ohne die betroffenen Wirte zu fragen!**

**Dagegen demonstrieren Wirte, Bürger und Wähler,  
Raucher und Nichtraucher mit aller Macht!**

Wir sind für:

- Nichtraucherschutz in der Gastronomie, wo immer es sinnvoll ist (Hotel, Restaurant, Speiselokal, Tagescafe etc.)

### **Wir fordern das spanische Modell:**

- Eigendeklaration für Einraumgastronomie bis 100 m<sup>2</sup>
- Raucherräume für Mehrraumgastronomie
- Für Festzelte und -hallen Übergangsfristen mit Plätzen für Raucher und Nichtraucher
- Innovationsklausel (Alternative technische Lösung, siehe Cafe Forum, München)
- Revisionsklausel nach einem Jahr



# In line with big tobaccos interests? dkfz.

## I. Learnings from experience -- What's worked/what's not worked?

1. We do not win public policy debates on the science alone. We have only won through public affairs strategies, building and working with allies who participate because of their own concerns about the impact of unreasonable smoking restrictions.

- „Accommodation“-Programs  
(Philip Morris Brainstorming 1996)
  - Accommodates the preferences of smokers and nonsmokers alike.
  - Ventilation should be part of any accommodation solution.
  - Ensure Regions and markets have pro-active strategies to lock in accommodation through either legislation or voluntary measures and have implementation programs in place to support accommodation.
  - Our best strategies have been those that recognize the vested interests of other stakeholders affected by smoking policies, e .g., the economic interests of the hospitality sector, concerns of over regulation by business owners and citizens, and consumers' preference for choice and ability to exercise free will, etc.
  - Accommodation programs work best when they are executed by the affected parties, not PM.



## Courtesy of Choice, Strategy meeting PM, Dec. 1999

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1. Overall Goal: The ultimate Goal of PM in the accommodation area should be a) reduction of tension between non-smokers and smokers and b) comfortable smoking (for both smokers and non-smokers) in the overwhelming number of hospitality environments. This goal is consistent with our commitment to Societal Alignment, since smoke annoyance is a major issue in every market.

2. Achieving the Goal: The strategic framework for achieving this goal requires several things:

- Stopping efforts to ban smoking, particularly in HORECA establishments
- "Proving the case" that comfortable smoking is possible
- Motivating the restaurant and bar industry to follow a "model" that includes separation (where relevant), ventilation, training of staff, etc.
- Making that "model" a reality in the overwhelming proportion of establishments ("compliance")

6. Role of Courtesy of Choice: Courtesy of Choice is a highly successful tool for the first three steps of the model. To that degree the goals of the Courtesy of Choice program should be:

- Prevent Bans
- "Prove the case" / Create a model of what is possible
- Allow PM to create relationships with critical allies and players
- Help passage of "reasonable legislation"



# Accommodation and Smoking Restrictions 1999 Plan (PM)

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## Objective #1

Initiate, develop and assist with implementation of worldwide programs that encourage self-regulation and recognize the benefits of using ventilation effectively to facilitate reasonable accommodation and preserve the social acceptability of smoking.

## HOSPITALITY

### Strategy A

In cooperation with international and local partners, maintain and expand *Courtesy of Choice* participating establishments, including those in strategic public settings.

***Courtesy of Choice:*** Clear and practical guidelines for hospitality management to establish smoking and non-smoking areas in hospitality venues, using ventilation effectively to accomplish separation.

### Strategy B

Expand local market hospitality and technical partnerships and establish *Traditional Hospitality* among affected market sector as a reasonable and practical way to accommodate their patron's expectations regarding smoking.

***Traditional Hospitality:*** Clear and practical guidelines that call for the effective use of ventilation to enhance the comfort for all customers in small restaurants, cafes, bars and taverns who enjoy socializing together without separating into smoking and non-smoking areas.



