

## **FEDERAL RESEARCH PROGRAM ON DRUGS**

### **FINAL REPORT**

#### **ALMOREGAL**

#### **Assessment of alternative models for regulation of alcohol marketing in Belgium**

**Contract - DR/02/77**

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Decorte, T., Kramer, R., Vlaemyck, M., De Donder, E., de Duve, M. ***Assessment of alternative models for regulation of alcohol marketing in Belgium***. Final Report. Brussels : Belgian Science Policy 2019 – 289 p. (BRAIN-be - (Belgian Research Action through Interdisciplinary Networks)

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## Chapter 1. Introduction

### 1.1 Background & aims

The WHO European region is the world's heaviest drinking region (World Health Organization, 2014)<sup>1</sup>. This region is home to 14.7% of the world's population aged 15+ years, but consumes more than a quarter (25.7%) of the total alcohol consumed worldwide.

Rates of youth drinking are particularly problematic (EMCDDA, 2016). On average, 48% of European youngsters drink alcohol at least once a month. About three quarters of 15-year olds have drunk some alcohol at least once in their lifetime (72%) (= European average (71%)). Belgian youngsters score above this average (54%). Belgium scores average on 30 days at least on one occasion 5 or more drinks in ESPAD (35%), and the European average is the same.

Considering alcohol marketing as one possible determinant of alcohol consumption and alcohol-related harm, regulation of alcohol marketing is an important policy tool to protect (young) people against exposure to alcohol advertising or marketing and subsequent alcohol use. The general objective of our study is to contribute to a better understanding of the strengths, weaknesses and conditions of the Belgian alcohol marketing regulatory system in light of the existing knowledge in this domain. In particular, this study describes and critically examines the regulation in Belgium and also the system that supports it (legal context, complaints system, sanctions, and monitoring). In the light of the feasibility and effectiveness of alternative policy options and interventions (e.g. bans on alcohol advertising and coregulatory frameworks) as documented in the existing (European) studies, our aim is to develop a "best fit design" for Belgium, taking into account the specificities of the Belgian context and the views of all stakeholders involved.

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<sup>1</sup> WHO EUR includes Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The, Former, Yugoslav, Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uzbekistan.

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In particular, the project compares the alternative systems in other European countries and will examine the strengths, weaknesses and necessary conditions of the different options. The project bears in mind the careful implementation of an alternative system in the Belgian context, with special attention for the specific cultural and social practices and the context-bound implications and limitations. The following research questions emerge from these aims:

- (1) How is the marketing for alcohol regulated in Belgium?
- (2) How is the marketing for alcohol regulated in other European countries (Finland, Norway, Poland, the Netherlands, and United Kingdom)?
- (3) What are the pros and cons of each of the (alternative) regulatory systems?
- (4) Which marketing regulatory system can be considered as a "best fit design" for Belgium, taking into account the specificities of the Belgian context and the views of all stakeholders involved?

### **1.2 Methodology**

In the initial phase, relevant (inter)national literature were collected and analysed. The focus of the literature review was on peer reviewed publications, meta-analyses of studies on marketing strategies for alcohol, relevant grey literature and internal documents.

The objective of the first part was to document the national and community (Flemish, French and German) law and regulation on the marketing of alcoholic beverages in Belgium, as well as to assess and report on its enforcement. The latter included the analysis of the number of alcohol marketing practices that have been evaluated for compliance with regulation, the number of alcohol marketing practices that have been presented for prelaunch advice, the number and type of complaints (related to the accessibility and knowledgeability of the system), the number and type of sanctions that have been pronounced and the overall adherence to regulations covering the last 5 years (2010-2015).

In order to ensure the effectiveness of existing alcohol marketing regulations, knowledge of the restrictions and compliance with regulations was key. The literature review described the several existing models in detail focusing on the advantages and disadvantages of each regulatory system. In this study, six European countries were

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studied, reflecting the greatest variation in alcohol marketing regulations: Norway (comprehensive volume restrictions), Poland (media, beverage and time restrictions), the Netherlands (volume and content restrictions), the UK (co-regulation system), France (comprehensive content restrictions) and Finland (volume restrictions depending on the product type).

In addition to the literature review (1-2-3), exploratory interviews were conducted with (inter)national experts. These consultations (face-to face or by Skype) complemented the comprehensive literature review and the evaluation framework and formed the starting point for further data collection.

The second phase builds on the identification and examination of the advantages and disadvantages of the alternative systems through in-depth interviews. The data collection was based on internationally validated instruments, such as the framework of De Bruijn et al. (2010) (see below).

Twenty Belgian stakeholders were interviewed face-to-face. In-depth interviews allowed us to identify and to understand stakeholders' perceived needs and to explore their views and experiences regarding the barriers and challenges presented by different alcohol marketing regulatory systems. Moreover, this qualitative method helped to explore the (contextual) processes (e.g., practical organisation and policy strategies) that influence the effectiveness of alternative regulation models. All participants were informed about the nature and purpose of the research study and the in-depth interview by an introduction letter. In the letter it was stressed that interviews would be confidential and reported anonymously (Noaks & Wincup, 2004). Interviews were expected to last 1-1.5 hours. If the participant consented, the interview was tape-recorded. All interview tapes were transcribed or notes fully written up as soon as possible after the interview had been conducted (Silverman, 2000). The data was analysed with qualitative data analysis software (NVivo 11).

### **1.3 In-depth interviews**

The empiric study is based on interviews with stakeholders working in the field. Methodological choices are preceded and determined by the nature of the research question. The research design for the empirical research is primarily evaluative, as the main objective of the study is to make sense of the more complex contextual social and



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cultural issues in Belgium, based on the expertise and experience of Belgian stakeholders, to finally come to a best fit design for Belgium (Walliman, 2010).

For this research study, in-depth interviews have been conducted in order to understand the perception of the respondents (Decorte & Zaitch, 2016). Interviews can help to gather the points of view of the stakeholders, with regard to their cultural context (Miller & Glassner, 1997). The surplus of a qualitative research is that it allows stakeholders to explain their answer. In addition, it offers the interviewer the opportunity to elaborate answers by asking follow-up questions. Qualitative research can be especially helpful to describe social and political processes and understand how things change (Rubin & Rubin, 2005).

In-depth interviewing served as a tool for collecting data in order to find an answer to the research question:

*‘which marketing regulation system can be considered as a “best fit design” for Belgium taking into account the specificities of the Belgian context and the views of all stakeholders involved?’*

The purpose of the empirical study was twofold. First, the aim was to get a better understanding of the social and cultural Belgian context and whether this context has a significant impact on the way in which alcohol marketing policy is constructed. Second, based on the most important contextual factors given by the stakeholders, this document will focus on which type of regulation model for alcohol marketing would be most appropriate for Belgium. Alternative forms of regulation of alcohol marketing will be examined to formulate an answer to this question.

### **1.3.1 The research sample**

For the qualitative study stakeholders were selected based on the method of purposive sampling. In contrast to random sampling, the respondents were not randomly chosen, but selected based on their (former) role. The main objective in preparation of the criteria was that all relevant elements of the subject are covered (Ritchie, Lewis, & Elam, 2003). First, the respondents needed to have a stake in the process of alcohol marketing policy in Belgium. More specific, the actors have been selected on the basis of a certain level of affiliation with the topic. The private actors are mainly selected based on their

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involvement in the Belgian regulatory model on alcohol marketing. The policy makers were selected, based on their contemporary or former involvement in determining alcohol policy, on both the federal and community level. The other actors can be subdivided into public health promoters, practitioners with specific expertise on alcohol and researchers on topics related to alcohol policy and marketing.

The stakeholders involved in the research can be described as 'elites'. David Richards (1996, p. 199) defines elites as '*..a group of individuals, who hold, or have held, a privileged position in society and [...] are likely to have had more influence on political outcomes than general members of the public*'. Despite the role of an elite interviewee, Richards argues that they still provide a subjective view on the subject discussed. The aim during the interview was to get an insight into the mind-set of the actors in shaping their view. The opinions of the stakeholders were studied in relation to their activities and interests (Dalton, 1959). Furthermore, all participants have a role in which they are concerned with the subject of alcohol marketing, or have studied or evaluated the role of alcohol marketing on (potential) customers.

In order to get valuable information out of an in-depth interview, especially with elites, a semi-structured approach was more appropriate than a questionnaire (Richards, 1996). The use of a topic list made the interviewer more flexible to pick up on the provided information by the interviewee and help to ensure that all relevant themes have been discussed. In addition, using a thematic list of topics provided the opportunity to keep control over asking the main questions in the limited time available.

### 1.3.2 Typologies

For the study, various stakeholders were interviewed, who gave their point of view from different angles on a desirable regulatory model on alcohol marketing that fits within the Belgian cultural, social and political context. The stakeholders can be further divided into three main categories. Based on the framework of Freudenberg (2005, p. 299) the stakeholders can be divided in four groups:

1. Industry representatives (private corporations)
  - a. Representatives of the alcohol industry
  - b. Representatives of the catering industry
  - c. Representatives of the advertising industry

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2. Governments (federal, regional and local) and the executive, legislative and judicial branches
3. Health actors (public health and advocacy organisations).
  - a. General practitioners
  - b. Public health actors
4. Researchers (on the topics: drug policy, digital communications, advertising ethics and public health)

The conceptual model of Freudenberg (2005) enables analysing the variables of interest of the stakeholders. Besides that, it allows comparisons between private actors, cases, and the level on which a social organization is situated (e.g. local, state, or national). The functioning of every actor is partly determined by the history, structure, culture and network of the institution or organisation. Some stakeholders could be placed in two groups (e.g. an industry representative who is also politically active). In that case, the actor is categorized in the group linked to the sector from which he or she spoke. As a result, also the behaviour and actions of the actors is influenced by this. In contrast to the framework of Freudenberg, researchers have been added as a separate group of stakeholders.

### **1.3.3 Aim of the empirical study**

As mentioned earlier, the qualitative study aims to find an answer to the research question *'which marketing regulation system can be considered as a "best fit design" for Belgium taking into account the specificities of the Belgian context and the views of all stakeholders involved?'*

One of the main concepts in this research question is the term 'context'. Within this research project context especially refers to the social, cultural and economic determinants that are related to the alcohol market, and more specifically, to the production and consumption of alcohol. A differentiation of the elements is possible, although they are also related to each other. The Belgian cultural context can for example refer to the tradition of brewing Belgian craft beers, but is also related to the economic context, because the existence of Belgian brewers creates workplaces for Belgian citizens. From a social perspective, the consumption of Belgian beers can be perceived as an means to increase individual and social welfare. The social, cultural and economic contexts

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interact with each other, and together possibly have an impact on the way in which alcohol marketing is regulated. Drinking beer can for example be seen as cultural heritage. In relation to Belgium, the Belgian beer culture has even been added to the UNESCO Representative List of the Intangible Cultural Heritage of Humanity (UNESCO, 2016).

### Characteristics of the interview

The interviews have been conducted in Dutch as well as in French. It is important to take into account the native language of the researcher, since it had some implications for the interaction between the interviewer and the interviewee. First, during interviews with French-speaking participants, questions were primarily and mainly posed in Dutch or English. However, some participants indicated that they did not understand the question well. In addition to that, answers given by the participants were sometimes perceived by the interviewer in a way that did not fully corresponded with the intended answer of the stakeholder. This risk coincides with conducting semi-structured interviews, since the discussion is mainly based on answers given by the participants. The lack of foreknowledge of the interpreter about the subject will enable him or her to pick up on answers.

### 1.4 Conceptual framework: policy analysis

A tool developed by De Bruijn et al. (2010), focusing on the role of volume restrictions, content restrictions, and a supporting regulatory system, provided the most important framework for analysing policies of alcohol marketing. With these criteria in mind, alcohol marketing regulations from 6 European countries and Belgium were analysed from a public health perspective. Study of de Bruijn: indicators from previous evaluation studies. The table below summarizes the evidence-based criteria used in this study (also used by de Bruijn et al., 2010).

Table 1. Criteria for evidence-based policy framework (De Bruijn et al., 2010)

Code of regulation	General	Distinguish between volume and content restrictions
	Size volume restrictions	Contribute substantially to the total volume of alcohol advertising
		No substitution effects
	Size content restrictions	Address all elements
Participation youth	Limit advertisements that are appealing to	

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		youngsters
		Evaluated according to youngsters' perceptions
Supporting regulatory system	Embedded in regulatory context	No conflicting regulations on the supra-national or national level
		Availability of legal backstop
	Commitment stakeholders	Commitment of all stakeholders: policymakers, civil society and industry related stakeholders
	Transparency	Available provisions of information to the public at every stage of the regulation process
	Pre-screening system	Obligatory pre-screening system for all marketing types
	Complaint system	Effective complaint system: easy access + support from the public
	Composition advertising committee	Independent jury
	Sanctions	Substantial sanctions which act as a deterrent
	Monitoring	Monitoring independent from commercial interests
		Monitoring routinely & systematically
		Include also 'unmeasured' types
Availability of marketing data to third parties		
Coverage	Code covers entire range of alcohol marketing practices	
Flexibility	Code should be updated regularly	

## Chapter 2. Marketing, public health & policy tools

### 2.1 Introduction

Alcohol is one of the most 'marketed' products in the world (Jernigan, 2010). It is an homogenous product (De Bruijn, Van den Wildenberg, & Van den Broeck, 2012), meaning that the chemical composition of pure alcohol is identical in every alcoholic drink. It is therefore crucial for producers and advertising agencies to present a specific alcoholic drink as better, 'cooler' and better tasting than other alcoholic beverages (De Donder, 2014). Population studies find, though alcohol use as a whole decreases, Europe still has the highest number of alcohol users (World Health Organization, 2014). The amount of alcohol used per individual remains very high as well (Alcohol Concern, 2013).

