

Draft law of the Principality of Asturias on the regulation of the sale, supply and consumption of energy drinks with a stimulating effect for the protection of persons under 16 years of age (12/0142/0012/18766)

EXPLANATORY NOTE

I

1. Article 43 of the Spanish Constitution recognises the constitutional right to the protection of health, imposing on public authorities the duty to safeguard that right and to organise public health through preventive and service-provision measures. Article 39(4) requires public authorities to provide social, economic and legal protection for children, in accordance with international treaties ratified by Spain, strengthening the duty to safeguard the best interests of the child. Article 51 instructs public authorities to ensure the defence of consumers and users, protecting their safety, health and legitimate economic interests through effective procedures.

2. The Statute of Autonomy of the Principality of Asturias confers upon the autonomous community, within the framework of the basic legislation of the State and, where appropriate, under the terms laid down therein, powers of legislative development and implementation in the field of health and hygiene (Article 11(2)) and protection of consumers and users (Article 11(8)). Due to the cross-cutting nature of the subject matter being regulated, exclusive competence also applies in matters of domestic trade (Article 10(1.14)), social assistance (Article 10(1.24)) and the protection and guardianship of minors (Article 10(1.25)).

3. On the basis of the above powers and the constitutional mandates for the protection of health, children and consumers, the legislature of the autonomous community shall be empowered to establish its own regulatory framework to strengthen protection of the health of persons under 16 years of age against the risks associated with the consumption of energy drinks with a stimulating effect, by means of preventive and control measures in accordance with basic national legislation and European Union law.

II

4. Stimulant energy drinks are highly popular among persons under 16 years of age, with a generally low perception of risk. Several studies and reports point to an increase in consumption among this population group and variability in consumption patterns according to sociodemographic determinants including gender and the contribution of habitual risk-taking. The study requested by the European Food Safety Authority (EFSA) in 2011 (*Gathering consumption data on specific consumer groups of energy drinks*, dated 6 March 2013) on consumption among children, adolescents and adults in 16 Member States revealed a prevalence of consumption among adolescents (10-18 years) of 62 % in Spain (68 % in the European Union), with 10 % classified as chronic consumers; and, in the case of children (3-10 years), a prevalence of 26 % (18 % in the European Union).

5. The ESTUDES 2025 survey (*Survey on Drug Use in Secondary Education*), conducted by the Spanish Observatory on Drugs and Addictions (OEDA), attached to the Government Delegation for the National Plan on Drugs (DGPNSD) of the Ministry of Health, estimates that 38.4 % of students consumed this type of drink in the last

month, with a higher prevalence among boys (45.7 %) than girls (31.0 %). In terms of age, in males, consumption starts at 37.1 % at age 14 and rises to 48.3 % and 49.1 % at age 16 and 17 respectively. In females, an increase is observed in the younger age groups: 27.1 % at age 14; 29.0 % at age 15; and 34.4 % at age 16. The association with other substances is also relevant: 15.2 % of students aged 14 to 18 report combined consumption with alcohol in the last 30 days, a pattern that is more widespread among males (17.5 %) than females (12.8 %).

6. The increase in the consumption of stimulant energy drinks among persons under 16 years of age and their intake in inappropriate contexts is causing concern among public authorities and the scientific community due to the potential health risks. Added to this is the absence of specific regulations comprehensively defining these drinks and specifying authorised substances, maximum concentrations and combinations, as well as the rise of new channels of access through digital services and the deployment of advertising and promotion strategies aimed at young audiences.

7. Various organisations have warned about the adverse effects associated with stimulant energy drinks. The *Report of the Scientific Committee of the Spanish Agency for Food Safety and Nutrition (AESAN) on the risks related to the consumption of energy drinks* of 17 February 2021 underlines that, in addition to the stimulation of the central nervous and cardiovascular systems, regular intake has been linked to (i) neurological and behavioural disorders (sleep and behavioural disorders) and (ii) endocrine-metabolic disorders (excess weight, obesity and type 2 diabetes). These risks are particularly worrying among children and adolescents, due to their particular biological and behavioural vulnerabilities.

8. Concern about these risks has also been reflected in self-regulatory initiatives. The *Code of Practice for the Marketing and Labelling of Energy Drinks* (Brussels, 9 December 2014) by *Energy Drinks Europe* (EDE), an association representing the interests of European producers of this type of drink, accepts that children are less tolerant to caffeine and includes commitments not to market these drinks to children under 13 years of age, avoiding media campaigns whose audience comprises more than 30 % of children, as well as in educational establishments and their surroundings.

9. In response to recommendations to limit the consumption of these drinks among children and adolescents and in accordance with the principle of enhanced protection of the health of persons under 16 years of age and the principles of prevention and precaution governing the protection of vulnerable consumers, specific regulatory intervention is necessary. This law pursues that objective by: (i) setting limits on the sale and supply of energy drinks with stimulating effects to persons under 16 years of age and on their consumption by this group; (ii) restricting advertising, promotion and sponsorship aimed at persons under 16 years of age; and (iii) coordinating preventive and educational measures, with a comprehensive approach, through campaigns, programmes and actions providing information and raising awareness in the areas of health, consumer affairs, education, sport, youth and commerce.

III

10. The law consists of a preliminary title, two titles, three additional provisions, one transitional provision, two final provisions and one annex.

11. The preliminary title establishes the purpose, scope of application and guiding principles, while establishing the conceptual foundations essential to correctly interpreting and applying the law. The fundamental objective of the regulation is to strengthen health protection for persons under 16 years of age, as vulnerable consumers, by regulating the sale, supply and consumption of energy drinks with a stimulating effect in the Principality of Asturias, as well as their advertising, promotion and sponsorship. This objective is articulated through a set of guiding principles such as public responsibility, intersectoral coordination, social co-responsibility, the participation of minors and their family environment, equity in health and the promotion of healthy habits.

The scope of application includes individual or collective actions, public or private, carried out within the territory of the Principality of Asturias, and, for providers operating through information society services, activities effectively directed towards that territory. The regulation respects the freedom to provide services, in accordance with European Union law on the single market for digital services and basic state legislation on information society services and electronic commerce.

12. Title I regulates, in three chapters, the prevention and control of the sale, supply and consumption of energy drinks with a stimulating effect for persons under 16 years of age. Chapter I provides for a series of prevention and awareness-raising measures aimed at providing information on the risks associated with the consumption of these drinks and promoting healthy habits through comprehensive, evidence-based strategies, thereby contributing to social awareness and the protection of children's and young people's health; measures aimed at persons under 16 years of age and their families, professionals in the fields of health, consumer affairs, education, sport and youth, and the economic sectors concerned.

13. Chapter II prohibits the sale and supply of energy drinks with a stimulating effect to persons under 16 years of age, as well as their consumption in publicly accessible spaces, facilities or centres and at events open to the general public. Compliance with this prohibition entails a duty of special vigilance at certain centres, premises, events or facilities at which the presence of persons under 16 years of age is predominant or very significant. In the case of physical sales outlets, the sale and supply of these drinks by retail businesses is subject to three requirements: signage, age verification and conditions for placement of the product. In the case of hospitality and catering establishments, signage becomes a compulsory requirement. The age verification systems and signage or notices are mechanisms designed to control the sale and supply of these products via automatic vending machines, distance sales or home delivery. Finally, limits are set on advertising, promotion and sponsorship, particularly when aimed at minors or associated with benefits in terms of performance or social success, and restrictions are imposed on digital media, social networks and public platforms frequented by minors.