## JEFATURA DEL ESTADO

**21261** *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.*

JUAN CARLOS I  
REY DE ESPAÑA

- Ley 28/2005 on the sanitary measures against tobacco addiction and on regulatory measures on the sale, supply, use and publicity of tobacco products
- Ratified: 26 December 2005
- Enacted: 1. January 2006



# Highlights

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- Extensive advertising bans and sale restrictions
- Smoking bans in
  - public buildings (administration, educational facilities)
  - public transport
  - indoor workplaces



## Exemptions for hospitality industry **dkfz.**

- Smoking prohibited for employees
- Smoking ban for guests depending venue size
  - More than 100 m<sup>2</sup> of accessible area:
    - “Courtesy of Choice”
    - Permission to have smoking rooms
    - Strong criteria for smoking rooms
  - Less than 100 m<sup>2</sup> of accessible area :
    - Freedom to choose = “Traditional hospitality”
    - Duty to designate as “smoker” or “non-smoker” (Sticker)



## Legal provisions

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<b>Smoking rooms</b> (venues >100 m <sup>2</sup> )	<b>Smoking establishments</b> (venues <100 m <sup>2</sup> )
Clear designation (sticker)	Clear designation (sticker)
Not more than 30% of the accessible area	-
Separation	-
Independent ventilation system	-
No passage of nons-mokers	-
No access to children and adolescents under the age of 16	-
No sale of tobacco products to children and adolescents under	No sale of tobacco products to children and adolescents under
Sale of tobacco products only through vending machines	Sale of tobacco products only through vending machines
Complete smoking ban, if any of the conditions can not be fulfilled.	-



# Regional Exemptions

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- Regional directives
  - Own interpretation and implementation of national law
- Drastic differences in interpretation of the law, e.g.
  - Definition of size:
    - Valencia: 100 m<sup>2</sup> accessible area equal total size of 120 m<sup>2</sup>
    - Balearic Isl.: Freedom of choice for all venues
    - Castilla y León, La Rioja und Madrid exclude all areas not exclusively used for consumption from the calculation (hallways, toilets etc.)
  - Separation:
    - No size restrictions in Madrid and on the Balearic Isl.
    - Castilla y León, Madrid, Valencia and Balearic Isl.: no need for physical separation (ventilation enough)
  - Smoking ban in workplaces
    - Madrid and La Rioja allow smoking rooms in canteens (> 100 m<sup>2</sup>)
    - Castilla y León allows declaration of small canteens (< 100 m<sup>2</sup>) as smoking venues
    - Balearic Isl: Hospitality in public authorities excluded from smoking bans



# Implementation

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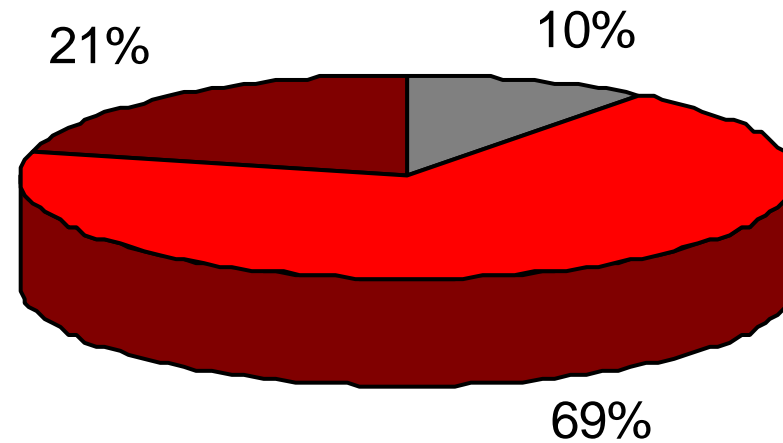
- Only 15% of the 300.000 hospitality venues were smoke-free or fulfilled the criteria in December 2006 (estimate) <sup>1</sup>
- Only 10% of the small venues (<100m<sup>2</sup>) were smokefree<sup>2</sup>
  - They cover ca. 80% of all hospitality venues



## Implementation – small venues (n=1000)

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### Smoking ban in bars and cafes