Alcohol use results in a plethora of avoidable medical, psychological and social harms, damaged lives and early morbidity (Hastings & Angus, 2009; World Health Organization, 2014). Both longitudinal studies (long term effects) (Anderson, De Bruijn, Angus, Gordon, & Hastings, 2009; L. A. Smith & Foxcroft, 2009) as well as experimental studies (short term effects) (Koordeman, Anschutz, van Baaren, & Engels, 2011) indicate that exposure to alcohol advertising leads to problematic drinking behaviour among minors. In addition, it complicates the situation for people with alcohol dependency problems, since exposure to a larger volume of alcohol marketing correlates significantly with stronger cravings for alcohol.

Politics are also affected by extreme cases. For instance, in UK there is the notorious 'Carlsberg baby', a child of a few months old in a Liverpool F.C. outfit that was used by Carlsberg as a living advertisement for its beer (IAS, 2001). This particular advertisement fired up the debate surrounding alcohol marketing:

Figure 1. Carlsberg baby illustration (IAS, 2001)



The first chapter therefore looks into the what is meant when talking about marketing (see 2). Next, marketing as a mediating factor in creating harm is discussed. The perspectives of corporations and public health organisations are presented as well (see 3). The literature review is concluded with an overview of known marketing policy tools (see 4).

### **2.2 Marketing & advertising: a definition**

A multitude of definitions of alcohol marketing exist. A general abstract definition is for instance provided by Armstrong, Kotler, Harker, and Brennan (2012, p. 5): *“Broadly defined, marketing is a social and managerial process by which individuals and organizations obtain what they need and want through creating and exchanging value with others. In a narrower business context, marketing involves building profitable, value-laden exchange relationships with customers. Hence, we define marketing as the process by which companies create value for customers and build strong customer relationships in order to capture value from customers in return”*.

Marketing defined as such includes two elements: marketing strategies as well as marketing actions (for instance advertisements)(De Donder, 2014). The whole of marketing strategies is defined by Eurocare as follows: *“a mix of sophisticated, integrated strategies, grouped around four main elements: the product, its price, its place (distribution) and its promotion. All four elements have ways of doing marketing, such as product design and brand name (product), pricing strategy and wholesale (pricing), distribution channels and placing within retail establishments (place) and promotional strategy, advertising, sales promotion and public relations (promotion).”* (Tricas-Sauras & Garnes, 2013, p. 4)

These four P’s (product, price, place, promotion) are key to any marketing strategy together with market segmentation, or setting the target audience (Anderson et al., 2009).

This brings the total of building blocks to five (De Donder, 2014):

1. Product development
2. Price setting
3. Physical availability
4. Promotions (advertising and promotional campaigns)
5. Market segmentations and setting of target audience

Literature on alcohol marketing indicates all five of these building blocks are applied when developing campaigns to promote alcoholic beverages (De Donder, 2014; Hastings & Angus, 2009). For instance, new products are being developed, price promotions are regular and tend to affect youngsters more than adults, a high density of sales points is associated with a higher consumption rate as well as with heightened problematic drinking, and market segmentation includes for instance strategies to reach unsaturated markets (e.g. women and young people) (Babor, 2010; Casswell, 2012) or to explore immature markets (e.g. Asia and Africa) (Casswell, 2012; De Bruijn, Johansen, & van den Broeck, 2010).

The Union of Belgian Advertisers (in Dutch 'Unie Belgische Adverteerders', further referred to as 'UBA') (2016) reports that the actual presence does not corroborate with the media investments in online platforms. The table below reports the data collected by UBA, through Nielsen. Online media seems not to be a popular choice for advertising. However, this apparent low presence in the table below is because, as of this year, Microsoft Ads does not share data. Google, YouTube, Facebook and others are not reported and thus not caught in the dataset of Nielsen. Anything that is reported falls under the name 'display' of advertising. There is no insight in things like user-generated content (see below). Table 1 illustrates how investments tend to range from above the line marketing actions, that state the brand exclusively, to more below the line actions which aid in creating the brand (De Donder, 2014):

*Table 2. Total of investment in alcohol advertisements in Belgium in 2015 (Unie Belgische Adverteerders, 2016)*

<b>Media investments - Belgium, 2015</b>		
<b>Type of media</b>	<b>Investment EUR</b>	<b>% of total</b>
Cinema	25,679,000	1.00
Dailies	767,794,000	21.30



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free sheets	141,112,000	2.40
magazines	296,627,000	6.40
Online	168,332,000	5.40
out of home	254,502,000	8.70
Radio	398,967,000	13.50
TV	1,414,340,000	41.30
<b>TOTAL</b>	<b>3,467,353,000</b>	<b>100.00</b>

Looking at the ranking of largest investors in advertising all over the world across all types of products, the highest ranked producer of alcohol is Anheuser Busch InBev. This company is ranked 33<sup>rd</sup> out of the 100 largest investors in 2015 (23,053,000 EUR). In comparison to 2014, their annual budget spent increased by 80.2% (in 2014 it was 12,794,000 EUR (rank 52), in 2013 14,800,000 EUR (rank 54)). This increase might have been in anticipation of the merger with SAB Miller, as the merger between Anheuser Busch and InBev happened in 2008. Whereas Bacardi-Martini was ranked 65<sup>th</sup> in 2013 with a total investment of 10,635,000 EUR, by 2015 they dropped out of the list of the 100 highest investors. It is interesting to see that the Belgian communities invested more, as they are ranked 25<sup>th</sup> with an investment of 29,346,000 EUR. In 2014 this was 7% lower (31,699,000 EUR). This seems to suggest there are some options to further initiate social marketing campaigns (see below).

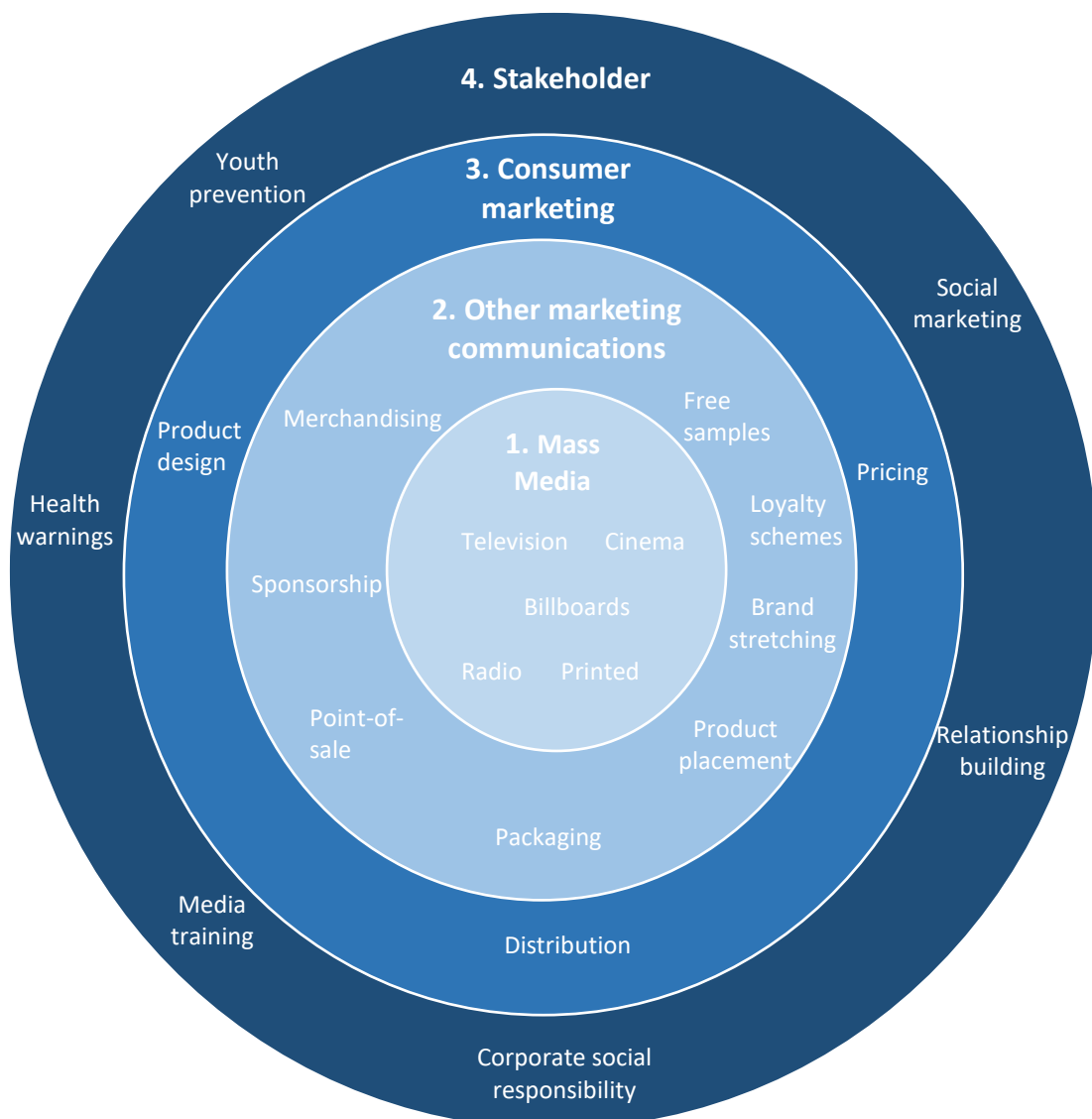
## 2.3 Marketing mix: types of media actions and (cumulative) effects

### 2.3.1 Marketing mix and cumulative effect

Marketing actions are broader than traditional broadcast media (such as television and radio) and traditional non-broadcast media (like print media, billboards and branded merchandise) or online media (like social network sites, websites, and fora) (WHO, 2009). As Hastings and Angus (2009) describe, alcohol is also promoted by linking brands to sports and cultural activities through product placement and sponsoring of sports and cultural events. The power of marketing cannot singularly be contributed to one marketing practice, but mainly lies in its cumulative impact. The total effect of these multiple layers of marketing actions not only influences alcohol consumption but social norms around alcohol as well (Hastings & Angus, 2009). This symbolic dimension associates alcohol use with regular cultural phenomena and legitimises it, which

contradicts an image of alcohol as a harmful product. These social norms influence attitudes and behaviour of especially young people. The more it is generally accepted to drink alcohol, the more likely it is that also young people will start to drink (more) alcohol. As mentioned earlier, the main impact of alcohol marketing is generated by the exposure to a combination of different marketing practices. There is a cumulative impact of alcohol marketing on young peoples' moment of initiation to alcohol consumption and drinking more as a result of exposure to alcohol marketing. In order to show how comprehensive alcohol marketing can be, Hastings and Angus referred to the marketing mix. Their illustration of the layers of alcohol marketing sums up the different levels of action (Hastings & Angus, 2009, p. 5).

Figure 1. Marketing mix as portrayed by Hastings & Angus (2009, p. 5)



### 2.3.2 Mass media marketing

Mass media marketing actions include advertisements in printed media (e.g. magazines and newspapers), on-screen (television, movie theatres, and music videos), on the radio, or on the street (e.g. billboards). The paragraphs below sketch (the lack of) Belgian research exploring the potential effect of these marketing actions on consumption levels.

Alcohol advertisements in **printed media** like magazines and newspapers appear quite commonly. However, there is not much research available on the impact of this particular form of advertising on the levels of consumption. In their literature review, the systematic review of the VAD (2014) refers to a few empirical studies and systematic reviews from the United States, United Kingdom and Australia consistently concluding that exposure to this type of advertising makes youngsters more inclined to start drinking alcohol, to drink more alcohol in general, and to drink more alcohol during one occasion (Ellickson, Collins, Hambarsoomians, & McCaffrey, 2005; Jones & Magee, 2011; Meier et al., 2008).

International studies into the short term effect of **on-screen alcohol advertisements** in television and movie theatres give further indication of a long-term effect while short-term effects tend to be diverse. A Dutch small-scale experimental study involving 80 male respondents (18 to 29-year-olds) did not find a short term effect on drinking while watching a movie on TV (Koordeman, Anschutz, & Engels, 2012). A larger experimental study into the impact of alcohol advertising during the screening of a movie in a movie theatre did show an increased use of alcohol among 16 to 28-year-olds (Koordeman, Kuntsche, Anschutz, van Baaren, & Engels, 2011). Longitudinal North-American studies do point to an increased risk among 11 to 13-year-olds of starting drinking within a year after watching beer advertisements on television (Collins, Ellickson, McCaffrey, & Hambarsoomians, 2007; Stacy, Zogg, Unger, & Dent, 2004).