14. Chapter III incorporates the preparation of an annual report as a tool for monitoring and evaluating the impact of the law, establishing its procedure and minimum content. Furthermore, it is expected to be submitted to the General Assembly of the Principality of Asturias for information and debate and published on the regional government's transparency portal.

15. Title II establishes, in five chapters, the legal regime for inspections and penalties, in order to ensure effective compliance with the law through a

comprehensive inspection system and a proportionate and dissuasive penalties regime. Chapter I regulates the inspection regime, determining the competent body for this purpose. It grants inspection staff the status of agent of the authority, with the powers and protection conferred by the regulation and with official identification, and specifies their inspection powers and authority, in compliance with data protection regulations and the principles of necessity and proportionality.

16. Chapter II regulates the general principles of the penalties regime, subject to the basic State legislation on powers to impose penalties and administrative procedure. The regulation identifies natural and legal persons as responsible parties, including: the owners of physical or digital sales establishments and automatic vending machines; distribution companies and wholesale retail establishments; centres, premises, events or facilities and, where applicable, staff responsible for effective control and, as regards commercial communication, the advertiser or beneficiary, the owner of the medium and, where applicable, agencies and sponsoring entities. Furthermore, provisions are established for joint and several liability where obligations are concurrent, as well as for exemption from liability for persons under 14 years of age, in accordance with the applicable state legislation.

17. Chapter III classifies offences as minor, serious and very serious, taking into account the risk entity and the impact on the health of persons under 16 years of age. It also regulates the issue of concurrent offences, in accordance with the principles of proportionality and *non bis in idem*, and determines the regime governing the limitation period for offences and the reasons causing it to be interrupted or suspended, in accordance with the basic legislation.

18. Chapter IV sets out the rules on penalties, distinguishing between main penalties (fines and warnings) and secondary penalties (suspension, closure or training activities), while prioritising educational measures, where appropriate, for offenders under 16 years of age. The scheme provides for objective graduation criteria based on the principles of legality, proportionality, culpability and legal certainty, considering factors such as the nature of the damage caused, culpability or intentionality, recidivism, turnover and profit obtained, social and health impact, dissemination, or the adoption of corrective measures. It also establishes the limitation period regime and the concurrence of penalties in accordance with basic State legislation.

19. Finally, Chapter V regulates the jurisdictional aspects of the disciplinary procedure, referring the proceedings to the provisions of basic State legislation and regional legislation applicable to the exercise of powers to impose penalties.

20. The final part of the regulation consists of three additional provisions, a single transitional provision and two final provisions. The additional provisions are intended to supplement the legal framework provided for in the law, addressing issues which, although not directly included in the main articles, are essential to ensure the consistency of the system. It includes provisions on the definition and calculation of the useful surface area for presentation and sale to the public, the procedure for updating the list of substances making up energy drinks with a stimulating effect and the updating of the amount of penalties.

The transitional provision aims to facilitate definitive application of the regulation, provisionally regulating situations during the period of time in which the legal provisions have not been fully implemented. Specifically, it regulates the system for

adapting the sectors concerned by the obligations relating to signage, placement of the product and age verification systems.

The final provisions serve to conclude the law. They empower the Governing Council to issue regulatory standards for the development and implementation of the provisions set forth in the articles, thus ensuring the operability of the new legal framework. They also determine the entry into force of the law, establishing a one-month *vacatio legis* in order to enable the Administration and the parties concerned to adequately adjust, in connection with the defined transitional regime.

PRELIMINARY TITLE

General provisions

Article 1. *Object and purpose.*

1. The purpose of this law is to strengthen protection of the health of persons under 16 years of age, as vulnerable consumers, by regulating the sale, supply and consumption of energy drinks with a stimulating effect, as well as their advertising, promotion and sponsorship.
2. This goal of protection is articulated through actions to prevent, sensitise and control the access of persons under 16 years of age to energy drinks with a stimulating effect, minimising the risks associated with their consumption and promoting healthy lifestyle habits, with the participation of the family environment, public administrations, public and private entities, economic sectors and social organisations concerned.
3. To this end, the following objectives are established:
 - a) to protect individuals under 16 years of age, as vulnerable consumers, by restricting their access to and consumption of energy drinks with stimulating effects in order to reduce the associated risks;
 - b) to raise awareness and sensitise society, promoting the participation of families, public administrations, educational, health and sports institutions, both public and private, and the economic sectors affected, in the prevention and control of consumption;
 - c) to develop preventive and educational strategies that drive awareness of responsible consumption and the adoption of healthy habits;
 - d) to regulate accessibility and promotion, focusing on factors that encourage consumption by persons under 16 years of age, in particular advertising, promotion, sponsorship and other commercial strategies aimed at this group;
 - e) to implement control and monitoring mechanisms that ensure compliance with restrictions on the sale, supply, consumption, advertising, promotion and sponsorship of energy drinks with a stimulating effect for persons under 16 years of age.

Article 2. *Definitions.*

For the purposes of this law, the following definitions apply:

- a) 'energy drinks with a stimulating effect' means non-alcoholic drinks presented as products that increase physical concentration and performance, the composition of which includes, in combination:

- i. caffeine, whatever its origin, in a quantity equal to or greater than 15 mg per 100 ml;
- ii. glucose, sucrose or fructose in large quantities;
- iii. other substances with similar properties as may be determined by regulation, such as taurine, guarana, ginseng, theophylline or theobromine, at such functional concentrations as may be determined;

b) 'consumption' means the intake or introduction into the body of energy drinks with a stimulating effect by persons under 16 years of age, in any space, facility or centre, whether public or private, that is accessible to the general public, as well as at events organised by public or private entities whose attendance is open to the general public under objective and non-discriminatory conditions, including, where appropriate, the purchase of tickets or registration, irrespective of:

- i. whether it is free of charge or subject to a fee; and
- ii. the type of venue (educational, recreational, public entertainment or sporting);

c) 'physical sales establishments' means premises, facilities or spaces, permanent or temporary, open to the general public, at which energy drinks with a stimulating effect are sold or supplied in person, including, in any case, retail establishments - whether independent or integrated into service stations, cinemas or the like - and hospitality and catering establishments;

d) 'digital sales outlets' means points of presentation, sale, supply or intermediation operating via an electronic interface that is accessible remotely and by electronic means, in accordance with European Union law on digital services and basic State legislation on information society services and electronic commerce, through which consumers can purchase energy drinks with a stimulating effect; including websites, website sections, mobile applications, online marketplaces and platforms, or other similar means;

e) 'automatic vending machines' means mechanical or electronic devices intended for the automated sale or supply of energy drinks with a stimulating effect, without any direct intervention by the staff of the establishment in which they are located, or by the company that owns the devices, at the time of delivery of the product;

f) 'sponsorship' means any public or private contribution, in cash or in kind, to an activity, event or person, whose purpose or effect, direct or indirect, is to promote energy drinks with a stimulating effect;

g) 'promotion' means any commercial practice aimed at encouraging the purchase or consumption of energy drinks with a stimulating effect through specific, additional or temporary advantages relating to the price, quantity or conditions of the transaction, such as discounts, 'two for one' offers (2x1), coupons, vouchers, free samples, linked gifts, competitions, prize draws, prizes or other similar offers;

h) 'advertising' means any form of communication made by a natural or legal person, public or private, in the course of a trade, business, craft or profession, with a view to promoting, directly, indirectly or subliminally, the sale, supply or consumption of energy drinks with a stimulating effect;

i) 'supply' means making available or supplying energy drinks with a stimulating effect, free of charge, through any distribution channel, including

promotional tastings or tastings incidental to a public or private event under the terms defined in point (b) of this provision;

j) 'sale' means any transfer of energy drinks with a stimulating effect in return for a consideration, including:

- i. where this takes place without the simultaneous physical presence of the buyer and seller, either at a distance or by electronic means; and
- ii. activities carried out outside the commercial establishment, including doorstep sales.