■ Smoking banned

■ Smoking allowed

■ Not marked \*

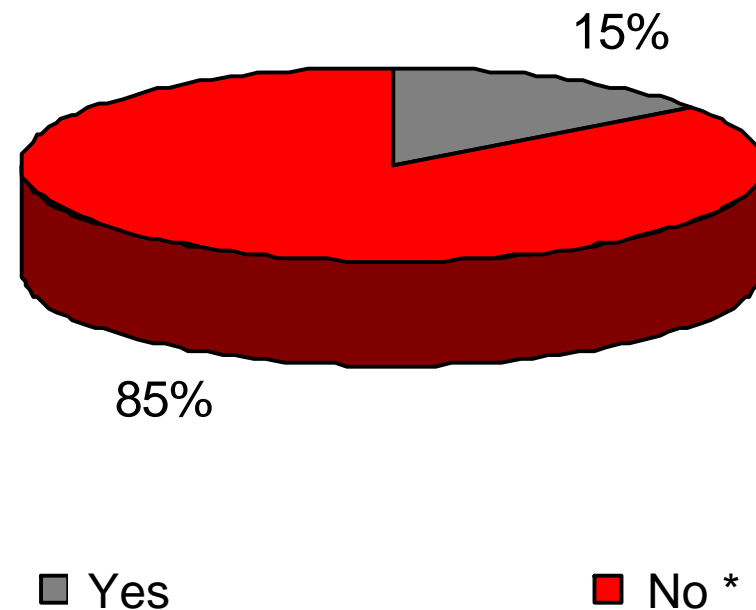
\* unlawful



## Implementation – large venues (n=1000)

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Correct implementation of smoking  
area criteria  
(max. 30% of accessible area)



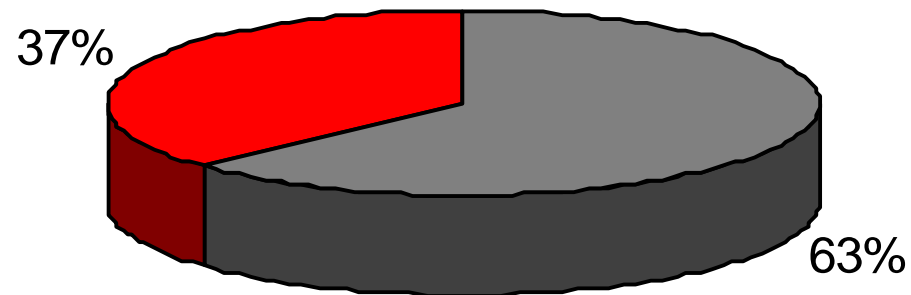
\* unlawful



## Implementation – large venues (n=1000)

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### Physical separation (Smoking area in large venues)



■ Yes

■ No \*

\* unlawful (often only signs on tables or cords)



# Hospitality workers

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- Smokefree workplaces (without hospitality)
  - Reduction of exposure to fine particles by 94%
- Hospitality
  - SHS exposure (fine particles)
    - Large venues: minor reduction
    - Pubs and discotheques: minor reduction
  - Smoking ban at workplaces
    - Valid for hospitality employees only
    - Increases exposure to SHS in hospitality sector
      - Smokers go to bars and restaurants to have a smoke
    - Pregnant women are allowed to work in smoking rooms



# Impact of the Spanish Smoking Law on Exposure to Second-Hand Smoke and Respiratory Health in Hospitality Workers: A Cohort Study



Esteve Fernández<sup>1,2,3\*</sup>, Marcela Fu<sup>1,2,3</sup>, José A. Pascual<sup>4,5</sup>, María J. López<sup>6,7,8</sup>, Mónica Pérez-Ríos<sup>7,9,10</sup>, Anna Schiaffino<sup>4,11</sup>, Jose M. Martínez-Sánchez<sup>1,2,3</sup>, Carles Ariza<sup>6,7</sup>, Esteve Saltó<sup>12,13</sup>, Manel Nebot<sup>4,6,7</sup>, and the Spanish Smoking Law Evaluation Group

**Table 2.** Exposure to second-hand smoke in nonsmoker\* hospitality workers reported in baseline and follow-up surveys in Spain and Portugal & Andorra.