Flemish researchers found a positive relation between watching **music videos** and drinking alcopops among high school students (J. Van den Bulck, Beullens, & Mulder, 2006). An international study further indicates about one fifth of the 793 lyrics studied included explicit references to alcohol use. Most of the times these references were put in a context of wealth, sex, partying, and other drugs. The mentioning of alcohol or alcoholic brands predominantly occurs in rap, R&B/hip-hop or country music, instead of pop or rock songs (Primack, Nuzzo, Rice, & Sargent, 2012).

The effect of alcohol advertising broadcast via radio remains understudied, especially in Europe. In general, studies into the impact of **radio** advertisements come to a similar conclusion as those already described. There is a lack research in Europe that specifically focuses on the impact of alcohol marketing broadcast on radio. A systematic review by Noel, Babor, and Robaina (2017) shows that almost a tenth of the alcohol advertising on radio is broadcast at times when more than 30% of the audience is underage. Collins et al. (2007) indicate that youth exposure to alcohol advertising via radio-listening is associated with beer drinking and drinking intentions.

The potential impact of **on the street** communications is not extensively studied. The report of the VAD (2014) refers to the systematic reviews of Meier et al. (2008) and Bryden, Roberts, McKee, and Petticrew (2012) which both include studies suggesting that on-street advertisements influence the intention to continue or start drinking alcohol as well as the amount of alcohol which is consumed on one occasion. De Bruijn et al. (2012) point out that restricting outdoor advertising (i.e. billboards) may give rise to the use of larger sized advertisements and techniques (e.g. illuminations on the facades of buildings) to increase the likelihood that the marketing communication will be noticed by the public. There may be a link between the number of available places where outdoor alcohol advertising is possible and allowed and the size of the advertisement.

### 2.3.3 Other marketing communications

Marketing is more than the mere showing of products but also includes the placement of these products in an 'attractive' cultural context (De Bruijn et al., 2012). Already during the 1980s researchers noticed that alcohol marketing campaigns, aside from their immediate effects, also contribute to the creation of a social environment where the positive aspects of alcohol dominate, and are thus normalised (Alcohol Concern, 2013; Wallack, 1983).

Exposure to advertisements that youngsters find 'attractive' makes these youngsters more inclined to start drinking and also affects already existing drinking behaviour (Casswell & Zhang, 1998; Chen, Grube, Bersamin, Waiters, & Keefe, 2005). For instance, the use of humour, social success, physical attraction, adventure, fun activities, celebrities and music, attracts young people (Chen et al., 2005). These 'attractive' advertisements have a positive relation to the wish to imitate them, as well as to buy the products featured

(Casswell & Zhang, 1998). On the other hand, there are studies pointing to a decrease in sales figures when advertisements include mainly product information (Proctor, Babor, & Xuan, 2005).

The marketing mix as discussed above gives a range of examples how marketing actions are broader than the above described tools. For instance, advertisements can take the shape of sponsorship deals, promo-items, portrayals of alcoholic beverages at the point-of-sale, product placement during television shows, rewards in loyalty schemes, and free samples.

Research indicates **sponsorship of sporting events** by the alcohol industry is associated with a higher degree of alcohol consumption (O'Brien et al., 2014; O'Brien, Miller, Kolt, Martens, & Webber, 2011). If an alcohol brand funds a sports club, the logo is not only put on the website but also on their clothing, and often made clear in the name of the stadium. Furthermore, drinks of the brand are sold in the canteen or through the website of the sports club. That way the brand is associated with playing sports, being a member of the sports club, sporting achievements, fan loyalty and a positive image in general (De Bruijn et al., 2012). The broad media attention of sponsorship leads to global branding of sports events, despite national efforts to limit this (Hill & Casswell, 2004). A Belgian example of this type of sponsorship is the Anheuser-Busch InBev Paralympic Committee (Anheuser-Busch InBev, 2013). Anheuser-Busch InBev is also the main sponsor of the Belgian national soccer team. Moreover, the Belgian premier league of soccer is called "Jupiler Pro League".

The link between **music events** and sponsorship deals of alcoholic products is also well-established, as in Belgium and abroad many music festivals are (predominantly) sponsored by alcoholic brands (e.g. Werchter is sponsored by Jupiler, Couleur Café and Pukkelpop by Maes pilsner). Many of these festivals have no age limit for purchasing tickets, which means minors do tend to be exposed to alcohol advertisements when attending these events (see also below 'promotional materials').

Few studies explore the effect or impact of exposure via sponsorship deals and the extent to which for instance young people assimilate these messages. Longitudinal research in North-America as well as Europe (including the Netherlands) does suggest youngsters, even as young as 12-year-olds, indicated not only that their future drinking behaviours

were influenced by these messages (Ellickson et al., 2005), but also that higher exposure to sport sponsorship messages created more positive attitudes towards alcohol (De Bruijn et al., 2012).

**Promo-items** are often used by the alcohol industry to attract new customers or to continue the relationship with existing customers (De Donder, 2014). International studies indeed suggest their popularity (e.g. one fifth of 11 to 13-year-olds in California indicated they possessed at least one promo-item of an alcoholic brand (Hurtz, Henriksen, Wang, Feighery, & Fortmann, 2007)). A range of different international studies consistently found an association between possessing promo-items and the intention to use alcohol, to continue to use alcohol or binge drinking (Collins et al., 2007; De Donder, 2014; Fisher, Williams Miles, Austin, Camargo, & Colditz, 2007; Henriksen, Feighery, Schleicher, & Fortmann, 2008; Hurtz et al., 2007; Jones & Magee, 2011; McClure, Stoolmiller, Tanski, Engels, & Sargent, 2013; McClure, Stoolmiller, Tanski, Worth, & Sargent, 2009).

It is important to take into account the cumulative effect of promo-items in combination with the exposure to other types of advertisements (e.g. on-screen ads) (Hurtz et al., 2007). For instance, promo-items could be evaluated as creating a positive attitude because consumers have already drunk that specific brand. The way someone obtains the item (e.g. through a parent a child confides in) might also influence their positive attitude (e.g. because a parent apparently approves of alcohol use) (McClure et al., 2009). Furthermore, youngsters wearing a promo-item (e.g. a T-shirt or a hat) of a particular alcoholic brand might influence their peers in developing positive attitudes towards alcoholic beverages (Henriksen et al., 2008).

The potential impact of **product placement** might be greater than that of explicit advertisements because the message is not seen as advertising (Wills, Sargent, Stoolmiller, Gibbons, & Gerrard, 2008). Longitudinal as well as experimental international studies did find a positive association between the portrayal of drinking alcohol in movies or television shows and an increase in drinking behaviour among minors (Hanewinkel et al., 2014; Koordeman, Kuntsche, et al., 2011; Nunez-Smith et al., 2010; L. A. Smith & Foxcroft, 2009; Wills et al., 2008). Belgian and Dutch researchers further established that alcohol is regularly consumed in soaps and other TV-dramas (H. Van den Bulck, Simons, & Gorp, 2008; van Hoof, de Jong, Fennis, & Gosselt, 2009). It is difficult to assess the direct

impact of watching TV-shows where alcohol is consumed and a person's drinking behaviour because this is partially influenced by the extent to which viewers identify themselves with that particular character (e.g. characters who drink because they lost their job might be difficult to identify with for underage viewers) (van Hoof et al., 2009). That said, systematic reviews, and additionally a Flemish study, do point to a positive association between the amount of time spent watching TV and the level of consumption of alcoholic beverages (L. A. Smith & Foxcroft, 2009; J. Van den Bulck et al., 2006).

Research into the potential impact of advertising at the **point-of-sale** shows different results. While some studies found a positive association between promotions in points-of-sale and the consumption of alcohol and binge drinking (Jones & Magee, 2011; Meier et al., 2008; Nakamura, Pechey, Suhrcke, Jebb, & Marteau, 2014) other studies tend to suggest that there is little to no effect on minors' drinking behaviour (Collins et al., 2007; Ellickson et al., 2005; Hurtz et al., 2007).

When restrictive rules are applicable to a certain product, producers sometimes try to avoid these regulations by promoting other products with the same logo, or by using the same style. This type of marketing is referred to as **brand-stretching**. Brand-stretching can be used by alcohol producers, for example by promoting non-alcoholic drinks, when a ban is applicable for alcohol marketing (Cooke et al., 2004).

Alcohol producers generally focus on producing alcoholic beverages. However, in some cases alcohol brands also offer non-alcoholic alternatives. For instance, in 2016 Anheuser-Busch InBev expanded its offering with an alcohol-free alternative. Non-alcoholic beer is frequently promoted as a healthy alternative to the alcoholic variants, following a social trend of consciously healthier lifestyles.

*Many consumers today are also convinced that beer without alcohol is better for health than ordinary beer. Healthier and moderate drinking is a real basic trend. Consumers love the beer experience, but alcohol is no longer necessary. (Het Laatste Nieuws, 2018)*

Some clear trends are emerging in the consumer market. In food, for example, people are increasingly looking for what is fresh, natural, light and healthy. This trend is reflected in the beer market, among other things, in an increasing consumption of low-alcohol and non-alcoholic products (Mampaey, 2018).

However, producing, selling and promoting non-alcoholic beverages also provides some extra opportunities for the industry. First, because of the absence of alcohol, the product can be offered and promoted as a substitute for soft drinks. As a result, it can also be portrayed as an alternative beverage that can be consumed at every moment of the day, during day times that drinking alcohol is usually perceived as less appropriate (e.g. before or during work, before driving, etc.), or as a drink that can be consumed without moderation. For example, the slogan of Maes particularly refers to the fact that by drinking Maes 0.0, it is no longer necessary to consume in moderation. “Maes 0.0% With mates, without moderation” (translated from Dutch “Maes 0.0% met maten, zonder mate”).

### 2.3.4 Consumer marketing

Some forms of marketing try to create product brand images, themes, or identities tailored to a specific target group. By buying the product, consumers subscribe to the image associated with the beverage. This type of marketing is referred to as **consumer marketing** (Davis, Gilpin, Loken, Viswanath, & Wakefield, 2008).

Among others, the WHO (2009) identifies price taxation as one of the most cost-effective approaches to reduce the harmful impact of alcohol on public health. **Pricing** can also be used as a marketing tool by alcohol producers, distributors, or points-of-sale (on-site as well as off-site). The price promotions like happy hours, ‘buy one and get one for free’, or promotion packages can have an impact on the consumption behaviour. Beyond that, they also significantly appeal to minors (Hastings & Angus, 2009). In addition, the image of alcoholic beverages as an everyday product is often reinforced by advertising price promotions in a range of media (Hastings & Angus, 2009).

Promotion practices for alcoholic beverages are often well tailored to the location where alcoholic beverages are distributed and the persons to whom they are offered. The **distribution** place of products often is related to the place where the target group of the brand is located (Davis et al., 2008). Alcohol marketing practices mainly occur in places where alcoholic products are offered, or they are related to other marketing activities. Think, for example, of offering price promotions on beer in a student neighbourhood. Hastings and Angus (2009) refer to this type of marketing as point-of-sale marketing. The other way around, the expansion of on-site venues in certain places is often also driven



by vigorous alcohol marketing activities (Hastings & Angus, 2009).

Additionally, the product itself can be created to appeal to a target group by its shape, portability, colour and taste. Studies mainly concern the use of colours, flavours, and innovating packaging that appeal to minors (Anderson, 2007). Several studies show that beverages, like 'designer drinks' (e.g. fruit flavoured wine) and 'alcopops' (mixed beverages of spirits, soft drinks and other flavours) are mainly popular with minors (STAP, 2007a). **Product design** therefore can influence the age of onset of drinking alcohol and contribute to heavier drinking (Hastings, Anderson, Cooke, & Gordon, 2005; Hastings & Angus, 2009).

### 2.3.5 Stakeholder marketing

The political and economic context of a country can both provide opportunities for alcohol producers as well as threaten their corporate aims. In order to turn these threats into opportunities, corporations undertake activities that anticipate regulatory measures, or try to influence them. This can be done by **building relationships** with powerful actors, like policy makers, to influence the regulatory environment or other activities that can threaten the economic interest of the alcohol industry (Hastings & Angus, 2009).

Marketing communication channels are used by authorities to inform people about the harmful effects of alcohol consumption. These pro-health messages can be labelled as **social marketing**. The fact that social marketing practices are initiated by authorities often does preclude the involvement of alcohol producers. The support can both be financial and content-related. In case of **corporate social responsibility**, the pro-health communications are initiated by the alcohol industry itself (Hastings & Angus, 2009). An example in Belgium is the BOB-campaign, against drinking and driving.

Another method that is used in order to make consumers aware of the harmful consequences of heavy alcohol consumption is providing products or marketing communications by an **educational message**. Among others, Anne Lavack (1999) found that alcohol producers aim to provide messages without references to the negative health consequences of alcohol consumption. Instead of providing a health warning, they mainly prefer to establish a message that promotes moderate drinking.