Article 3. Scope of application.

1. This law shall apply to actions, whether individual or collective, public or private, carried out within the territory of the Principality of Asturias or having effects there, relating to the sale, supply, consumption, advertising, promotion or sponsorship of energy drinks with a stimulating effect. In particular, it shall apply to:

a) Natural or legal persons who sell or supply energy drinks with a stimulating effect to persons under 16 years of age.

b) Natural or legal persons who advertise, promote or sponsor the purchase or consumption of energy drinks with a stimulating effect by persons under 16 years of age. Where these actions are carried out through audiovisual media service providers, the provisions of this law shall apply to actions or broadcasts whose scope of coverage does not exceed the territory of the Principality of Asturias, in accordance with the applicable basic State legislation.

c) Persons under 16 years of age who consume energy drinks with a stimulating effect as provided for in this law.

2. The obligations and restrictions provided for in the law shall apply to service providers operating via an electronic interface that is accessible remotely and by electronic means, as soon as they effectively direct their activity into the territory of the Principality of Asturias. In any event, the freedom to provide services shall be respected, in accordance with European Union law on the single market for digital services and with the basic State legislation on information society services and electronic commerce.

3. The provisions of this law are without prejudice to applicable basic state legislation and European Union law.

Article 4. Guiding principles.

The guiding principles of this law are:

a) public responsibility and institutional coordination: it ensures concerted action by public administrations and stakeholders involved in preventing and controlling the consumption of energy drinks with a stimulating effect by persons under 16 years of age;

b) intersectorality, cooperation and social co-responsibility: it promotes the involvement of Asturian society in preventive strategies, with the participation of families, public administrations, educational, health and sports institutions, economic sectors and relevant social organisations, including youth organisations;

- c) precaution in public health: it takes preventive measures where there are reasonable grounds to believe that there is a risk to the health of persons under 16 years of age;
- d) promotion of healthy habits: it promotes nutritional education, physical activity and reducing the consumption of stimulants by persons under 16 years of age;
- e) evidence, effectiveness, efficiency and continuous assessment: it ensures that measures are based on the best available scientific evidence, are proportionate and are monitored and assessed using objective and verifiable indicators;
- f) comprehensive and interdisciplinary approach: its prevention and control strategies address the areas of health, education, sports, commerce and social issues, as well as consumer protection;
- g) participation of children and young people: it ensures their involvement, either directly or through their representative organisations, in designing, implementing and evaluating public policies on the consumption of energy drinks with a stimulating effect;
- h) gender perspective and equity in health: it incorporates gender differences and social inequalities into consumption habits, promoting equal access to information, preventive measures and support resources and avoiding all forms of discrimination;
- i) monitoring, control and inspection: it establishes effective mechanisms for the supervision of marketing, access and consumption, as well as the advertising, promotion and sponsorship of energy drinks with a stimulating effect, for persons under 16 years of age, with the corresponding penalty response in the event of non-compliance;
- j) essential role of the family: it promotes their active involvement in raising awareness of the risks and in preventing the consumption of these drinks and their impact on the health of persons under 16 years of age.

TITLE I

Prevention and control of the sale, supply and consumption of energy drinks with a stimulating effect, for persons under 16 years of age

CHAPTER I

Prevention and awareness of the risks associated with the consumption of energy drinks with a stimulating effect

Article 5. *General principles.*

1. Public administrations shall promote, on an ongoing and coordinated basis, information, awareness-raising and sensitisation campaigns, programmes and actions intended to inform the public of the risks associated with the consumption of energy drinks with a stimulating effect and to promote healthy lifestyles. These shall be directed at:

- a) persons under 16 years of age and their families;
- b) professionals in the fields of health, consumer affairs, education, sport and youth;

c) the economic sectors concerned.

2. Public administrations shall incorporate the gender perspective and health equity, in a cross-cutting manner, into the design, implementation, monitoring and assessment of the prevention and awareness-raising measures provided for in this chapter, including objectively verifiable evaluation indicators and, where appropriate, disaggregation by sex, age, origin, territory and disability.

Article 6. *Measures in the field of health.*

1. The regional ministry responsible for public health shall incorporate prevention of the consumption of energy drinks with a stimulating effect into health programmes and plans, providing information materials and specific advice to families, adolescents and healthcare staff.

2. It shall promote in-service training for healthcare staff in the early detection and treatment of adverse effects associated with the consumption of energy drinks with a stimulating effect in persons under 16 years of age, with a particular focus on the impact thereof on their nervous, cardiovascular and metabolic systems.

3. Good practice guidelines and care protocols aimed at healthcare staff – with a particular emphasis on primary care – shall be developed, approved, disseminated and periodically updated. These will contain up-to-date information based on scientific evidence about the risks of regular consumption of stimulant energy drinks by persons under 16 years of age, as well as prevention strategies, brief interventions, and referral strategies.

4. Health check-ups for children and adolescents shall incorporate preventive messages, consumption screening and risk-based intervention guidelines. Such actions shall also be included in the care of persons under 16 years of age with anxiety disorders, insomnia, high blood pressure, excess weight or other pathologies potentially related to the consumption of these drinks.

Article 7. *Measures in the area of consumer affairs.*

1. The regional ministry responsible for consumer affairs, in collaboration with the regional ministries responsible for health, education, sports and youth, will periodically develop information and education campaigns on the risks associated with the consumption of energy drinks with a stimulating effect, aimed at persons under 16 years of age and their families, educational communities, physical and online sales establishments. These campaigns shall be developed in consultation with youth organisations and be based on the best available scientific evidence.

2. The campaigns shall include, as a minimum, information on:

- a) adverse effects of the consumption of energy drinks with a stimulating effect in persons under 16 years of age, with special reference to their impact on the nervous, cardiovascular and metabolic systems;
- b) the relationship between the consumption of stimulant energy drinks and health problems such as obesity, insomnia, anxiety and caffeine dependence;
- c) the impact of excessive consumption of sugar and caffeine on academic and sporting performance;
- d) active and healthy lifestyles, promoting the consumption of water and other habits contributing to integral health.

3. The campaigns shall be disseminated through health and educational centres, sports facilities, the media, social networks and physical and digital sales establishments, using a multi-channel strategy with technological neutrality. The use of clear and

accessible language shall be guaranteed, with formats adapted to children and adolescents, meeting universal accessibility criteria and respecting personal data protection regulations in all cases.

Article 8. Measures in the field of education.