	n	Baseline <sup>†</sup>	Follow-up <sup>†</sup>	p-value <sup>‡</sup>	% change (95% confidence interval) <sup>¶</sup>
<b>SPAIN (according to type of post-ban regulation)**</b>					
Salivary cotinine, ng/ml					
Smoking completely banned	32	1.6 (1.2–2.2)	0.5 (0.5–1.1)	<0.01	–56.6 (–63.7;–48.0)
Smoking permitted in designated areas	22	1.8 (1.2–3.0)	1.1 (0.8–1.7)	0.068	–31.9 (–53.7;0.3)
Smoking permitted throughout the premises	63	2.5 (1.7–3.9)	2.6 (1.7–3.7)	0.475	–1.6 (–15.2;14.2)
Self-reported exposure to second-hand smoke at work, hours/day					
Smoking completely banned	30	3.0 (0.0–8.0)	0.0 (0.0–0.0)	<0.01	–100.0 (–)
Smoking permitted in designated areas	19	8.0 (0.0–9.0)	1.0 (0.0–8.0)	0.055	–47.8 (–71.1;–6.0)
Smoking permitted throughout the premises	58	8.0 (0.7–10.0)	10.0 (8.0–12.0)	<0.01	10.2 (–4.3;26.8)
Self-reported exposure to second-hand smoke in other settings, hours/day					
Smoking completely banned	30	0.5 (0.0–1.5)	0.5 (0.0–0.9)	0.013	–35.7 (–55.8;–6.6)
Smoking permitted in designated areas	19	0.5 (0.1–1.5)	0.0 (0.0–0.1)	<0.01	–54.6 (–80.1;–3.7)
Smoking permitted throughout the premises	59	0.5 (0.0–1.7)	0.3 (0.0–0.9)	0.061	–16.1 (–38.9;–3.8)
<b>PORTUGAL &amp; ANDORRA (control areas)</b>					
Salivary cotinine, ng/ml	20	1.2 (0.6–1.6)	1.2 (0.5–1.6)	0.962	–9.5 (–33.9; 23.9)
Self-reported exposure to second-hand smoke at work, hours/day	19	8.0 (4.5–8.0)	8.0 (8.0–9.5)	0.180	18.2 (–2.3; 43.0)
Self-reported exposure to second-hand smoke in other settings, hours/day	19	0.04 (0.0–0.6)	0.1 (0.0–1.0)	0.463	54.2 (6.2; 123.9)

\*Defined as workers who reported they were former or never smokers in the baseline and follow-up interviews, and had salivary cotinine concentrations <20 ng/ml. (Workers who changed smoking status between surveys were considered smokers and hence excluded from this analysis.)

\*\*In Spain, smoking was permitted in all venues at baseline (before the law entered into effect), and was completely banned, permitted in designated areas, or permitted throughout the premises at follow-up. In Portugal and Andorra, smoking was allowed without restrictions at both baseline and follow-up.

<sup>†</sup>Values are medians (interquartile ranges).

<sup>‡</sup>p-values for comparison of medians (Wilcoxon's test for paired samples) and categorical variables (McNemar's chi-squared test).

<sup>¶</sup>Percentage change derived from a simple linear regression model with random effects.

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## Public opinion

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- Majority supports comprehensive smoking bans <sup>1</sup>
- Owners of large venues favor comprehensive bans (undue competition) <sup>2</sup>
- Spanish Ministers of Health B.Soria und E.Salgado supportive of stricter rules <sup>3</sup>

1 CNPT, Dez 2006

2 Fundación Salud Innovación Sociedad (2007)

3 El País, 2007/2008



## Consequences

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- Freedom of choice leads to a majority of smoking venues.
- Large venues don't seek improvements, but rather ways to circumvent the law to avoid disadvantages.
- Smokers and venue owners disrespect smoking bans.
- The main victims remain the hospitality workers.



## The “Spanish model“

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- Exemptions undermine protection against SHS
- Undue advantages for small venue owners forces large venue owners to circumvent the law
- Complex laws lead to habituation of guests and owners to violation
  - Inefficient enforcement
  - Lack of sanctions
- Regional disparities („rag rug“)
- Increased health risks of hospitality workers
- Perpetuates public debate



„In Spain they found a solution,  
which is fair to everyone!“

(Reemtsma Website: „Tolerance für Smokers“)

- The “Spanish model“ is NOT a solution:
  - It avoids effective non smokers protection
  - It perpetuates public debate
    - for better protection, and
    - for fair competition
  - It leads to legal uncertainty



## The only solution

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- 100% smokefree
- No differentiation by venue size
- Universal smoking bans without exemptions
  - Constitutional (even in Germany, BVG 2008)
  - Internationally successful
  - WHO Standard (FCTC Art. 8)



**We are appalled by our own sins,  
when we discover them in others.**

Johann Wolfgang von Goethe (1749-1832)