## 2.4 New media: the digital era

### Definitions

There is no formal definition of social media. Eurocare (and many others) refer to Blackshaw (2006) and Blackshaw & Nazzaro (2006) who describe *social media* as a range of internet-based applications where content is created by the consumers. This consumer-generated content encompasses *“media impressions created by consumers, typically informed by relevant experience, and archived or shared online for easy access by other impressionable consumers. This includes a variety of applications in the technical sense which allow consumers to “post”, “tag”, “digg”, or “blog”, and so forth, on the Internet. The contents generated by these social media include a variety of new and emerging sources of online information that are created, initiated, circulated, and used by consumers with the intent of educating each other about products, brands, services and issues.”*

New media encompasses a wide variety of digital forms of communication such as the Internet, social media, mobile devices, games, blogs and podcasting (Van den Wildenberg, 2010). These forms of communications do not seem to replace the ‘traditional’ forms but are rather complementing these existing activities (Chester, Montgomery, & Dorfman, 2010).

Digital marketing is then characterised by (Chester et al., 2010):

1. Creating engagement of the consumer by constructing an environment where consumers interact with the brand, ‘befriend’ the brand and integrate the brand in their personal and social relations.
2. Individualised advertisements based on tracking of individual preferences.
3. Part of an all-encompassing strategy: consumers are reached repeatedly on- as well as offline.

Examples are brand websites, marketing through social media (e.g. YouTube channel, Facebook page, Twitter account, or the Instagram page of a particular brand), banners of alcohol brands on popular (news)sites, viral marketing (e.g. television-commercials that go viral on YouTube), smartphone apps, direct marketing through e-mail, and customer loyalty websites (EUCAM, 2009; Van den Wildenberg, 2010).

Consolidation of the alcohol industry and the accompanying possibilities for profit,

stimulated an increase in investment in branding or marketing to strengthen consumers' bonds with specific brands. For instance, it is estimated that about two thirds of marketing activities involve the use of new media (Casswell, 2012; Hill, 2008). The United Kingdom is the first 'large economy where advertisers invest more in internet advertisements (Facebook, video-sharing sites like YouTube) than in traditional means of marketing' (Alcohol Concern, 2013). A study of alcohol advertisements from five UK alcohol brands indicated that all five maintained a Facebook page, Twitter page and YouTube channel with varying levels of user engagement (Winpenney, Marteau, & Nolte, 2014). While Facebook-pages were age-protected, YouTube and Twitter content could be accessed by all ages. Considering age, a study using fictitious YouTube profiles of a 14, 17, and 19-year-old found that every underage profile, regardless of age was able to subscribe to any of the channels. In total about two-thirds of the 16 investigated brands were successfully viewed (Barry et al., 2015). At the same time, YouTube is one of the most popular online streaming platforms among young people (Bastien et al., 2018), making them even more vulnerable to being exposed to alcohol marketing messages on YouTube. The extensiveness of new media as a marketing activity in Belgium is difficult to assess. For instance, Anheuser-Busch InBev has a YouTube channel and Facebook page (Unie Belgische Adverteerders, 2016).

Social media contribute to creating a positive image of alcohol use (Beullens & Schepers, 2013; Moreno et al., 2010). In 2013, 160 Belgian Facebook profiles of mainly students (birth year ranged from 1958 to 1996) were sampled to explore how alcohol use is portrayed visually as well as textually on Facebook and how peers react to posts related to alcohol (Beullens & Schepers, 2013). Content analysis indicated that most of these references referred to alcohol use in a positive context (72.23% of the pictures and 72.83% of the messages). The main conclusions indicate that alcohol-related references are common while negative reactions to these posts are infrequent.

It is difficult to assess the boundaries of what is perceived 'content' of the advertisement and what is not (Alcohol Concern, 2011, 2013; Van Waeg, D'hanens, Doods, & Naesens, 2016). User-generated content is all content created by users on websites and social networks sites, like YouTube and Facebook. The content created can be either on the site of the alcohol company or on their personal site. The Apestaartjaren research study suggests that about two thirds of the 3,291 12 to 18 year-olds that were studied could

differentiate between an advertisement and a search result (67%). That said, if they use the Internet for a school assignment only a third check whether the information found is an advertisement (33.5%) and even fewer double check the information found on another web page (12.6%). More than two thirds think they can recognise advertisements (68%). Less than half of the respondents think that they are critical of ads (42.7%). That said, most youngsters stated that they did not believe what is said or portrayed in advertisements (86.1%), while few indicate they believe what is shown in an ad (2.6%) or think ads always show the truth (2%). As to how they act when seeing an ad, most of them want to avoid it (67.9%), and very few act upon it by searching for further information (3.2%), letting themselves being convinced by it (3%) or by forwarding it to friends (3%). A minor remark here is that 3% of 3,292 still accounts for close to 100 youngsters. The online survey did indeed reveal that most youngsters find advertisements irritating and therefore try to avoid these as much as possible (65.7%). Most of them agree they are confronted with too many advertisements (65.4%) and would like to be able to choose which ads they see and which they do not (61.1%). About a fifth think it is a good thing advertisements exist (21%), but less than ten per cent really like it (8%). For instance, they do not mind advertisements that come with something free (e.g. games, songs, or music videos). On the other hand, most did not know what an ad blocker is (56.3%) (an extension in your browser that blocks advertisements), and only about a quarter actively used it (26.9%). Simultaneously, about two fifths worry about what companies do with their personal data (42.8%) (Van Waeg et al., 2016).

There is little data available which can be used to study the link between alcohol advertising and drinking habits (De Bruijn, Engels, et al., 2016). Some studies focused specifically on the link between the drinking habits of European youth and digital advertisements. These studies consistently find strong associations between online marketing and young people's drinking habits (Barry et al., 2016; Barry et al., 2015; De Bruijn, Engels, et al., 2016; Moreno, Christakis, Egan, Brockman, & Becker, 2012; Ridout, Campbell, & Ellis, 2012; Winpenny et al., 2014).

The AMPHORA-project focuses on the role of alcohol marketing and digital media in influencing adolescents to initiate drinking. In four countries (Germany, Italy, the Netherlands and Poland), self-administered online questionnaires were used to collect data. Univariate as well as multivariate statistical analysis of 100 surveys from each

country zoomed-in on drinking habits and alcohol marketing exposure as well as a range of possibly confounding variables (demographic data, social influences and non-alcohol-branded media exposure) (De Bruijn, Engels, et al., 2016). The association between online alcohol marketing exposure and drinking outcomes was revealed to be significant, and more importantly stronger in effect size than any other confounding variable. The effect found was also consistent across the four countries under study.

## **2.5 Effect of alcohol marketing on consumption and attitudes**

### **2.5.1 Marketing & total consumption levels**

Research into alcohol marketing and the link to alcohol consumption was inconclusive for a long time. After 30 years of research the influence of alcohol marketing on behaviour remains heavily debated (Hastings et al., 2005). Systematic reviews discern two general types of studies exploring the link between advertising of alcohol and drinking behaviour: econometric studies and consumer research. The inconsistency was partially due to the method used by econometric studies. Econometric studies are often used by the alcohol industry to indicate there is no connection between advertising and behaviour (Hastings et al., 2005). That said, this kind of research has important weaknesses. For instance, these studies use statistical models to explore the relation between alcohol consumption (measured in terms of sale figures at the population level) and exposure to advertising (measured in terms of expenditures) (e.g. Babor, 2010; Saffer & Dave, 2002).

Consumer research applies different research techniques, like discourse analysis and case studies to examine the relation between alcohol marketing and the perception of youngsters and their drinking habits (Casswell, 2012). These techniques are part of diverse research designs, like longitudinal (Anderson et al., 2009), cross-sectional studies using structural equation models or regional studies (Saffer & Dave, 2006; Snyder, Milici, Slater, Sun, & Strizhakova, 2006). This leads to more nuanced insights that can be used by public health professionals (Casswell, 2012) (see also description of potential effects above).

A range of longitudinal systematic reviews argue that the volume of advertisements, the total exposure of young people to advertisements, has a long term impact on their drinking behaviour (Anderson et al., 2009; De Bruijn et al., 2010; De Bruijn et al., 2012; L.

A. Smith & Foxcroft, 2009). These studies consistently indicate that exposure to advertisements has an influence on the number of occasions where someone drinks alcohol, but also on the amount of alcohol someone consumes on any one occasion (Connolly, Casswell, Zhang, & Silva, 1994; Ellickson et al., 2005; Fisher et al., 2007; McClure et al., 2009; Stacy et al., 2004) or in general (Snyder et al., 2006). Furthermore, the studies included in these systematic reviews point also to a positive association between exposure to alcohol advertising and problematic use or binge drinking (McClure et al., 2009; Wills et al., 2008).

Moreover, some experimental studies also indicate alcohol advertising has a more immediate effect. For instance, watching someone drinking alcohol in a television show or while watching a movie in the cinema (during advertisements as well as during broadcasting content) is associated with alcohol use (Engels, Hermans, Van Baaren, Hollenstein, & Bot, 2009; Koordeman, Kuntsche, et al., 2011). These studies point to the effect of ‘mirror neurones’, that make people unconsciously imitate behaviour they see (Chen et al., 2005). The effect is more present among men than among women, and is also larger among people who are already drinking a lot (Koordeman, Anschutz, & Engels, 2011; Koordeman, Anschutz, van Baaren, et al., 2011; Koordeman, Kuntsche, et al., 2011).

### **2.5.2 Marketing, social norms & vulnerable groups**

#### **2.5.2.1 Alcohol use as the social norm**

Alcohol advertisements have, as described in the marketing mix, a wider impact on behaviours and attitudes of consumers. For instance, taking into account both the above described mass media marketing actions and the other actions like product placement in soaps, promo-items and sport sponsorship, youngsters especially grow up in an environment filled with pro-alcohol stimuli (Hastings & Angus, 2009). The cumulative impact of these direct references with an abundance of indirect media references (e.g. celebrities using alcohol in music videos) influences not only drinking behaviour but also instigates a definition of alcohol use as the social norm. This particular attitude further stimulates an increase in alcohol consumption. That said, current regulations do not devote a lot of attention to the cumulative effect of marketing campaigns which reach users in different ways simultaneously (Gordon, Harris, Mackintosh, & Moodie, 2009; Hawkes, 2005; Meier, 2011).

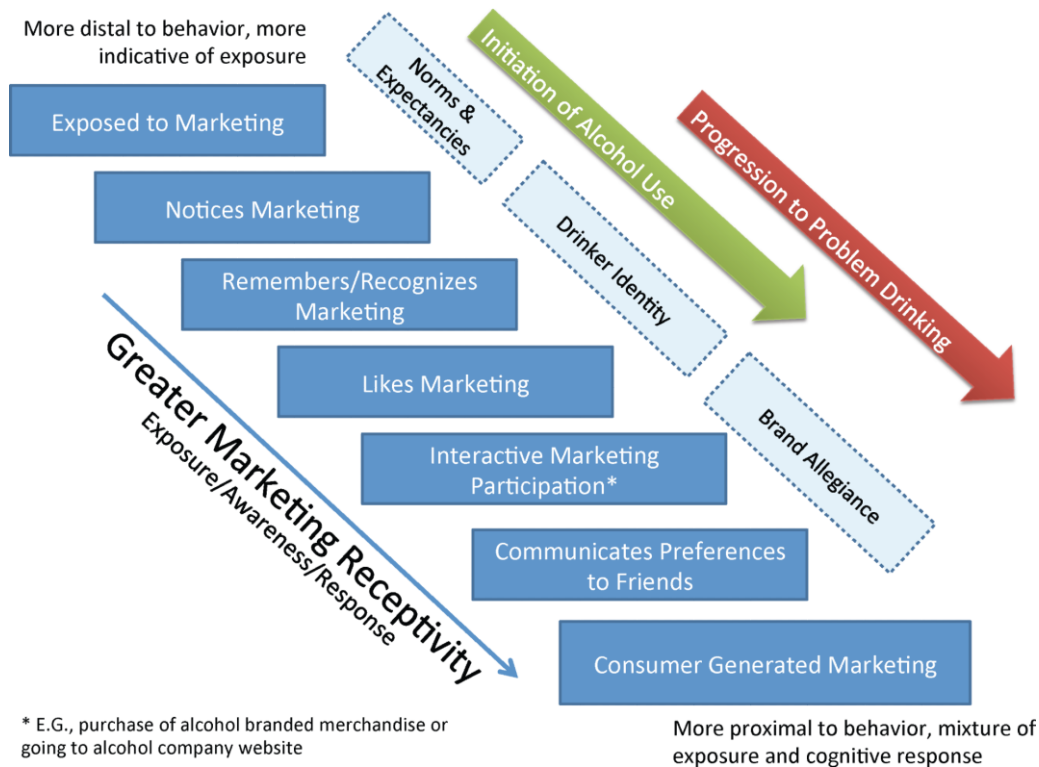
Systematic reviews conclude that youngsters are particularly 'vulnerable' to the 'harmful effects' of alcohol marketing (Babor, Robaina, Noel, & Ritson, 2017). Vulnerability as a concept refers to a certain susceptibility to poor health or illness, which is manifested through physical, mental and social health outcomes and has two manifestations: susceptibility to the effects of alcohol-related harm and the actual effects of marketing.