1. The regional ministry responsible for education, together with the regional ministries responsible for health, consumer affairs, physical activity and sport, and with the collaboration of the public or private entities and organisations involved, shall jointly and in a coordinated manner promote actions enabling the school population to acquire knowledge and habits on responsible consumption, nutrition and healthy lifestyles, with a particular focus on preventing the consumption of energy drinks with a stimulating effect and their adverse reactions in persons under 16 years of age. These actions will be integrated into the regional consumer education and school health strategies of the Principality of Asturias.
2. Specific priority actions include:
 - a) incorporation into the curriculum: promoting educational coverage of this content within the curricular framework, through key and specific competences linked to the promotion of health, responsible consumption and healthy lifestyles;
 - b) teacher training: development of specific training in pedagogical strategies for consumer education, including teaching resources on the harmful effects of stimulant energy drinks, in collaboration with public health services and within teacher training plans in school health and consumer education;
 - c) educational materials: creation, dissemination and updating of materials and resources with a comprehensive approach and adapted to each educational stage;
 - d) complementary and extracurricular activities: promotion of activities encouraging the adoption of active and healthy lifestyles and the development of self-care behaviours and physical and emotional well-being;
 - e) involvement of the educational community: carrying out dissemination and awareness-raising activities aimed at the educational community, including families, to reinforce knowledge of the risks associated with the consumption of stimulant energy drinks.
3. School health committees shall contribute to the design and implementation of strategies to address this issue, particularly with regard to restricting the sale and supply of energy drinks with stimulating effects in school cafeterias and vending machines, in accordance with applicable regulations and within the framework of the school health and wellness plans.
4. The Network of consumer training centres (CFC), which reports to the body responsible for consumer affairs, shall include in its training offer specific activities to raise awareness of the influence of consumption habits on health, with particular attention to the consumption of energy drinks with a stimulating effect. It may promote practical workshops, in collaboration with healthcare professionals, nutrition experts and consumer specialists, addressing the composition of these products and their effects on the nervous, cardiovascular and metabolic systems.

Article 9. Measures in the field of sports.

1. The ministry responsible for sports, within the framework of the applicable regional legislation, shall, in cooperation with federations, clubs, sports facilities and

professional associations linked to this field, promote actions aimed at preventing the exposure of persons under 16 years of age to the promotion, distribution and consumption of energy drinks with a stimulating effect at sporting and recreational activities.

2. Without prejudice to the autonomy of sports organisations and clubs, information campaigns shall be launched to encourage the voluntary adoption of codes of good practice for complying with the restrictions relating to advertising, promotion and sponsorship, as well as to the sale and supply of energy drinks with a stimulating effect, especially at events aimed exclusively at persons under 16 years of age.

3. The availability of healthy food and drinks shall be promoted at recreational or sports facilities and spaces managed by the Administration of the Principality of Asturias and at municipal public sports facilities, in accordance with the principles of public health and protection of consumers under 16 years of age set out in the regional consumer regulations.

4. The Administration of the Principality of Asturias shall develop health education programmes aimed at persons under 16 years of age, families and technical-sports personnel, focusing on the risks associated with the consumption of stimulant energy drinks and on guidelines for adequate hydration and nutrition for sports practice.

Article 10. *Measures in the field of youth.*

The competent youth council, in collaboration with health and sports organisations and with the participation of youth organisations, shall develop health education programmes aimed at young people, designed to raise awareness of the risks of consuming stimulant energy drinks, incorporating peer methodologies, healthy leisure approaches and technologically neutral digitally channels.

Article 11. *Measures in the field of trade.*

The Administration of the Principality of Asturias shall, through the competent regional ministry for trade, promote collaboration agreements and codes of conduct with associations representing the retail trade in order to reduce the exposure and accessibility of stimulant energy drinks in sales establishments, including, among other measures:

- a) avoid placing them in highly visible areas, checkout lines, promotional areas, or near products specifically targeted at persons under 16 years of age;
- b) promote the training of sales staff in the applicable obligations and in the protection of consumers under 16 years of age.

All of the above is without prejudice to any legal obligations and penalties that may apply.

CHAPTER II

Control of the sale, supply and consumption of energy drinks with a stimulating effect

Article 12. *Restrictions on the sale, supply and consumption of stimulating energy drinks.*

1. The sale and supply of energy drinks with a stimulating effect to persons under 16 years of age shall be prohibited. Similarly, the consumption of such energy drinks with a stimulating effect by persons under 16 years of age shall be prohibited, in any space, facility or centre, whether public or private, that is accessible to the general

public, as well as at events organised by public or private entities whose attendance is open to the general public, in accordance with Article 2(b) of this law.

2. Compliance with the above prohibitions shall be subject to special monitoring in:

- a) educational centres of any level up to compulsory secondary education and any other spaces intended for the education of persons under 16 years of age;
- b) dependencies of regional and local administrations in which activities are carried out directed at or attended by persons under 16 years of age;
- c) health, social-health and social services centres;
- d) workplaces in which activities are carried out directed at or attended by persons under 16 years of age;
- e) outdoor sporting events, sports facilities, and recreational venues in which persons under 16 years of age participate or to which they have access.

The owners or managers of the aforementioned centres, facilities, events and premises, as well as law enforcement officers and private security staff, shall, within the scope of their powers, take the necessary measures to prevent the consumption of stimulant energy drinks by persons under 16 years of age within their premises, in accordance with current regulations and with respect for the principles of necessity, suitability and proportionality.

3. The authorisation, consent or physical presence of the person exercising parental authority, guardianship, wardship or custody, as applicable, does not exempt compliance with the prohibitions laid down in this Article.

4. The sale of energy drinks with a stimulating effect to persons over 16 years of age is also prohibited where there are objective and verifiable indications that they are intended for supply or consumption by persons under 16 years of age, in the context of manifest or fraudulent acts of intermediation, simulation or commission.

Article 13. *Sale and supply of energy drinks with a stimulating effect in physical sales establishments.*

1. Retail establishments must:

- a) Compulsory signage: display, in a visible and permanent location, the sign informing consumers of the ban on sales and supply to persons under 16 years of age, with the dimensions and content set out in Annex I;
- b) Age verification: request a document certifying the age of the buyer, unless it is evident that they are 16 years of age or older.

Age verification shall be carried out in such a way as to avoid any discriminatory practice based on gender, sex, origin, appearance, disability or other similar circumstances.

c) Placement of the product:

- i. establishments with a useful surface area for presentation and sale to the public of $\geq 300 \text{ m}^2$: energy drinks with a stimulant effect must be located in distinct and clearly marked areas, with a visible warning about the ban on sale to persons under 16 years of age; under no circumstances may they be placed next to soft drinks or isotonic drinks;
- ii. establishments with a useful surface area for presentation and sale to the public $< 300 \text{ m}^2$: energy drinks with a stimulating effect must be placed behind the counter or in a controlled display case, with a visible warning about the prohibition of sale to persons under 16 years of age.

2. Hospitality and catering establishments must display the sign informing consumers of the ban on the sale and supply of energy drinks with a stimulating effect to persons under 16 years of age, in a visible and permanent location, with the dimensions and content provided for in Annex I.

3. Distributors and wholesalers of energy-related drinks with a stimulating effect shall:

- a) inform physical sales establishments of the prohibitions and obligations established in this law.
- b) ensure compliance throughout the marketing chain, without prejudice to the responsibilities that may apply in accordance with the regulations in force.

Article 14. *Sale and supply of energy drinks with a stimulating effect in automatic vending machines.*

1. Automatic vending machines that are located on the façades of or inside physical sales establishments may only sell or supply energy drinks with a stimulating effect if:

- a) they are under the direct supervision of the staff responsible for the establishment, understood to mean the effective prior control of each sale by means of express authorisation for each operation; or
- b) they have a technology-neutral age verification system in place that determines and certifies that the purchaser is over 16 years of age without storing personal data or generating identification records. Without prejudice to their regulatory development, such systems shall comply with personal data protection regulations, ensure universal accessibility and avoid any discriminatory practices based on sex, gender, origin, appearance, disability or other similar circumstances. Any use of biometric techniques shall be voluntary and equivalent alternatives shall be available.

