

THE NON-SMOKING ITALIAN REGULATION

1. The aim

The Italian non-smoking law has been particularly issued to guard the non-smoking people health because of the consideration of the cigarettes smoke as one of the most important causes of premature death and one of the most critical problems of the world Public Health. For this reason the prevention of smoking illnesses is a priority not only for our country but also for the EU.

The new Italian law has primary this aim which must be reached by granting the observance of laws, by punishing the offences but especially through a regulation that must have a general application with only few exceptions expressly established by law.

The smoking preclusion must be general.

2. Scope of law

The objective scope of this law is extended to all public and private confined atmospheres opened to public.

With regard to public places this law⁽¹⁾ leaves unchanged the old regulation that states that smoking is restricted in schools, hospitals, public administration bureau, public motor vehicles, local bodies and private concessionary firms of public services for transport of

⁽¹⁾ L.16 gennaio 2003, n. 3, art. 51 com. 10.

people, cabs, metros, trains, train stations, airport waiting rooms, libraries, museums, galleries, seaports. With the new regulation the smoking restriction must be also applicated to private confined places opened to public, represented by: bars, restaurants, public place of entertainment, private clubs, gyms, cinemas, theatres, casinos, except the faculty of equipping a smoking area. In consideration of the free access of smoking and non smoking people, smoking cannot be admitted in spaces larger than the non-smoking areas⁽²⁾.

It is allowed to smoke:

- in the private spaces closed to the public;
- in the smoking areas that fulfil the requirements established by law.

3. Director's liability

The person who owns the responsibility of the place or the collaborator chosen by him, must remind the law-breaker of his duty and must refer to the public official or to the qualified agent⁽³⁾.

The person who is responsible of the place or his delegate must:

- remind the law-breaker of his duty , and tell him to stop smoking;

⁽²⁾ L.16 gennaio 2003, n. 3, art. 51 com.1b.

⁽³⁾ Direttiva del Presidente del Consiglio dei Ministri, 14 dicembre, 1995, art. 4.

- in the case of inobservance, notify it to the agents entitled to inflict penalties⁽⁴⁾;
- put out a non-smoking signpost⁽⁵⁾.

The directors, therefore, is not only obliged on putting out a signpost, but has a real duty of discouraging people from smoking. The fine provided in case of inobservance of these duties varies from a minimum of 200 euros and a maximum of 2000 euros⁽⁶⁾, except the faculty of the chief constable to decide to suspend the activity for a time lasting between three days and three months, or to revoke the license of the activity⁽⁷⁾.

4. Who is entitled to fine the transgressor?

The Italian system is based on autonomy of the regions from the state with regard of the regulation of some aspects of social, economic, administrative and health life. For this reason, a conference⁽⁸⁾ between State and regions stated that the choice of the organs⁽⁹⁾ qualified on inflicting fines, in this case, must be taken by the local public administration with a formal act. The determination of a responsible doesn't obviously

⁽⁴⁾ This part of the law has been contested by the directors of restaurants and bars who would have the power to directly fine the transgressor.

⁽⁵⁾ The signpost must indicate the type of restriction (NO SMOKING), the rule in object, the fine applicable, the subject intitled to verify the respect of laws and the authority intitled to punish the transgressor.

⁽⁶⁾ L. 28 dicembre 2001, n. 448, art. 52 com. 20.

⁽⁷⁾ L.16 gennaio 2003, n. 3, art. 51, com. 9.

⁽⁸⁾ Conferenza Stato-regioni, 16 dicembre 2004.

⁽⁹⁾ Commonly known as "non-smoking sheriffs."

prevent the officials and agents of the regular police department from punishing the transgressors.

A different rule is provided for the private places which carry out a public service, in this case, in fact, the responsables of the places are directly entitled to fine the transgressor. They must:

- verify the respect of the laws;
- ascertain the violation and directly fine the transgressor.
- in case of transgression they must put it on record which must contain the procedure for the contestation of the fine. The record must be notified by person, or if it isn't possible so, by mail in 90 days from the ascertainment of the violation⁽¹⁰⁾.

With respect of the transgressor, against him is provided the payment of a sum from a minimum of 27,5 euros to a maximum of 275 euros. The fine is doubled when the infraction is committed in presence of children until 12 years old or pregnant women⁽¹¹⁾.

5. Interpretation problems

In the case of interpretation problems they must be resolved in the base of the fundamental principle for

⁽¹⁰⁾L. 20 novembre 1982, n. 890.

⁽¹¹⁾L. 28 dicembre 2001, n. 448

which "smoking is forbidden in every public and private confined atmospheres opened to public, except private houses and smoking areas that respect the characteristic established by law".

6. Smoking areas

1. The smoking areas must be indicated, built as to be separated from the non smoking areas and must fulfil some requirements:

- they must be delimited by walls in all side of the room. The wall must be as high as the ceiling;
- they must have an independent entrance with an automatic lock door, that must remain closed;
- they must be indicated;
- they can't be in the passage of the non-smokers.

2. The non smoking areas must be endowed with a ventilating system that assures the change of air. The supplementary spair air must be filtered. The minimum supplementary air capacity must be of 30 litre/second for each person that can feet in each space accordingly to the law on the basis of a crowding index of 0.7 people/mq.

At the entrance must be indicated the maximum number of people allowed, with reference to the capacity of the structure.

3. The smoking areas must be maintained at a depression index of 5 Pa

4. The square measure of a smoking area must be half smaller than the non-smoking area⁽¹²⁾.

5. The air that comes from smoking areas cannot be recycled but must be excreted outdoor.

6. The ventilation system projection, maintenance and trial must be made in accordance with the effective security and energy-saving laws. The authorized personal must declare the setting up of the plant accordingly to law.

The installation certificate, that must contain the declaration of the ability of the ejection system, and the annual maintenance and system verification certificate must be hold at the disposal of the competent authority.

7. The non smoking areas must be indicated by a signpost that contains the type of restriction (NO SMOKING), the rule in object, the fine applicable, the subject intioled to verify the respect of laws and the authority intioled to punish the transgressor.

⁽¹²⁾ Decreto del Presidente del Consiglio dei Ministri, 23 dicembre 2003. which puts into effect art. 51 com. 2, legge 16 gennaio 2003, n. 3, as modified by art. 7, legge 21 ottobre 2003, n. 306, in the subject of "non smoker's health".

8. When the structure is composed of more spaces, in addition to the regular signpost in the first room, it is sufficient to put in the rest of the rooms a signpost with the inscription: NO SMOKING AREA.

9. The smoking areas must contain a lighting sign with the inscription: NO SMOKING AREA FOR FAILURE IN THE AIR SYSTEM, which lights automatically up in case of failure in the air system.

10. The places that do not correspond to those characteristics, remain out of the art. 51⁽¹³⁾ application.

⁽¹³⁾ L. 16 gennaio 2003, n. 3