In general, developmental theory and research strongly suggest that young children are more susceptible to media imagery because they lack the necessary capacity to differentiate commercial advertising from other sources of information. Young children are more susceptible to the effects of alcohol marketing because they do not have the ability to compensate for biases in advertising portrayals and glamorised media imagery (Babor, Robaina, et al., 2017; Brucks, Armstrong, & Goldberg, 1988).

Aside from a cumulative force, receptivity to advertisements seems also the result of a cyclical process. McClure et al. (2013) found that cognitions relating to alcohol use (e.g. identifying themselves as an alcohol user and having a favourite alcohol brand) influence the relation between alcohol marketing and binge drinking among 14 to 21-year-olds in the United States of America. Further empirical research suggests not only that receptivity is cyclical, but also that the relation between alcohol use and advertising exposure is reciprocal rather than unidirectional. For instance, Tucker, Miles, and D'Amico (2013) concluded that experimenting with alcohol use might also incite adolescents to explore alcohol-related content in the media.

The figure below illustrates how advertising receptivity is a continuous process, where adolescents internalise advertisements through cycles of exposure and increasingly adapt their identity (see Figure 4, McClure et al., 2013). This process sets off with initial exposure to advertising and gradually progresses into the development of a drinker identity and brand allegiance, and an increased level of drinking.

Figure 2. Heuristic model of the effect of marketing (McClure et al., 2013, p.13)



### 2.5.2.2 Identity-formation among young people

Youngsters, including minors, are exposed to marketing campaigns on a daily basis (Center on Alcohol Marketing and Youth, 2010; Tricas-Sauras & Garnes, 2013). The alcohol industry is argued to be focusing on these ‘young’ drinkers increasingly, for example by the introduction of cheap products like *alcopops*, alcohol energy drinks, and pre-mixed cocktails. These products are designed and packaged specifically to be attractive to young people (Jernigan, 2001, 2010).

Some advertising campaigns and promotional activities specifically focus on them. These vary from traditional ads to sponsorship and new media (Gordon et al., 2009). A growing number of studies indicate that there is a strong correlation between marketing on social media and the drinking habits of youngsters (Henriksen et al., 2008; Tricas-Sauras & Garnes, 2013). For instance, the study by Tricas-Sauras and Garnes (2013) shows how exposure to marketing to youngsters is associated with an increase in baseline drinking.

Already from a very young age children understand the persuasive nature of advertising (Moses & Baldwin, 2005). Already in the nineties researchers concluded that children who are conscious of alcohol advertising, more often adopt a positive attitude towards



drinking alcohol as well as being more inclined to drink alcohol more frequently once they reach adulthood (Grube & Wallack, 1994). However, in some cases consumers also have difficulties in identifying which drinks contain alcohol. Alcoholic energy drinks are an example of this. These products are more attractive to youngsters because of their taste, combination of ingredients and product packages. An Australian study into AED's (Alcoholic Energy Drinks) concludes that students ( $n = 1263$ ) often do not realise that aside from an energy drink, these products also contain alcohol (Jones, 2011).

Key in this period of time is identity formation. Research indicates youngsters use alcohol increasingly to express their identity (McCreanor, Barnes, Gregory, Kaiwai, & Borell, 2005; McCreanor, Greenaway, Moewaka Barnes, Borell, & Gregory, 2005; Tricas-Sauras & Garnes, 2013). In this period of identity formation minors often mirror the behaviour of young adults, which explains why advertisements aimed at twenty-year-olds also affect fifteen-year-olds (Duijvestijn & De Ridder, 2003; STAP, 2007c).

Aside from a period of growing up, adolescence is also a time of risk taking where social contexts can exert a strong influence (Tricas-Sauras & Garnes, 2013). Use patterns which are established at a very young age can have a negative impact on future health in the long term. Meaningful others can play an important mediating role here (e.g. parents communities, schools, and health care agencies).

Moreover, because their brains are not yet fully developed, youngsters are extra sensitive to advertising (Pechmann, Levine, Loughlin, & Leslie, 2005). Their impulsivity and self-consciousness makes them even more sensitive to choosing the more highly-advertised products but also for choosing those products fitting the image they want to create. Through advertising alcohol as an attractive product that gives immediate pleasure and as something fitting the desired way of life, youngsters are more inclined to use this risky product.

Research further indicates that the alcohol industry is well aware of these effects (McCreanor, Barnes, et al., 2005; McCreanor, Greenaway, et al., 2005; Tricas-Sauras & Garnes, 2013). Marketing strategies use these social theories of identity formation and consumption in their attempt to make consumers see these products as 'acceptable' and 'positive'. These authors do notice that, despite the fact the alcohol industry denies it, health research finds a link between these effects and the profit goals of marketing which

illustrates how new generations are primed and recruited as new consumers (Tricas-Sauras & Garnes, 2013).

An important incentive to further analysis is the fact most data about marketing strategies concerning alcohol is not publicly available. In most countries, companies are not obligated to do so. An exception to this is the United States where all companies in the alcohol industry are obliged to pass through their marketing expenses to the *Federal Trade Commission* (De Bruijn et al., 2010).

## 2.6 Alcohol industry & public health

Self-regulation and social responsibility campaigns (e.g. drink responsibly campaigns, educational messages on products, and age warnings) are two means of the alcohol industry to deal with criticisms about products and the marketing strategy they have developed for them (S. W. Smith, Atkin, & Roznowski, 2006). On the one hand these campaigns create a positive image of the company, on the other hand they communicate the vision of the company considering a social, business or environmental subject.

Research further indicates these campaigns are strategically ambiguous (S. W. Smith et al., 2006). Strategically ambiguous messages are developed to provoke different interpretations by different segments of the market (e.g. women and young people). Though diverse in interpretations, these messages do succeed in creating a universally positive image of the company at stake. These '*private service messages*' then aid in establishing a good reputation of the company among consumers as well as public health advocates and the legislative authorities. At the same time, these messages also communicate topics like brand preference and consumption (Agostinelli & Grube, 2002; Barry & Goodson, 2010; S. W. Smith et al., 2006). They also promote a 'soft approach' for battling alcohol *misuse* without disapproving of alcohol use all together (De Donder, 2014). That said, recent publication campaigns of Jupiler, promoting a new process of brewing that allows all alcohol to be extracted from beer while maintaining a 'beer taste', suggest companies foresee a change in attitude towards alcohol (Anheuser-Busch InBev, 2016). The company sees it as one of the 'immature markets' that is going to be developed in the future. This ambition is articulated in their sales goals: one fifth of the revenue has to come from alcohol-free beer by 2025 (Anheuser-Busch InBev, 2016). That interest is quite widely seen in the reaction of competing companies. For instance, not long after

Jupiler 0.0% was launched, Heineken started to promote 'Heineken 0,0%' (Heineken, 2016). This makes studies into strategical ambiguity that much more crucial.

That said, S. W. Smith et al. (2006) argue that there is no concluding evidence this form of marketing is also successful. There is no evidence that these campaigns encourage responsible drinking and it is more likely that unambiguous messages would be more effective. Similarly, Barry and Goodson (2010) systematically review studies from the nineties and the 2000s, concluding that 'responsible drinking' campaigns are not stating that 'not drinking' is an acceptable choice as well, nor do these campaigns state that alcohol use is never without risks.

Aside from the alcohol industry, researchers themselves seem to define 'responsible' drinking in a multitude of ways (Barry & Goodson, 2010). In their systematic review Barry and Goodson (2010) found 11 articles that zoom-in on the concept of 'responsible drinking'. Though most formulated some sort of definition, there was a wide variety in the way they did so. For instance, some studies talk about blood alcohol concentration or conceptualised that responsible drinking was 'not to drink and drive'. Other studies defined responsible in terms of potential impact on an individual's immediate environment, by avoiding doing damage to family and friends, or looked at the impact on the individual, by examining the effects of intoxication on individual behaviour and actions. To conclude, some studies do not give any detailed definition of 'responsible drinking', although it is the key concept under study.

**Belgian example:** BOB campaigns in Belgium have the Brewers Association as a partner. Respect 16 in Belgium has Anheuser-Busch InBev as partner. In their annual reports they state:

*"Promoting Responsible Drinking InBev Belgium participated in Global Be(er) Responsible Day by organizing a "Feet on the Street" initiative where about 75 colleagues distributed flyers on the responsible use of alcohol in several cities in Belgium. We sampled our Jupiler Force and Hoegaarden 0.0 variants. We launched our Family Talk website that same day. A letter was sent to all employees highlighting the Family Talk program that encouraged parents to talk with their children about drinking and the Employee Assistance Program of Fonds Verhelst. There*

*also was a “Be(er) Responsible Lunchbeat Party” at our headquarters with more than 150 stakeholders, employees of other neighboring companies and the majority of our employees attending the event. In addition, InBev Belgium continued to support the responsible 2012 Global Citizenship Report Belgium 89% 11% continued on other. In addition, InBev Belgium continued to support the responsible 2012 Global Citizenship Report Belgium 89% 11% continued on other side drinking programs such as “BOB”, a designated driver effort, and “Respect 16”, which reminds retailers to sell only to those of legal drinking age. In addition, we launched major “Don’t Drink and Drive” advertising campaigns using our Jupiler NA and Hoegaarden 0.0 non-alcohol brands.” (Anheuser-Busch InBev, 2013)*

Alcohol producers also use other means to show their social responsibility like sponsoring research into the relation between health, science, and prevention (De Donder, 2014). In Belgium, Anheuser-Busch InBev launched a program called ‘Smart Drinking’ in cooperation with the University Hospital (Anheuser-Busch InBev, 2016):

*“In September 2016, we launched our city pilot program in Leuven, Belgium, called Smart Drinking Leuven. With our 3 partners, the City of Leuven, the KU Leuven (university) and the UZ Leuven (academic hospital), we have committed to reduce the harmful use of alcohol, including such practices as binge drinking among students, underage drinking and drink driving, by 10% by 2020. We are conducting a baseline study during the autumn of 2016, which will determine the current status of harmful use in Leuven. This will help us to determine what the most pressing issues are and where we will focus our efforts”.*

In the Netherlands the Dutch Brewers sponsor a website describing the positive health effects of alcohol (<http://www.kennisinstituutbier.nl/overons>). At the European level a similar site is sponsored by the European association of Brewers (<http://beerandhealth.eu/>). This is also the site the Belgian Brewers Association refers to when discussing health (<http://www.belgianbrewers.be/en/health/>).

Other examples include training modules for employees (SAB Miller, 2016) and sponsorship of educational campaigns. Though brands are not directly linked to

campaigns like BOB and Respect 16, both campaigns are funded and the BOB is even developed by the Belgian Federation of Brewers.

## **2.7 Effect of policy measures: volume, content and supporting framework**

### **2.7.1 Volume: limiting total exposure**

Literature has suggested that alcohol consumption behaviour is affected by the cumulative impact of alcohol marketing (Anderson et al., 2009; De Bruijn et al., 2010; Noel, Babor, et al., 2017). Therefore, volume restrictions are regarded as a way to limit the total exposure to alcohol marketing.

#### **2.7.1.1 Partial ban: product, media, time, target group**

Some countries regulate marketing for **specific products** more than other products. For instance, advertisements for strong alcohol drinks are regulated more strictly than alcoholic drinks with a low alcohol content. A differentiation between liquors and other alcoholic drinks at least regulates a proportion of alcohol marketing. This might stimulate the development of further strict regulations of other types of products (Giesbrecht, Johnson, Anglin, Greenfield, & Kavanagh, 2004). That said, some researchers warn that there can be a substitution effect (De Bruijn et al., 2010). For instance, it might lead to an increase in the total volume of alcohol marketing as the focus will be even greater on those low alcoholic drinks.

Many European regulations include a partial ban of specific **types of media**. One can see a substitution effect here as well. For instance, when a ban comprises billboards, marketing agencies simply use a different medium from the media mix. The importance of this type of partial ban might be mainly symbolic as some studies even indicate that a ban on billboards actually led to an increase in sales of wine and liquors (Frank, 2008; Nelson, 2003).

Further partial limitations include watersheds or time bans (Ross, De Bruijn, & Jernigan, 2013), that for instance restrict broadcasting advertisements at specific times in the evening (for instance when a lot of children are expected to watch television) (De Bruijn et al., 2010; Hawkes, 2005). As with the above-described forms of partial bans,

watersheds are characterised by substitution effects. After the set time, there is a disproportionate amount of alcohol advertising (Ross et al., 2013). Research indicates children tend to watch television after the time ban (De Bruijn et al., 2012; McGee, Ketchel, & Reeder, 2007; Ross et al., 2013). Time bans seem to work to limit exposure to alcohol advertising to very young children but lead to overexposure among teenagers. A study applying a simulation model shows nicely that if a time ban is set at 9 or 10 pm, often teenagers (aged between 12 and 17) watch television after 9 or 10 pm and are then overexposed to alcohol advertisements. The numbers did not decline when the ban was pushed to 11 pm. A time ban only seemed to limit exposure to alcohol advertising of 6 to 11 year olds (De Bruijn et al., 2012; Ross et al., 2013).