2. Automatic vending machines located in any space, whether public or private, that may be accessed by the general public, may only sell or supply energy drinks with a stimulating effect when they have an age verification system in place that prevents purchase by persons under 16 years of age.

3. In any case, the sale or supply of energy drinks with a stimulating effect via automatic vending machines located in the spaces referred to in Article 12(2)(a) and (c) of this law shall be prohibited.

4. All automatic vending machines must display, in an explicit, visible and permanent manner, the sticker provided in Annex I informing the consumer of the prohibition on the sale and supply of energy drinks with a stimulating effect to persons under 16 years of age.

Article 15. *Distance selling, distance supply and home delivery of energy drinks with a stimulating effect.*

1. Websites, applications or electronic interfaces for distance selling must display, in a visible and accessible manner, before the contracting process begins, an informative notice regarding the prohibition on the sale and supply of energy drinks with stimulating effects to persons under 16 years of age in the Principality of Asturias.

2. Physical and online sales establishments offering distance selling shall implement, in a technologically neutral manner, effective age verification systems prior to conclusion of the transaction, which prevent purchases by persons under 16 years of age for orders with a place of delivery or collection in the Principality of Asturias.

Without prejudice to their regulatory development, such systems shall:

- a) be based on recognised standards or solutions;
- b) apply the principles of data minimisation and storage limitation and not process or store personal data beyond what is strictly necessary;
- c) offer non-discriminatory and accessible alternatives;
- d) enable compliance auditing and traceability without processing personally identifiable information about purchasers;
- e) comply with personal data protection regulations, ensure universal accessibility and avoid any discriminatory practices based on sex, gender, origin, appearance, disability or other similar circumstances; any use of biometric techniques shall be voluntary and equivalent alternatives shall be available.

3. The delivery of energy drinks with stimulating effects to smart mailboxes, lockers or other collection points that do not have a mechanism for verifying that the recipient is over 16 years of age shall be prohibited.

In any case, the recipient must prove their age at the time of delivery or collection; if proof is not provided, delivery will be refused. In the case of collection from a shop, the collection establishment must carry out the age verification in accordance with the same requirements.

4. The following shall be responsible, in their respective areas of operation, for ensuring compliance with this Article:

- a) owners or managers of sales establishments: these persons shall ensure age verification prior to the transaction for orders for delivery or collection in the Principality of

Asturias; they shall contract logistical arrangements involving age verification upon delivery; they shall give precise instructions to the operator and refrain from offering delivery methods incompatible with age verification;

- b) logistics operators: these persons shall verify age upon delivery or collection and refuse delivery if proof of age cannot be provided; they shall not keep copies of identity documents and shall keep minimal, non-identifying records of the verification results;

- c) online marketplaces and platforms: when acting as sellers or controlling the payment and contracting process, they shall enable the age verification provided for in this Article; when acting as intermediary providers with respect to offers from third parties, they shall be governed by European Union law and basic state law, without prejudice to their duty of due diligence when they have actual knowledge of offers or sales contrary to this law.

5. This provision applies to transactions for the distance sale and supply of energy drinks with a stimulating effect, whose place of delivery, collection or enjoyment is in the territory of the Principality of Asturias, or which are actually aimed at persons under the age of 16 in that territory.

Its application is understood without prejudice to basic state legislation on information society services and electronic commerce and European Union law on digital services, respecting the freedom to provide services and the prohibition on imposing general supervisory obligations.

Article 16. *Advertising, promotion and sponsorship of energy drinks with a stimulating effect.*

1. Any advertising, promotion or sponsorship of energy drinks with a stimulating effect aimed at persons under 16 years of age, by any means, format or channel, in a technologically neutral manner, is prohibited. In particular, the following are prohibited:

- a) inducing the consumption of such drinks, directly or indirectly, by any means of dissemination or commercial strategy;
- b) associating their consumption with improvements in physical, intellectual or academic performance, or with beneficial effects on health, well-being, concentration capacity or the reduction of fatigue, in accordance with European Union law on nutrition and health claims;
- c) linking their consumption to social, professional or sporting success, or to situations of power, leadership or popularity;
- d) linking them to the practice of sport or to health, education or vocational training activities;
- e) using images, voices or testimonies of persons under 16 years of age;
- f) employing visual elements, graphics, typography, animated characters, or designs specifically targeted at or particularly appealing to this group;
- g) using public figures, athletes, influencers or figures of social relevance when the communication is directed, segmented or planned to significantly impact persons under 16 years of age;
- h) carrying out covert or subliminal advertising, as well as commercial communications not identified as such on social networks, video-sharing services or other digital media, including influence marketing and undeclared product placement.

2. Any form of advertising, promotion or sponsorship of energy drinks with a stimulating effect aimed at persons under 16 years of age is prohibited in the spaces provided for in Article 12(2) of this law and in:

- a) printed or digital publications specifically aimed at this group, as well as in sections of the media directed at it;
- b) cinemas, theatres and shows intended for children or young people, and in public transport;
- c) radio programmes, television programmes, video-sharing services or digital platforms where the actual or foreseeable audience of persons under 16 years of age is significant or where the communication is specifically targeted at that group;
- d) the distribution of promotional materials (clothing, school supplies, accessories) or mailings, direct mail, telephone, email or other media targeted at this audience;
- e) promotional activities using gamification techniques (application games, online contests, point systems) designed to attract persons under 16 years of age.

3. Advertising for these drinks shall be prohibited on publicly-owned media or media located on public land – digital, audiovisual, or physical (billboards, bus shelters, hoardings, street furniture, or publications) – where, due to their content, they are aimed at persons under 16 years of age or are predominantly attractive to this group.

4. In establishments where consumption on the premises itself is authorised, it shall be prohibited to promote these drinks through practices that incentivise

excessive or irresponsible consumption, such as intensive discounts, two-for-one offers (2x1), coupons, vouchers, free samples, linked gifts, contests, draws, prizes or other similar practices, where such practices are targeted, segmented or accessible in a way relevant to persons under 16 years of age.

5. The sponsorship or funding of events, activities or programmes aimed specifically at persons under 16 years of age, including those of a sporting, educational, cultural or recreational nature, as well as those whose effective or foreseeable audience of persons under 16 years of age is significant, shall be prohibited.

6. No product specifically intended for persons under 16 years of age that mimics the packaging, labelling, presentation or distinctive features of energy drinks with a stimulating effect may be placed on the market where this is likely to cause confusion as to their nature, composition or effects.

CHAPTER III

Monitoring and evaluation

Article 17. *Annual monitoring and evaluation report*

1. The regional ministry responsible for consumer affairs, in collaboration with the regional ministries responsible for health, education, sport and youth, shall draw up an annual monitoring and evaluation report on the impact of this law.

2. The report shall be approved within the first half of the year following the period under assessment and shall comply with methodological criteria of objectivity, inter-annual comparability and transparency.

3. The report shall include at least the following:

a) data on compliance with the ban on the sale and consumption of energy drinks with a stimulating effect by persons under 16 years of age, including: prevalence and consumption patterns, disaggregated where possible by sex, age, territory, socioeconomic status and disability, in accordance with the principles of health equity;

b) evaluation of information, prevention and awareness campaigns and actions: objectives, scope, target population, means used, outcome and impact indicators;

c) inspection activity and penalties regime: number of inspections, type of non-compliance, measures taken, penalties imposed and degree of implementation;

d) supervision of the digital and logistical environment: age verification in distance selling, delivery/collection incidents and action taken in response to any non-compliance detected;

e) complaints and claims: volume, type, processing and results;

f) equality and accessibility indicators: measures taken to integrate the gender perspective, equity in health and universal accessibility;

g) resources and means: budgetary forecasting and execution associated with the measures of the law and identified needs;

h) recommendations and improvement plan: regulatory, operational or inter-institutional coordination proposals, including the implementation schedule and responsible parties;

i) methodological annex: sources of information, definition of indicators, limitations and, where applicable, comparable historical series.

