

## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,  
the Secretary-General has the honour to communicate the following legislative texts.*

#### SPAIN

#### Communicated by the Government of Spain

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psycho-tropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

#### ORGANIZATIONAL LAW No. 12, OF 12 DECEMBER 1995, CONCERNING THE CONTROL OF SMUGGLING

**JUAN CARLOS I**  
**King of Spain**

To all who see and hear this.

Know that Parliament has adopted and I hereby approve the following Organizational Law:

##### PREFACE

##### 1. *Need for legislation*

In recent years the Spanish customs service has undergone a period of unprecedented change. The formation of the European Union as an internal market established by the Single European Act has brought with it the free circulation of goods without their being subject to controls when crossing internal borders. This new situation necessitates the amendment of legislation governing the movement of goods within the Community,

which corresponded to a model specifically based on border taxes and controls. This in turn entails adapting the legislation in such a way as to penalize the smuggling of goods into the customs territory.

[...]

The main challenge facing the single market in this area is to balance the facilities given to the free movement of goods against the need to maintain the effectiveness of efforts to control smuggling.

At the same time, it is deemed advisable to amend Organizational Law No. 7, of 13 July 1982, amending the existing legislation concerning smuggling and establishing the related criminal offences and administrative infringements, such law having been in force for 13 years in order, *inter alia*, to update the maximum value established therein of 1,000,000 pesetas for the difference between the criminal offence and administrative infringement of smuggling, and to include illicit operations involving goods not previously covered, such as endangered species of flora and fauna and precursors of drugs.

## PRELIMINARY TITLE

### **General provisions**

#### Article 1. *Definitions*

For the purposes of this Law:

[...]

10. "Precursors" shall mean substances and products capable of use in the cultivation, production or manufacture of toxic or narcotic drugs or psychotropic substances, as listed in Tables I and II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, and any other products added to that Convention or to other future conventions ratified by Spain.

[...]

## TITLE I

### **Offence of smuggling**

#### Article 2. *Definition of the offence*

[...]

3. Likewise, any person who performs any of the acts described in paragraph 1 of this article shall be deemed to have committed the offence of smuggling if any of the following circumstances obtain:

(a) If the object of the smuggling operation consisted of toxic or narcotic drugs, psychotropic substances, substances classified as precursors, arms, explosives or any other property whose possession constitutes a criminal offence, or if the smuggling operation was undertaken through an organization, even if the value of the property, goods, articles or merchandise is less than 3,000,000 pesetas.

[...]

### Article 3. *Penalties*

1. Any person committing the offence of smuggling shall be liable to the penalties of short-term imprisonment and a fine of two to four times the value of the property, goods, articles or merchandise in question.

In the cases covered by article 2, paragraph 1 (a) and (b), the penalties shall be imposed in their minimum degree; in the remaining cases they shall be imposed in the medium or maximum degree.

2. The judges or courts shall impose the corresponding penalty in its maximum degree if the offence is committed by or for the benefit of persons, bodies or organizations whose character or activities are such as to facilitate its commission.

[...]

### Article 5. *Seizure*

1. Any penalty imposed in respect of a smuggling offence shall give rise to seizure of the following property, merchandise and instrumentalities:

(a) The goods constituting the object of the offence;

(b) The materials, instrumentalities or equipment used in the manufacture, production, processing or sale of the articles held up or prohibited;

(c) The means of transport used for the purpose of commission of the offence, except where they belong to a third party who had no part therein, or if the competent judge or court considers that this accessory penalty is disproportionate in relation to the value of the means of transport used to commit the offence and the value of the goods forming the object of the smuggling operation;

(d) The proceeds from the offence, whatever transformations they may have undergone;

(e) Any property or merchandise, of whatsoever nature, that has served as an instrumentality for commission of the offence.

2. Property, effects and instrumentalities in connection with the smuggling operation shall not be liable to confiscation if they have been licitly traded and purchased by a third party in good faith.

3. Property, effects and instrumentalities definitively confiscated by final judicial judgement shall be allocated to the State.

### Article 16. *Right of customs services to perform search and inspection*

In the customs premises, the customs services may carry out the search and inspection of any vehicle, caravan, parcel or package.

First additional provision. *Functional organization*

1. The authorities, officials and forces entrusted with the detection and discovery of smuggling shall continue to perform their tasks with the same rights and powers with which, for the purposes of investigating, detecting and penalizing such conduct, they have been vested since their creation.

The Customs Surveillance Service shall, in the investigation, detection and penalizing of smuggling offences, act in liaison with the State Security Forces and Bodies and, for all legal purposes, shall enjoy collaborative status with the latter.

2. The customs administration organs of the State Revenue Agency may, at the request of the entities and services responsible for the detection of smuggling, permit, without obstructive interference, the release of goods from the places or premises equipped for use by the customs administration, for the purpose of facilitating investigations aimed at the discovery of smuggling activities.

3. For the same purpose, the entities and services responsible for the detection of smuggling may establish contacts and exchange information with other, national or international counterpart services.

Second additional provision. *Budgets of the State Revenue Agency*

1. The State Revenue Agency may, in its budgets, include items specifically designated for confidential operations aimed at detection of smuggling.

2. Audits and checks of such items shall be carried out by means of such procedure as may be established by the State Audit Office, in which the aforementioned confidentiality shall, in all circumstances, be observed.

A copy of the findings of such audits and checks shall be submitted to the Court of Audit.

Sole transitory provision. *Retroactivity*

1. The provisions contained in the present Law shall have retroactive effect insofar as they favour those responsible for the commission of the acts constituting smuggling referred to herein, in accordance with the terms established in the Penal Code.

2. The penalty provisions of the present Law shall have the same retroactive effect, in accordance with the provisions of article 128.2 of Law No. 30, of 26 November 1992, concerning the Legal Regime applying to Public Authorities and Common Administrative Procedures.

Sole revoking provision

1. Organizational Law No. 7, of 13 July 1982, amending the existing legislation concerning smuggling and establishing related criminal offences and administrative infringements, is hereby revoked.

[...]

Second final provision. *Status of the Law*

Title I, article 4, the provisions of Title II, and also paragraphs 2 and 3 of the first additional provision, paragraph 2 of the sole transitory provision and paragraph 2 of the first final provision of the present Law shall have the status of ordinary law.

Third final provision. *Entry into force*

The present Law shall enter into force on the day following the date of its publication in the *Official State Gazette*.

Accordingly,

I command all Spanish citizens and authorities to observe this Organizational Law and ensure its observance.

Madrid, 12 December 1995.

JUAN CARLOS, KING

Prime Minister  
FELIPE GONZALEZ MARQUEZ