Critics further indicate that this ban is often only limited to the actual advertisement and not for broadcasting of alcoholic products via product placement (Babor & Caetano, 2005; Monteiro, 2007). Furthermore, this type of ban is very difficult to enforce and is questioned from an ethical viewpoint as it limits the freedom of expression (De Bruijn et al., 2010). That said, when coupled to a ban on alcohol sponsorship on television, it might help to limit overexposure to alcohol advertising among minors (De Bruijn et al., 2010).

Other ways to limit overexposure to alcohol advertising is a ban on reaching specific **target groups**. These target groups are sometimes delineated in self-regulations (Babor & Caetano, 2005). They include vulnerable groups like minors and adolescents who are particularly receptive to alcohol advertisements, but also for instance pregnant women. Target groups are defined either by defining a public or by limiting the location of advertisements.

Schools can be part of a limitation in locations where advertisements are allowed (e.g. no billboards close to schools). Here as well a substitution effect is at play, as there seem to be a disproportionate number of billboards just outside the boundaries of the zones. For example, in Chicago for instance the demarcation line is at 300 feet (about 150 m), but if it would be 1000 feet (about 300 m) about 49% of all billboards would have to be removed (Hackbarth et al., 2001; Hawkes, 2005).

Target populations are restricted by what percentage of the 'vulnerable' public (e.g. minors) is allowed to be exposed to alcohol advertising (De Bruijn et al., 2010; De Bruijn et al., 2012). In that case, it is deemed acceptable to expose a certain number of minors to

alcohol advertising as long as a sufficient part of the public consists of adults. The total % should be proportionate to the total % of minors in a specific country, and not just a random limit. If not, the absolute number of people reached remains higher in one country than in another. In the Netherlands the criterion is set on a public comprising 25% minors; while in other European countries the accepted public is 30% (De Bruijn et al., 2012). The 30% threshold is based on the United States population where the total population includes more minors than in European countries (De Bruijn et al., 2012). This means that in principle the threshold in Europe should be lower for it to reach a proportionate number of minors. Researchers in the AMMIE-project therefore suggest working with a proportionate standard. For instance, 13 to 17 year olds are exposed to two thirds of all alcohol advertisements. In Europe (EU-27) this group is not 30% of the total population but only 6.6%. A more proportionate standard would then be 7%. For the five countries participating in the AMMIE-project proportionate standards should be set at 6% (Bulgaria, Germany), 8% (the Netherlands, Denmark) and 5% (Italy).

The Dutch Institute for Alcohol Policy further indicates that it is difficult to assess when a public that consists of 'less than 25% minors' is reached (STAP, 2007c). The exact way the definition is formulated is crucial. There is more room for manoeuvres by the alcohol industry if the definition talks about 'reaching' a public rather than 'aiming' for a public. For example, in case of an event or advertisements in a magazine, it is very difficult to evaluate whether the public *reached* comprises 25% minors or fewer. Formulated as such, an advertiser is free to *aim* for a public, as long as the public *reached* includes more than 25% adults and the threshold is not breached.

### 2.7.1.2 Complete ban

A partial ban in itself can decrease the total volume on alcohol advertising on the condition the ban is not merely symbolic and any substitution effects (like switching type of media) or unwanted side effects (like a lowering in price) take place (De Bruijn et al., 2010). Some countries adopted a complete ban on any type of alcohol advertisement. That said, in those countries this does not necessarily affect drinking behaviours as countries with strict regulation tend to have a lower percentage of alcohol consumers and less alcohol related problems to begin with (Babor & Caetano, 2005).

In their systematic review, Anderson et al. (2009) discern several arguments in favour of

a total ban:

- Advertisement for tobacco is prohibited. Some argue that only excessive use of alcohol is associated with harm, while tobacco causes harm no matter what amount is consumed. Studies indicate that risks for creating harm are present from the first consumption on.
- Alcohol tricks the brain. Alcohol is overvalued by our brain, so our brain will tell us we need more aside from any possible subjective or objective advantage.
- Advertisements for alcohol drinks strengthen the desire to drink.
- Advertisements for alcohol drinks increase the number of young drinkers.
- Evaluation studies predict advertisements have an impact on health and health costs (see also (Anderson, 2009; Anderson & Baumberg, 2006)).

Despite these arguments, most so-called 'total bans' do include some exceptions. For instance, in Norway in principle all alcohol advertisements are prohibited (see further below the Case Studies). However, foreign TV-broadcasts, which have to comply with the regulations in the country of their origin, and foreign magazines, if it is not their main aim to sell alcoholic products in Norway, are allowed to advertise alcoholic products (De Bruijn et al., 2010).

Moreover, a total ban does not mean youngsters are no longer reached by advertising. It is for instance very difficult to assess which online advertisements reach Norwegian youngsters specifically. User-generated content such as on Facebook is difficult to control as well. Some companies tend to go around the ban by printing parts of their slogans e.g. Carlsberg sponsors soccer teams. Instead of putting "Probably the best beer in the world" on the shirts, they put "Probably" in the lay out of the advertisement. Judicially this is allowed, but a lot of people associate this specific word with the beer brand (De Bruijn et al., 2010). Editorials in magazines are also difficult to assess: they are allowed as 'long as the alcohol industry does not sponsor them'. This is very difficult to ascertain.

A comprehensive ban should be statutory, as self-regulation does not work, and at least at the European level. Research indicates there is public support for more strict regulation (Anderson et al., 2009). Moreover, European *case law* is in favour as well (e.g. a ruling about British advertisements that cannot be broadcast on French television ("Bacardi France SAS v. Télévision française 1 SA en Groupe Jean-Claude Darmon SA & GiroSPORT



SARL, Zaak C-429/02, [2004] E.C.R. I-6617," ; "Commissie van de Europese Gemeenschappen & Verenigd Koninkrijk v. Frankrijk, Zaak C-262/02, [2004] E.C.R. I-6598,"). EUCAM (2011) pleads to work towards statutory regulations to limit the total volume of marketing. This ban should be comprehensive in the sense that advertisements as well as sponsorship and promotional artefacts should be addressed. This avoids a shift in types of media used in marketing strategies.

Moreover, for regulations to include new media one needs more comprehensive regulation than exists at present. As discussed below, for now there is but the Recommendation of the European Council of 2001 and the *Audio Visual Media Services Directive*. Though the AVMSD is binding for the member states, these regulations only include traditional media, and in case of the AVMSD it only includes television.

### 2.7.2 Content restrictions

Most regulations are quite vague on the issue of content restrictions. It is seen as an effective way to restrict alcohol marketing but what is meant by content is left a little vague. France and Sweden are the only countries which utilize strict content regulations (De Bruijn et al., 2010). The French Loi Evin for example is often put forward as a good example (Rigaud & Craplet, 2004). This law does not prescribe what is prohibited but lists what is allowed: only objective product information. This includes: alcoholic percentage per volume, origin, name product, contact data, way of production, sales condition and methods of use. A second marketing law regulates the sale to minors in gas stations, happy hours and the issue of free alcoholic drinks. Moreover, alcoholic drinks can only be advertised in magazines or television programmes that target adults (see further below Case studies).

De Bruijn et al. (2010) give some further suggestions of 'ideal' content regulations:

- Address all elements which are known to be attractive to young people (e.g. images of life styles and humour).
- Limit advertisements which youngsters find 'attractive' event though they are not aimed at minors specifically, as well as all advertisements that are aimed at minors (even if they are aimed at adults as well).
- Are evaluated according to the interpretation of the youngster and not according to the interpretation of the advertiser (e.g. only objective product information).

- Include an obligation to add health warnings.

Though content regulations as in the Loi Evin seem to be formulated in a uniform way, and are thus seemingly not open for different interpretations, they are challenged in different ways. For instance, in France the wine lobby attempted to avoid the ban by getting wine to be recognised as food and not as an alcoholic drink (Boella, Legrand, Pagnon-Maudet, Sloan, & Baumann, 2006).

Other difficult issues include difficulties in assessing the link between alcohol consumption as portrayed in the advertisements and social and sexual success (STAP, 2007c) and the issue of humour. Complaints about humorous ads, though often very attractive to youngsters, are often rejected because humour makes it particularly difficult to interpret the regulations in a strict way (Hondebrink, 2006; STAP, 2007c).

Babor et al. (2010) discuss the effect of codes on advertising content.

### **2.7.3 Support system: regulating context**

### **2.7.4 Self-regulation vs statutory regulation**

The regulatory framework for alcohol marketing typically takes one of three shapes: statutory regulation, self-regulation or co-regulation (Anderson, 2007). First, statutory regulation means policy is embedded in law and issued by the national government. Second, self-regulations include voluntary codes of practise, statutes or guidelines. In this case the regulatory framework is developed by the industry rather than the government. This does not mean involvement of the government is entirely lacking (e.g. government is still responsible for enforcement). Third, co-regulation refers to those frameworks where regulations are developed, administered and enforced by a combination of government agencies and industry bodies.

The alcohol industry is not in favour of volume restrictions. Self-regulation codes for instance almost solely focus on content restrictions (De Bruijn et al., 2010). If there is a form of volume restrictions then most of the time these involve a partial ban in the form of restrictions of targeted groups and not the total volume (Babor & Caetano, 2005). It is important to regulate the volume as well as the content of alcohol advertisements (Van Dalen, 2011). Statutory regulation often includes volume restrictions, for example in the form of a product restriction (e.g. no advertising of spirits) or a time ban (Van Dalen,

2011). This form of regulation is often more severe than forms of self-regulation. That being said, there is for example in Norway very comprehensive legislation, but often restrictions remain too partial and have loopholes. The French legislation is also not yet evaluated (Casswell, 2012).

Self-regulation is used to safeguard the freedom of expression of advertisers (STAP, 2007c; Van Dalen, 2011). Most of these regulations contain mainly content restrictions, and generally less attention is paid to volume restrictions (except for example, a target group criterion). In the Netherlands such a system is currently the main way of regulating alcohol marketing. Self-regulation is inherently partial, and sometimes reversed in times of economic downturn (Hill & Casswell, 2004). Self-regulation was developed to 'beat' the law (Babor et al., 2013; Casswell, 2012). Self-regulation increased mainly in the 1980s – 1990s (Casswell, 2012). Self-regulation often does not include sponsorship or new media (Casswell, 2012).

The global alcohol industry plays an active role in shaping policy around alcohol. However, there is a presumption that these activities actually aim to prevent the development of an effective alcohol policy because this policy would adopt a health perspective and thus go against the commercial interests of the companies (Babor et al., 2013). Dr Chan (2013), Director-General of WHO, argues for instance, that according to the WHO, companies actually should play no role in the development of an alcohol policy from a health perspective. Chan (2013) refers to what happened in the tobacco industry, noting that 'big alcohol' fears regulation and utilises all sorts of strategies (e.g. advocacy groups, promises of self-regulation, litigation, industry-sponsored research, gifts, and grants) to be engaged by the industry as 'respectable' towards the general public.

Pure self-regulation is not effective. It is assumed to be responsive to changes in the market, but that seems not to be the case. There is also no independent assessment (Alcohol Concern, 2013; Anderson, 2009; Babor, Jernigan, Brookes, & Brown, 2017; Hastings et al., 2010). This system is not effective in protecting young people from exposure to alcohol (Anderson, 2009; Casswell, 2012; STAP, 2007c). Self-regulation is often insufficient because it creates a conflict of interest when economic actors are expected to impose restrictions on their activities (De Bruijn et al., 2010; De Bruijn et al., 2012). A proportional standard, such as thresholds of target audiences, are problematic because monitoring compliance with these threshold is difficult: monitoring should be

independent, to follow the evolution of the target audience is difficult because of the amount of data, monitoring currently only happens if the damage is already cause, and there is no effective sanction and no legal backstop. In response to these criticisms, some forms of co-regulation were developed (Casswell, 2012).

Self-regulation, co-regulation, and local regulations must be in accordance with national legislation. In other words, self-regulation with a legal backstop is more effective. Research indicates that self-regulation works most effectively when there is pressure from the government and society, and the threat of lawsuits is great, and much less effective if there is little pressure (Hawkes, 2007). If self-regulation is not effective then these legal backstop are even more important. De Bruijn et al. (2010) refer to a roundtable at the European Advertising Alliance where it was stated that the ultimate legal mechanism is required where self-regulation fails. The responsibility is placed on national authorities for their development (DG Health and Consumers, 2008).

In practice most regulations are applied to a national context while marketing practices are not bound by national borders. Most regulations, however, do not discern between domestic and foreign products. This can create conflicts between national and international trade agreements. International trade agreements often have commercial priorities, rather than health priorities. In addition, self-regulation does not prohibit cooperation with foreign investors. Consequently, it is suggested that international trade agreements would allow for exemptions when these are in the interest of public health. This would make it possible to limit or regulate alcohol and alcohol marketing (De Bruijn et al., 2010). These are a number of areas at the European level where the need for a more harmonised policy is expressed (Baumberg & Anderson, 2008; De Bruijn et al., 2010).

### **2.7.5 Characteristics of an effective policy: framework of De Bruijn**

To create an effective policy, this policy should have **wide support**. It thus should be supported by all stakeholders. Especially in the case of self-regulation or co-regulation, De Bruijn et al. (2010) emphasize that previous research shows all parties should be involved, both producers and retailers and other places where alcohol products are manufactured, distributed or sold. In the case of self-regulation, the representation of the advertising industry is also of great importance. Research shows that this increases the effectiveness of self-regulation. To balance the commercial interests, it is also important

to involve public health advocacy groups. Finally, decision makers can play an important role in coordinating, stimulating and improving things.