3. The regional ministry responsible for consumer affairs shall send the annual report to the competent committee of the Junta General of the Principality of Asturias within one month of its approval, for information and discussion.

4. The report shall be published on the Transparency Portal of the Government of the Principality of Asturias in accessible and reusable formats, accompanied, where appropriate, by aggregated open datasets.

In any case, the regulations on the protection of personal data and statistical secrecy shall be respected, avoiding the incorporation of any information permitting the direct or indirect identification of natural persons.

TITLE II

Inspection and penalties regime

CHAPTER I

Consumer inspection

Article 18. *Inspection functions: powers and coordination.*

The regional ministry responsible for consumer affairs shall be responsible for inspection functions aimed at ensuring compliance with this law, without prejudice to:

- a) the powers of the law enforcement authorities;
- b) the collaboration of the other regional ministries and public administrations in their respective areas of competence;
- c) cooperation between the state authorities responsible for information society services and electronic commerce for actions relating to distance selling and digital services.

Article 19. *Status of inspection service staff.*

The staff of the consumer inspection services shall:

- a) be considered agents of the authority in the exercise of their functions, with the powers and protection recognised under the current regulations;
- b) act supported by the corresponding accreditation, which they must produce if requested;
- c) benefit from presumption of veracity as regards facts directly recorded in the documents they issue, without prejudice to any evidence that may be provided by the interested parties in defence of their rights;
- d) be subject to the duty of discretion and confidentiality and to the principles of necessity, appropriateness and proportionality.

Article 20. *Powers and authority of inspection.*

1. In the exercise of their duties, consumer inspection service staff may:

- a) freely access any centre or establishment open to the public and subject to this law, without prior notification, during business hours;
- b) perform such checks, tests, investigations or examinations as may be necessary to check compliance with this law and its implementing regulations;
- c) take or extract samples, writing up the corresponding report and ensuring the chain of custody;

d) require the centre or establishment to produce or submit documentation, data, records and supporting evidence, including electronic records, relating to the activity;

e) access, with appropriate safeguards, interfaces and computer systems linked to the offer or sale, in order to verify the existence and effectiveness of age verification systems and compulsory information, without prejudice to data protection rules;

f) conduct test purchases by adults to verify compliance with reporting obligations, age verification and refusal to sell to minors;

g) require the immediate adoption of corrective measures to cease the unlawful conduct or prevent its recurrence;

h) grant or propose, where appropriate, provisional measures provided for in this law and in the applicable legislation, which are justified and proportional.

2. In relation to distance selling and information society services, inspection staff may:

a) check the existence and effectiveness of age-verification notices and mechanisms on websites, or in applications and electronic interfaces;

b) require information from the owners of digital sales outlets and, where applicable, from providers of intermediary services in accordance with European Union law on digital services and basic State legislation on the information society and electronic commerce, without imposing general monitoring obligations;

c) give notice, where appropriate and through the competent body, requiring the removal or adaptation of content or practices that are contrary to this law.

3. Owners or managers of digital sales establishments or automatic vending machines, as well as the staff working for them, shall:

a) facilitate access for inspection staff and provide the necessary cooperation;

b) provide the required documentation and data within the deadline;

c) designate a contact person during the inspection.

4. The inspection actions shall be documented in official records that shall:

a) describe the facts established, evidence gathered and measures taken;

b) identify the persons present and the responsible person or representative;

c) include, where applicable, the sampling carried out and the chain of custody.

5. Inspection protocols, record formats, sampling techniques, technical verification requirements in physical and digital environments, as well as cooperation mechanisms with other administrations and competent authorities shall be specified by regulation.

CHAPTER II

General principles of the penalties regime

Article 21. *Responsible parties.*

1. Natural or legal persons responsible for committing the offences defined in this law may be penalised on the basis of intent or fault, including mere negligence, once the corresponding penalty proceedings have been initiated, in accordance with the principles laid down in the basic legislation on the penalties regime.
2. Persons under 14 years of age shall be exempt from liability. If the offence is committed by a person below that age, the competent authority shall bring it to the attention of the Public Prosecutor's Office.

Where the offender is under the age of 16 and over the age of 14, the persons exercising parental authority, guardianship, wardship or custody, as appropriate, shall be jointly and severally liable with the offender for payment of the financial penalties imposed.

3. Persons over the age of majority who, taking advantage of this status, purchase energy drinks with a stimulating effect for subsequent sale or supply to persons under 16 years of age, as well as persons who facilitate, incite or cooperate in the commission of such offences shall also be liable.
4. The following shall also be liable, depending on the facts and the obligations breached:
 - a) owners of physical or digital sales establishments, and owners, distributors or operators of automatic vending machines;
 - b) owners of distribution companies and wholesale commercial establishments who fail to comply with the duties of information, diligence and vigilance established in this law;
 - c) the persons in charge of the centres, departments, events or facilities at which the offence is committed or, failing that, the staff responsible for effective control within the scope of their duties;
 - d) the manufacturer, importer or distributor if the offence is a result of their initiative, their policy or commercial practices contrary to this law;
 - f) the company advertising or benefiting from advertising, in the case of offences relating to advertising, promotion or sponsorship, the owner of the trademark or product advertised, the owner of the medium or establishment in which it is disseminated or displayed and, where appropriate, the advertising agency and the sponsoring entity.
5. Where several persons are jointly responsible for compliance with the obligations established in this law, they shall be jointly and severally liable for the relevant offences and penalties. However, where the penalty is pecuniary and where possible, it will be individualised in the decision according to the degree of participation of each person responsible, in accordance with the basic legislation concerning the legal regime for the public sector.
6. The existence of adequate and effective prevention, control and monitoring measures, including staff training and internal checking procedures, shall be assessed for the purposes of determining liability and penalties, without prejudice to the legal obligations applicable in each case.

CHAPTER III

Offences

Article 22. *Classification of offences.*

The offences provided for in this Law are classified as minor, serious and very serious, in accordance with the principles of legality and proportionality.

Article 23. *Minor offences.*

The following shall constitute minor offences, with the exception in all cases of conduct expressly classified as serious or very serious under this law:

- a) the consumption of energy drinks with a stimulating effect by persons under 16 years of age, in any space, facility or centre, whether public or private, that is accessible to the general public, as well as at events organised by public or private entities whose attendance is open to the general public, in accordance with Article 12(1);
- b) failure of the owners or managers of the centres, premises, events and facilities referred to in Article 12(2) to adopt necessary and proportionate measures to prevent the consumption of energy drinks with a stimulating effect by persons under 16 years of age within those centres, premises, events and facilities;
- c) failure to display the sign or sticker informing consumers of the prohibition on the sale and supply of energy drinks with a stimulating effect to persons under 16 years of age, in a visible and permanent location, in accordance with Articles 13(1)(a), 13(2) and 14(4);
- d) omission of the notice prohibiting the sale of energy drinks with a stimulating effect to persons under 16 years of age on distance selling websites, applications or electronic interfaces, in accordance with Article 15(1);
- e) failure to comply with the age verification obligation of the purchaser provided for in Article 13(1)(b);
- f) failure to ensure direct supervision of the sale or supply of energy drinks with a stimulating effect to persons under 16 years of age via automatic vending machines, within the meaning of Article 14(1)(a);
- f) lack of effective age verification systems in the sale or supply of energy drinks with a stimulating effect, in accordance with the provisions of Articles 14(1)(b), 14(2) and 15(2);
- g) placement of energy drinks with a stimulating effect in a manner contrary to the provisions of Article 13.1(c);
- h) failure to comply with the information, due diligence and monitoring obligations laid down in Article 13(3);
- i) refusal to provide information or failure to cooperate with the control activities of the public administrations, where this disrupts or delays their performance without preventing or seriously hindering them.