De Bruijn et al. (2010) suggest also taking a wider view. Thus, academic organizations and round tables (see above) could contribute to the creation of a common platform. The customer also plays a role. Based on a systematic review of 110 peer-reviewed articles, the researchers propose involving organizations representing customers' interests, as well emphasising research which indicates that all forms of marketing communications, including packaging, must start from how the customer receives the message (Jackson, Hastings, Wheeler, Eadie, & MacKintosh, 2000).

The second key element is **transparency**. De Bruijn et al. (2010) cite European sources which highlight the importance of developing a transparent policy which informs the public at every stage of the legislative process. Even when there is co-regulation and self-regulation, it is important that the part played by the industry regulation is transparent. A review of different regulation models in Europe illustrates that there is a lack of transparency in most countries (STAP, 2007b). This way, the consumer obtains and retains a higher level of confidence.

Third, **pre-screening** procedures should be part of any effective system because monitoring makes little sense especially in the case of self-regulation because the damage is already done (De Bruijn et al., 2012).

Pre-screening, referring to screening advertisements before they are publically shared, has advantages for consumers as well as the alcohol industry (De Bruijn et al., 2010; Hawkes, 2005). On the one hand, children are better protected against misleading or deceitful campaigns. On the other hand, companies profit from this because advertising companies know the job the alcohol industry requires them to do adheres the regulations currently in force.

There are two systems of pre-screening (DG Health and Consumers, 2008):

- *Copy advice*: does not include any obligation, either to initially request or to follow the proposed directives.
- *Pre-clearance advice*: it is obligatory to seek advice on an advertisement, before it is broadcast or published, in order to find out to what extent the advertisement conforms with the statutory or self-regulation. This then includes an initial

obligation.

Fourth, an **effective complaints system** which is open to the public is crucial because effective regulation is driven by complaints. Research and round table talks further indicate this openness is particularly important for vulnerable groups, who might consider advertisements in a different way from other groups. Therefore, clear instructions on how to use this system are key (De Bruijn et al., 2010; DG Health and Consumers, 2008; Hawkes, 2005).

An evaluation of STAP (2007c) found self-regulation codes tend to use many vague concepts. For example complaints about 'reaching minors' are often rejected because it cannot be adequately demonstrated that these advertisements are 'attractive' for minors 'specifically'. The example discussed above about the use of terms like 'reach' and 'aim' applies here as well. Another example includes the relation of sports and alcohol. In the original code it was stated that there should be 'no relation whatsoever', and in the current code it states that there should be 'no suggestion of enhancing sporting success'. Despite the vagueness of these concepts, complaints bodies tend to interpret these concepts strictly. For instance, many complaints are rejected because the advertisement cannot be shown to link alcohol to social or sexual success. Only when alcohol is actually consumed in the advertisement is the relation demonstrated adequately. Most of the times, however, actual alcohol consumption is not portrayed during the broadcast or in the publication of the advertisement.

The AMMIE-project evaluated the effectiveness of the complaints system in five countries (Bulgaria, the Netherlands, Denmark, Germany and Italy) (De Bruijn et al., 2012; Van Dalen, 2011). To explore how complaints about the attractiveness towards minors were dealt with, the researchers submitted complaints to the jury as well as a youth panel. The test focused on self-regulation. A panel of 150 youngsters could indicate via an online score system to what extent they for example thought certain advertisements were attractive to them and their friends, or to what extent they got the impression that these advertisements refer to sexual, commercial or sporting success. By doing so, it could be established how youngsters actually interpret these advertisements, rather than relying on the initial intention of the advertiser.

Issues that stood out in the youth panel's judgement:

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- Many complaints were rejected (De Bruijn et al., 2012; EUCAM, 2013; Van Dalen, 2011) but the youth panel and the committee often had different opinions. The members of the youth panel evaluated more advertisements as attractive than the committee (EUCAM, 2013).
- Humour is often not included in self-regulation (EUCAM, 2013). However, for the youngsters this aspect played an important role in their evaluation as to what advertisements they did or did not find attractive. The Danish committee sees humour as a *mediating* factor and not a *strengthening* element, therefore they did not take it into account in their evaluations (De Bruijn et al., 2012; Van Dalen, 2011).
- The reasons for rejection often have to do with the specific formulation of the self-regulation (EUCAM, 2013). In Germany as well as the Netherlands the findings indicated that the regulation 'specifically oriented towards minors' is interpreted in a very strict way. In both countries complaints were often rejected because the specific advertisements were aimed at 'adults as well', so not 'only' to youngsters (De Bruijn et al., 2012; Van Dalen, 2011).
- The Dutch committee also interpreted the link between alcohol consumption and commercial or social success very strictly, only when a *causal* link to the actual consumption of alcohol was shown, is a link is considered to exist. The mere *association* did not lead to rejection (De Bruijn et al., 2012; Van Dalen, 2011).
- Many advertisements contain elements belonging to youth culture (EUCAM, 2013). Italian researchers describe the use of cartoons. Even if the committee argues that the cartoon used is not part of 'youth culture', the youth panel disagrees and indicates elements of it (sex, irony, and originality) make the advertisement attractive. They are also aware of the fact product information can be misleading. Social contexts, for instance parties, are also considered by the youth panel members as very attractive (De Bruijn et al., 2012; Van Dalen, 2011).

Alcohol Concern (2013) reports on the conclusions of the *Youth Alcohol Advertising Council*, a group of 16 to 19 year olds who are members of the NGO and aim to give a face to the debate. This group, like the youth panel in the AMMIE-project, evaluated advertisements and the way the complaints system deals with them. A number of important weaknesses were reported:

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- The system is *after the facts* and slow. Complaints can only be made once the advertisement is broadcast/published.
- No meaningful punishments or deterrents.
- Little control on internet advertising.
- The code is interpreted too literally, interpretations in the *spirit of the regulations* are rare.

Fifth, advocates of, as well as opponents to, self-regulation are in favour of establishing an **independent advisory committee** where for instance consumers are represented as well (A. Brown, 2006). For instance the *Federal Trade Commission* in the US states that self-regulation can only be effective if an independent third party judges the complaints (Giesbrecht et al., 2004). This body must then deal with complaints from other companies as well as those brought forward by individuals. According to some, this body should replace the existing committees that were established by the alcohol industry because they are not deemed *independent* (Jackson et al., 2000).

It is also important to include experts in public health to ensure the way the targeted public perceives the advertisement is the basis for judgements. Often members of the committee, even without relations to the alcohol industry, have more commercial interests rather than an interest in public health (Hill & Casswell, 2004). As it is the goal to protect consumers, the public health perspective should be part of it.

Sixth, imposed **sanctions** and the threat of sanctions might lead to more *compliance*, but it is important that these sanctions are also **effective**. For instance, advocates of self-regulation argue bad publicity can be a good sanction. However, de De Bruijn et al. (2010) equally point out that 'bad publicity is publicity anyway', and in this case it's even free publicity. For instance, an image of 'rebellious youth' might even be strengthened that way. Another sanction might have to do with restrictions considering broadcasting (e.g. UK) (De Bruijn et al., 2010). These restrictions then might be put forward as a necessary condition to obtain a license. As a counter-reaction, investors in broadcasting companies started to invest in 'pre-screening' methods (A. Brown, 2006).

The European Advertising Alliance suggests inviting advertisers who do not comply with existing codes to a hearing and, if they continue not complying, to make it possible to prosecute them through the legal system (DG Health and Consumers, 2008). The



minimum sanction, according to the Alliance, should be revoking the right to advertise. Financial sanctions, in this case fines, are in this option not effective because companies pay these willingly. Based on the experiences with the tobacco industry, revoking the right to publish is more effective than imposing financial sanctions.

Seventh, research often indicates that continuous **monitoring** is essential, and in many cases there is no such system in place (De Bruijn et al., 2010). Existing literature points towards some elements that are key in developing an effective system. Monitoring:

- Is performed by an body independent of any commercial interests (governmental or non-governmental) (Jackson et al., 2000; Monteiro, 2007).
- Is done routinely and systematically and should include the volume as well as content of alcohol marketing (Jackson et al., 2000; Monteiro, 2007).
- Encompasses 'unmeasured' types of alcohol marketing like, for example, 'below-the-line' promotions (e.g. sales) and online marketing (DG Health and Consumers, 2008; Jackson et al., 2000).
- Takes place at different levels. The local level might have more political strength and complete the national level (Alaniz, 1998; Gallet, 2003).
- Relies upon trustworthy information, collected by an independent and adequate institution. This requires access to marketing data by third parties (e.g. government, academic institutions or civil society). Companies could be obligated to do so by this institution, much like the Federal Trade Commission in the US (Henriksen et al., 2008).

### 2.7.6 Comprehensive and flexible

Regulations should be **comprehensive**, so advertisers cannot find loopholes, **but also flexible** so they can quickly be adapted to new situations (De Bruijn et al., 2010). This can be achieved through self-regulation as well as co-regulation. The European Commission also calls for flexible and constantly adaptable legislation.

The credibility of the regulations depends on how they react to new developments (de Bruijn, 2010). For example, the use of new media and 'below-the-line' types of marketing are a challenge. The use of advertising via computer games, social networking sites, chat rooms, blogs, the emerging 'buzz marketing' and 'word-of-mouth' is difficult to monitor because there is little to no access to the necessary data. Additionally, in online marketing

there are many additional partners aside from the advertiser and the producer. For instance, consumers also generate content but sanctioning these non-traditional marketers can be problematic.

Substitution effects as a result of volume restrictions complicate developing a regulatory framework as these effects tend to differ from country to country (De Bruijn et al., 2012). Similarly, defining an appropriate threshold for 'over-exposure' is difficult as delineating an appropriate audience depends from country to country. Target audiences are often defined in relative terms, while De Bruijn et al. (2012) points out that reaching a high absolute number of for instance young people, is deemed 'acceptable'.

## **2.8 Belgium: overview of regulations**

### **2.8.1 European regulation of alcohol marketing**

There is a lack of international regulation, although regional cases tend to respect national decisions. As a result, especially internet marketing is very difficult to follow. This is a big difference from the case with tobacco. In 2009 there was an attempt to incorporate online marketing in the Loi Evin, but this failed (Brailon & Dubois, 2009; Casswell, 2012).

In 2001 a European recommendation mentioned alcohol advertising should not be attractive for minors (Van Dalen, 2011). More specifically, Member States were called upon to ensure that producers do not make alcoholic products aimed specifically at minors and to ensure that advertisements are not attractive to these minors (Council Recommendation N° 2001/458/EC):

- No references to youth culture (e.g. characters, motifs or flavours).
- No allusions or images that show the consumption of drugs or other harmful substances (e.g. tobacco).
- No children, adolescents or young (or young-looking) models portrayed in the marketing campaign.
- No links with violence or antisocial behaviour.
- Not involving social, sexual or sporting success.
- No encouragement for children or adolescents to start/continue drinking alcohol (e.g. by offering cheap alcohol to adolescents.).
- No advertising during or sponsorship of sports, music or other events where a

significant number of children and adolescents participate or are part of the public.

- No free distribution of alcohol to children and adolescents. This includes not selling or distributing free samples to promote alcohol consumption which are specifically attractive to children and adolescents.

The Audio-visual Media Services Directive of 2010 includes rules on the content of advertisements on radio, TV and as well as online TV. The formulation of the regulations is similar to those of the European recommendation (Van Dalen, 2011). Article 22 of the old Audio-visual Media Services Directive (AVMSD) formulates these regulations as such (AMSD, 2010/13/ EU):

*Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:*

*(a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;*

*(b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;*

*(c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;*

*(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;*

*(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;*

*(f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.*

## **2.8.2 Self-regulation: Covenant**

### **2.8.2.1 Partners, definitions and evolution**

On the 12th of May 2005, a self-regulation code between the alcohol industry, consumer organisations and the government was adopted. There have been attempts to give this code a legal base, for instance by proposing to add them to article 7bis of the Consumers Law of January 24 1977, but up to now these attempts have failed (see further in the

discussion of the Belgian case).

The partners in the self-regulation code, further referred to as the covenant, are the alcohol industry (represented by the Belgian Federation for Wine and Spirits and the Belgian Brewers Federation), a trade organisation (Fedis), hotel-restaurant-pub organisations (Patron Federation of Professional Restaurant holders, Fed.Ho.Re.Ca Brussels/Wallonia/Flanders), the Jury for Ethical Practices considering Advertisements and consumers' organisations (OIVO and Test-Aankoop). The original code was renewed on 25th of January 2013 and signed by the Belgian Brewers federation, the Belgian Federation for Wine and Spirits, COMEOS, the federations of hotel-restaurants-bars, consumers' organisations (OIVO, Test-Aankoop) and the Minister of Public Health, Laurette Onkelinx. The changes took effect as of the 25<sup>th</sup> of April 2013.