Article 24. *Serious offences.*

The following shall be considered serious offences:

- a) the sale or supply of energy drinks with a stimulating effect to persons under 16 years of age, as referred to in Article 12(1);

b) the sale or supply of energy drinks with a stimulating effect via automatic vending machines under the prohibited circumstances referred to in Article 14(3);

c) the delivery of energy drinks to smart mailboxes, lockers or other collection points, where there is no mechanism for verifying that the recipient is over 16 years of age, in accordance with Article 15(3);

d) the carrying out of any form of advertising, promotion or sponsorship of energy drinks with a stimulating effect aimed at persons under 16 years of age, contrary to the provisions of this law and, in particular, Article 16;

e) refusal to provide information, unjustified refusal to allow inspections, or failure to cooperate with the control activities of public administrations, as well as the provision of inaccurate or false information, where this prevents or seriously hinders their performance;

f) repeated commission of minor offences within a period of two years, in other words a situation in which, having been imposed a definitive penalty for a minor offence, another offence of the same nature is committed within that period;

g) the commission of a minor offence where there are, in the previous two years, at least three definitive penalties for minor offences of the same nature.

Article 25. *Very serious offences.*

The following shall be considered very serious offences:

a) commission of an offence classified as serious where, in the previous two years, the person responsible has been penalised through definitive decisions for at least two serious offences of the same nature;

b) absolute and unjustified refusal to provide information or to cooperate with inspection and control services, when this prevents them from performing their duties; this includes, in particular, active or passive resistance, disobedience, coercion, intimidation or violence against the personnel involved, as well as the destruction or deliberate concealment of relevant documentation or evidence.

Article 26. *Concurrence of offences.*

Where several offences are included in the same disciplinary proceedings, provided that the constituent facts are distinct and are not covered or absorbed by each other, each of them may be subject to separate disciplinary action, respecting in all cases the principle of proportionality and the principle of *non bis in idem*.

Article 27. *Limitation of offences.*

1. The offences provided for under this law will be subject to the following limitation periods:

a) minor offences: six months;

b) serious offences: two years;

c) very serious offences: three years.

2. The limitation period for offences shall begin to run from the day on which the offence was committed, in accordance with basic state legislation on the legal regime for the public sector.

3.The limitation period for offences shall be interrupted by the initiation of penalty proceedings, provided that the person presumed to be responsible has formal knowledge thereof. The time limit shall be recalculated if the procedure has been halted for more than one month for reasons not attributable to the person presumed responsible, in accordance with the basic State legislation on the legal regime for the public sector.

CHAPTER IV

Penalties

Article 28. *Types of penalties.*

Offences against the provisions of this law will result in the imposition of the following penalties:

- a) main offences:
 - a warning;
 - a fine;
- b) accessory offences:
 - temporary, total or partial suspension of sales or supply activities;
 - temporary closure of the physical sales establishment;
 - closure, immobilisation or temporary removal of automatic vending machines;
 - educational or preventive training activities linked to the subject of the offence.

Article 29. *Penalties.*

1.The penalties for offences classified as minor shall be:

- a) a warning;
- b) a fine of up to EUR 600;
- c) where the offender is under 16 years of age, for the consumption of energy drinks with a stimulating effect, the penalising authority may, giving reasons, replace all or part of the fine with the performance of educational or preventive training activities, subject to the agreement of the minor and the consent of the person exercising parental authority, guardianship, wardship or custody, in accordance with the provisions of this law.

2.The penalties for offences classified as serious shall be:

- a) a fine of EUR 601 to 10 000;
- b) additionally, as an additional and reasoned penalty, temporary suspension of the activity of selling or supplying energy drinks with a stimulating effect for up to a maximum of three months; in the case of digital sales, temporary suspension of the activity through electronic interfaces may be agreed for the same period;
- c) where applicable, closure, immobilisation or temporary removal of automatic vending machines for a period of up to three months.

3.The penalties for offences classified as very serious shall be:

- a) a fine of EUR 10 001 to 100 000;

b) in addition, as a secondary and reasoned penalty, closure of the physical sales establishment or suspension of the activity of distance selling of energy drinks with a stimulating effect for a period of up to two years, especially in cases of repeat offending or serious risk to public health.

Article 30. *Penalty scale.*

1. Specific determination of the penalties provided for in this law shall be in accordance with the principles of legality, proportionality, culpability and legal certainty, with express reasons being provided in the penalty decision.

2. In order to scale the penalties, the following criteria shall in any case be taken into account:

- a) the nature of the damage caused, as well as the resulting risk to health, in particular that of persons under 16 years of age;
- b) the degree of culpability or the existence of intent;
- c) repeat offending if not taken into account in the definition of the offence;
- d) the turnover and profit obtained as a result of the offence;
- e) the significance and social and health impact of the offence;
- f) the degree of dissemination of illicit advertising;
- g) the active collaboration of the offender in identifying other persons responsible or mitigating the damage caused.

2. Mitigating circumstances shall include, inter alia, immediate and voluntary compliance with the cease and desist orders issued by the competent authority; early acknowledgement of responsibility and substantive cooperation in the investigation; and the effective adoption of corrective and preventive measures to avoid repetition.

Where one of the mitigating circumstances is present, the penalty may be imposed at an amount of less than half of the maximum provided for the offence in question.

3. Aggravating circumstances shall include, inter alia, significant profit derived from the offence or serious risk to public health; any relevant obstruction of the inspection work or provision of false information; and the use of particularly suitable means to circumvent the regulations.

Where one or more of the aggravating circumstances are present, the penalty may be imposed to its maximum amount within the relevant range.

4. Where the amount of the fine is lower than the profit derived from the offence, the financial penalty may be increased, giving reasons, to twice the amount of the unlawful profit, while ensuring that it has a dissuasive and proportionate effect.

5. Voluntary recognition of responsibility shall produce the effects provided for in the basic legislation on administrative penalty proceedings and in the applicable regional legislation.

Article 31. *Limitation of penalties.*

1. The penalties provided for under this law shall be subject to the following limitation periods:

- a) minor offences: one year
- b) serious offences: two years

c) very serious offences: three years.

2. The limitation period for penalties shall begin on the day following the date on which the decision imposing the penalty becomes enforceable or the deadline for appealing against it has expired, in accordance with the basic legislation on the legal regime for the public sector.

3. The limitation period for penalties shall be interrupted by the initiation of enforcement proceedings, provided that the person presumed liable has formal knowledge thereof. The time limit shall be recalculated if the procedure has been halted for more than one month for reasons not attributable to the person presumed liable, in accordance with the basic legislation on the public sector legal regime.

In the case of presumed rejection of the appeal filed against the decision imposing the penalty, the period of limitation of the penalty shall commence the day after that on which the period legally provided for the resolution of the said appeal ends.

Article 32. *Concurrence of penalties.*

1. Acts that have already been subject to criminal or administrative penalties may not be subject to new penalties in cases where the subject, the act and the grounds are identical, in accordance with the principle of *non bis in idem*.

2. Where it is known that criminal proceedings have been brought in respect of the same acts, the penalty proceedings must be suspended until a final judicial decision has been issued, unless the Administration is able to continue proceedings in respect of acts not covered by the criminal proceedings.

CHAPTER V

Penalties proceedings

Article 33. *Powers relating to penalties proceedings.*

1. The penalty proceedings provided for in this Law shall be initiated and investigated by the head of the General Directorate responsible for consumer affairs, without prejudice to the provisions of the applicable legislation of the Autonomous Communities.

2. The reasoned decision on disciplinary proceedings shall be made by:

- a) the head of the general directorate responsible for consumer affairs, for the imposition of penalties for minor and serious offences;
- b) the head of the regional ministry responsible for consumer affairs, for the imposition of penalties for very serious offences.

Article 34. *Penalties procedure.*

Penalties proceedings shall be conducted in accordance with the basic national legislation on the common administrative procedure and on the legal regime of the public sector, as well as with the legislation of the autonomous community governing the exercise of the power to impose penalties, guaranteeing in all cases the principles of legality, criminality, proportionality, the presumption of innocence and procedural appropriateness.

First additional provision. *Definition and calculation of the useful surface area for presentation and sale to the public.*

For the sole purpose of specifying the regime applicable to the placement of energy drinks with a stimulating effect provided for in Article 13(1)(c) of this law, and in accordance with regional legislation on trade, the ‘useful surface area for presentation and sale to the public’ is defined as follows:

“‘useful surface area for presentation and sale to the public’ means the area in which commercial exchange takes place, consisting of spaces used, either regularly or occasionally, for public display of the items on offer, whether on shelves or in counters or display cases, presentation boxes or wall displays, fitting rooms, cash registers and, in general, all spaces intended for the public to remain in or pass through, expressly excluding areas intended for offices, car parks, loading and unloading areas and storage areas not visited by the public and, in any case, those premises or facilities with restricted access to the public’.

Second additional provision. *Update of the list of substances and compositional parameters of energy drinks with a stimulating effect.*

1. The list of substances that, together with caffeine and glucose, sucrose or fructose, make up the composition of energy drinks with a stimulating effect, as well as the minimum amounts or ranges applicable to those substances for the purposes of the definition provided for in this law, may be updated by order of the head of the regional ministry responsible for health, in accordance with the legislation on the legal status of the Administration of the Principality, published in the *Official Gazette of the Principality of Asturias*.

2. Prior to approval of the order, consultation will be sought from the Spanish Agency for Food Safety and Nutrition (AESAN) and a technical report will be issued justifying the appropriateness of the update in terms of the science and its health implications.

The economic sectors, consumer organisations and professional associations concerned may be heard, where appropriate, without prejudice to any applicable hearings and public information.

3. Updates shall be made in accordance with European Union law and basic national legislation on food safety, food composition, the addition of vitamins and other substances, food additives, food information provided to consumers and nutrition and health claims.

4. The order must not authorise the use of substances not permitted by the applicable regulations or alter the food safety, labelling or advertising requirements established by European Union law or by basic state regulations; its effectiveness is limited to the purposes of defining and applying this law.

Third additional provision. *Updates to the amounts of the penalties.*

The Governing Council may, by decree and on an exclusively economic basis, update the amounts of the penalties provided for in this law, without altering the nature or classification of the offences and taking into account any changes in the objective and relevant economic indicators. Such updates must in all cases comply with the principles of legality, specificity, proportionality and legal certainty and may not have any unfavourable retroactive effects.

Sole transitional provision. *Adaptation of physical and digital sales establishments and automatic vending machines to the obligations of signage, placement of the product and age verification systems.*

1. Retail establishments, hotels and restaurants, as well as automatic vending machines, must display the sign provided for in Annex I in a visible and permanent location, within a maximum of 30 calendar days.

Within the same time frame, digital sales establishments selling or supplying such drinks through websites, applications or electronic interfaces must incorporate the pre-contractual information notice provided for in Article 15(1).

2. Establishments with a useful surface area for presentation and sale to the public $\geq 300 \text{ m}^2$ must place energy drinks with a stimulating effect in separate, clearly marked areas with visible warnings within a maximum period of 90 calendar days.

Establishments with a useful floor area $< 300 \text{ m}^2$ must place these drinks behind the counter or in a controlled display case, with a visible warning, within a maximum period of 120 calendar days.

3. Age verification systems shall be implemented within: (a) a maximum period of six months in the case of pre-transaction systems on websites, applications or electronic interfaces; (b) a maximum period of nine months in the case of verification upon delivery or at the collection point.

4. Automatic vending machines located in sales establishments or public spaces must, within a maximum period of 9 months, incorporate effective age verification systems that prevent purchases being made by persons under 16 years of age.

5. Pending complete adaptation of the economic sectors concerned to the requirements of the law, provisional measures may be adopted to remove drinks with a stimulating effect from any self-service area, temporarily limit sales to assisted or controlled sales, cease sales, withdraw products or block delivery.

6. For the purposes of this provision, all time limits shall be calculated from the date of entry into force of the law.

First final provision. *Authorisation of regulatory development.*

The Governing Council of the Principality of Asturias shall be authorised, within 12 months of the entry into force of this law, to issue any regulatory provisions necessary for its development and implementation, within the scope of its powers and with respect for the principles of regulatory hierarchy, effectiveness and legal certainty.

Second final provision. *Entry into force.*

This decision shall enter into force on the day of its publication in the *Official Gazette of the Principality of Asturias*.

ANNEX I

Sign informing consumers of the ban on the sale and supply of energy drinks with stimulating effects to persons under 16 years of age

1. Obligation to display the sign

Physical sales establishments selling energy drinks with stimulant effects must display the sign informing consumers of the ban on sales and supply to persons under 16 years of age, in a visible and permanent location.

This sign should be located at:

— the entrance of the establishment, if energy drinks with stimulant effects are available for direct sale;

— the checkout area or payment point.

2.Characteristics of the sign

The sign must comply with the following specifications:

— Dimensions:

- o minimum size: A4 (210 x 297 mm);
- o recommended size: A3 (297 x 420 mm) for greater visibility.

— Design and colours:

- o white or red background, with black or white text to ensure maximum legibility;
- o addition of a prohibition pictogram (red circle with a diagonal line over an energy drink can).

— Compulsory content:

- o title in capital letters, in bold:
 - **‘THE SALE AND SUPPLY OF ENERGY DRINKS WITH STIMULATING EFFECTS TO PERSONS UNDER 16 YEARS OF AGE IS PROHIBITED. CONSUMPTION MAY CAUSE CARDIOVASCULAR AND NEUROLOGICAL PROBLEMS AND SLEEP DISORDERS’.**
- o Legal reference:
 - ‘In accordance with the provisions of Article [corresponding number] of Law [name of law], the sale and supply of energy drinks with stimulating effects to persons under 16 years of age is prohibited throughout the territory of the Principality of Asturias.
- o Visual warning:
 - Prohibition pictogram with the number ‘16’ inside the symbol.
- o Penalties:
 - ‘Failure to comply with this regulation may give rise to penalties in accordance with the legislation in force’.

Informative sticker on the prohibition of the sale and supply of energy drinks with stimulating effects (24954 GPP) to persons under 16 years of age

Automatic vending machines selling energy drinks with stimulating effects must display a sticker with similar characteristics and the same content, measuring at least 105 x 145 mm.