The code defines advertisements as well as 'an alcoholic drink'. As such, advertisements are any "communication which directly or indirectly aims to improve the sale of alcoholic drinks, regardless the place or the means of communications used". The restrictions included in the covenant are applicable to any drink containing more than 1.2% alcohol by volume (abv). The new covenant defines beverages as alcoholic beverages when they contain more than 0.5% abv.

### **2.8.2.2 Content regulations**

Content regulations are formulated as restrictions. This means that the regulation starts from the idea that alcohol marketing is allowed, but that its content cannot refer to or imply a range of predefined topics. The overview below illustrates what advertisements should not do:

- Inciting irresponsible, excessive or illegal consumption or encourage this (art. 3.1); criticise another drink or abstinence, sobriety or moderate consumption (art 3.4); propose a high alcohol content as a quality. The alcoholic content may only be given for informational purposes and such information should be clear and precise so as to avoid any confusion with non-alcoholic products (art. 10).
- Show that alcohol consumption leads to social or sexual success. In the original version of the covenant it was explicitly permitted to associate a welcoming atmosphere with drinking alcohol as is indicated in art. 3.3: *"Advertisements can portray a pleasant and welcoming atmosphere which is associated with consuming*

*alcohol*". In the new covenant, an extra article was added specifying that alcohol advertising must not suggest that alcoholic beverages are a necessary condition to obtain a happier everyday life or to create a festive atmosphere (art. 3.5).

- Link alcohol use and improving health (Article 6.2); refer to favourable psychological and physical effects caused by drinking alcohol (art. 3.2); refer to a recommendation or approval of a physician, make references to medical or paramedical professions, or portray people wearing medical clothing, situate people in a medical setting, or display medical attributes (art 6.1); argue that alcoholic beverages mitigate or prevent particular diseases (art 6.4).
- Link alcohol with an active participation in traffic (art 7).
- Establish a positive link between the consumption of alcoholic beverages and positive job performance (art. 8).
- Show that the consumption of alcoholic beverages affects athletic performance positively (Article 9).

### **2.8.2.3 Volume regulations**

The self-regulation code also includes forms of volume restrictions: limitations of locations for advertisements and limitations for showing advertisements to certain target groups (i.e. pregnant women; minors) and a very limited time ban. In addition, educational slogans are requested.

As will become clear below, many of these volume restrictions also include further regulation of the content (e.g. marketing communications addressing minors). Again, the regulations are formulated in a negative sense, advertisements for alcoholic beverages should:

- Not be placed in social institutions, health and work premises, with the exception of catering establishments (art 2.2).
- Not be shown 5 minutes before and 5 minutes after a TV show primarily aimed at minors (art. 11.2) or integrated in newspapers and magazines focused on minors (art. 11.2).
- Not be part of a screening in a movie theatre IF the movie is aimed at an audience consisting largely of minors (art. 11.2). The original covenant used the term 'children', the new covenant talks about 'minors'.

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- Not be advertised through providing free samples or for a symbolic price on the public road (art. 5.1). In the previous code, this was restricted to minors, in the new code it applies to all ages.
- Should be clearly presented as for sale. Each potential confusion, mainly with regard to the minor consumers, should be avoided, if possible, by making use of a physical separation (art. 5.2).

Aside from being part of restrictions the code also includes content restrictions specifically dealing with a target audience, namely **minors**. Accordingly, alcohol advertisements aside from the above restrictions cannot:

- Be aimed at minors, nor its contents or the form of communication (art 2.1, art. 4.1) encourage minors to purchase alcoholic beverages (art. 4.4) or directly encourage them to persuade their parents or others to purchase the advertised alcoholic beverages (art. 4.6).
- Portray minors or persons who seem minors (art. 4.2).
- Portray abstinence as a sign of immaturity (art. 4.3).
- Use drawings or marketing techniques referring to characters who are particularly popular or in vogue among minors as well as drawings or marketing techniques that include images or statements that are mainly part of youth culture (art. 4.5. ).
- Exploit the special trust minors place in parents, teachers or other confidants (art. 4.7).
- Present alcoholic beverages as a means to overcome dangerous situations (art 4.8).
- Must not be aimed at pregnant women (art. 6.3).

To conclude, the original code stipulated that advertisements in newspapers, magazines and periodicals, as well as advertising through posters, television, cinema, radio or the Internet must be accompanied by an **educational slogan**, "*Please drink our craftsmanship responsibly*" or "*Beer brewed with love, to be consumed with care.*" (Article 11.1). Striking in the new text is that digital media are explicitly mentioned as media in which the educational slogan must be included. A final change adopted in the new code is that the text in article 11.1 is extended with the phrase "*and any other advertising*". This means basically that all advertising material must be provided with the educational slogan.

### 2.8.3 Statutory regulation

The law of January 24, 1977 on the protection of the health of consumers of food and other products (the 'Consumer law') states in Article 7§2 that the King in the interest of public health may prescribe rules and injunctions on advertising alcohol and alcoholic beverages. This article was added in November 17<sup>th</sup> 2006 and provided a possibility to create a legal framework for the marketing of alcoholic beverages. As the Council of State herein gave a negative opinion on July 1, 2013, to date the self-regulation code is still the main document for regulation.

Additionally, some decrees developed at the regional level also include provisions directly or indirectly addressing advertisements for alcoholic beverages. For instance, the *Dekret über [die audiovisuellen Mediendienste] und die Kinovorstellungen* of 27 June 2005 regulates radio broadcasting and movie projections. Article 6.1 of this decree stipulates that audio-visual communications about alcoholic beverages should not be aimed specifically at minors and should not encourage immoderate consumption of these beverages.

The Flemish decree concerning radio and television broadcasting of 27 March 2009 (the so-called "Media Decree"), last changed on April 25 2014, contains some specific provisions on alcohol advertising (Flemish government, 2009). This decree regulates broadcasting of private channels approved by the Flemish community and the broadcasting of the public radio and television broadcaster of the Flemish Community (VRT). As a rule, the public broadcaster may not broadcast advertising on television. However, admitted are promotional spots for, inter alia, its products and programs, short sponsor mentions of program sponsors around programma's<sup>44</sup> and Messages of General Nut<sup>45</sup> (Flemish regulator for the media, 2013c).

Article 68 of the decree restricts the content of alcohol advertising as follows:

- Not aimed specifically at minors or show underage alcohol use.
- Not link alcohol consumption with an improvement in physical performance or driving.
- Not create the impression that alcohol contributes to social or sexual success.
- Not suggest that alcohol has therapeutic qualities or that it is a stimulant, sedative or has a stress reducing effect.

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- Not encourage immoderate consumption of alcohol or put abstinence or moderation in a negative light.
- Not emphasise high alcoholic content of beverages as a positive attribute.

The decree also contains volume restrictions specifically focusing on children's programs:

- Alcohol is not allowed on Ketnet (the children's channel of the public broadcaster (Flemish regulator for the media, 2013a)).
- Alcoholic advertisements should not be shown during commercial breaks before and after children's programs on radio and television (Art. 83, Art. 89).
- No sponsor may be mentioned within a period of five minutes before and after children's programs on the television broadcaster of the Flemish Community (Art. 92).
- Children's programs may not be interrupted by advertising and teleshopping (art. 80).
- Children's programs as a whole may also not be sponsored by the alcohol industry (art. 94).
- Product placement (include or reference to a product, service or brand fee) on television is not allowed in children's programs of the public broadcaster of the Flemish Community (VRT). The Flemish Government can extend this ban to the children's programs of other broadcasters (Flemish regulator for the media, 2013b).

The decree also contains further content restrictions for the protection of minors (but not specifically for alcohol) (art. 72). Commercial communications to minors must not cause moral or physical harm. They may not do following: directly exhort minors to buy a product or service or rent by exploiting their inexperience or credulity; directly encourage them to persuade their parents or others to purchase the advertised goods or services; unreasonably show minors in dangerous situations; exploit the special trust minors place in parents, teachers or other persons.

The *Decree coordonné sur les services de médias audiovisuels* of October 17, 2013 regulates alcohol advertising in the audio-visual media in the French community. Article 16 provides that the services which broadcast advertising of alcoholic beverages (radio and TV) should provide free airtime for advertising of the government which should be



devoted to the broadcasting of campaigns for health education (Collard et al., 2013):

*“Les éditeurs de services qui diffusent de la publicité en faveur des médicaments et traitements médicaux ou en faveur des boissons alcoolisées doivent mettre gratuitement à la disposition du Gouvernement, selon des modalités à convenir après concertation avec les éditeurs de services concernés, des espaces publicitaires destinés à la diffusion de campagnes d'éducation pour la santé, égaux à ceux consacrés à la publicité en faveur desdits produits ou services”*

Further, in the *Quatrieme contrat de gestion de la RTBF (2013-2017)* stricter rules set for the French-language public broadcaster RTBF are included (Collard et al., 2013). More specifically article. 72.2 prohibits advertising and sponsorship of alcoholic beverages above 20% abv while article 72.5 prohibits advertising and sponsorship in the period five minutes before and five minutes after programs aimed at children under 12 years.

### **2.8.4 Complaints system**

#### **2.8.4.1 Self-regulation: Jury for Ethical Practices in case of Advertising**

The Jury for Ethical Practices in Advertising (JEP) is the self-disciplinary body of the advertising sector in Belgium, founded in 1974 by the Council of Advertisement. The jury has equal representation (1/2 advertising sector, 1/2 civil society), both at first instance and on appeal. The core aim of the JEP is to monitor the proper and fair nature of the advertising based on national and international statutory as well as self-disciplinary regulations and codes. Any legal or natural person who pursues no commercial interest may file a complaint. A Belgian consumer can also file a complaint with the JEP about an advertising message distributed in Belgium by, for instance, a foreign newspaper or television station.

The jury fulfils this aim in two ways: by examining ads and through the provision of copy advice. On the basis of the Covenant relating to the advertising and marketing of alcoholic beverages, the JEP is authorized to examine any advertising that undertakes promotion of alcoholic beverages, distributed both in the media and elsewhere (JEP, 2013). Types of advertisements under examination include advertising messages disseminated by the mass media (newspapers, magazines, house-to-house newspapers, magazines, radio,

television, posters in public places, cinema, and Internet) as well as e-mailing and/or direct mail. On the other hand, advertisers, advertising agencies and media have the opportunity, before the advertising is disseminated, to request copy advice from the JEP.

After examining the submitted advertising the JEP can take three types of decisions:

- No comment: if the advertisement contains any element that is inconsistent with law and/or self-disciplinary codes it refers to. The complaint is then declared unfounded.
- A decision to change or discontinue the advertising directed to the advertiser: if the advertisement contains editorial and/or visual elements that are not in accordance with the laws and codes. If the proposed changes are not met by the advertiser in a positive way or in case of lack of response, the JEP can recommend a suspension to the media and/or professional associations concerned.
- An advice under reservations: if the advertisement only evokes a reservation to the advertiser, the advertising agency and the media are left the responsibility to take action.

#### **2.8.4.2 Statutory regulations: regional organs**

The **Flemish Media Regulator (VRM)** is the independent regulator for the Flemish Audio-visual Media. The VRM monitors compliance with the media regulations as described in the Flemish Media Decree (see above). The VRM intervenes in disputes and deals with complaints and reports of possible breaches of the regulations. The mission of the organization is defined in Article 218§1 of the Media Decree. The Flemish Regulator for the Media is composed of two chambers, the general chamber and the chamber for impartiality and protection of minors. It is the general chamber that rules on disputes arising in relation to advertising, teleshopping, sponsorship and public service announcements.

The General Board of the VRM shall decide on the basis of a complaint on commercial communications and public service announcements, following an ex officio investigation or at the request of the Flemish Government. As a result of the investigation the board can impose the following sanctions upon the broadcasters, service providers or networks:

- A warning with the order to stop the infringement.
- An administrative fine of up to € 125,000.

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- An order to send the decision of the VRM via radio or television at the time and manner as determined by the VRM or to publish the decision in newspapers and/or magazines, at the expense of the offender.
- Suspend or revoke the broadcasting license or the accreditation of the broadcaster; or suspend the transmission.

*Le Conseil supérieur de l'audiovisuel (CSA)* is responsible for regulating the audio-visual industry (television, radio, and cable) of the Federation Wallonia-Brussels. The Board shall include compliance with the advertising rules set out in the above regulations. However, these are not specific for alcohol. The advisory board of the CSA adopted a code of ethics in 2007 on the broadcasting of advertisements for children (CSA, 2013). This code stipulates that advertising for alcoholic beverages, regardless of the content, must not be aimed specifically at children; must not show minors drinking alcohol; must not be broadcast during children's programs or in the commercial breaks immediately before or after children's programs.

For the German community *Medienrat* is responsible for monitoring the media.

## 2.9 Summary

In this chapter, first some marketing definitions are given and the marketing mix of Hastings and Angus (2009) has been described in detail. In addition, an overview was given of literature on the impact of alcohol marketing on public health and the role of the industry in campaigns against harmful alcohol consumption. In paragraph 2.7, the framework of De Bruijn et al. (2010) is proposed and used to describe the Belgian alcohol marketing regulation model in paragraph 2.8. In the next chapter, the framework of De Bruijn et al. will be used to analyse the regulatory model for alcohol marketing of six other European countries (i.e. Finland, France, Norway, Poland, the Netherlands and the United Kingdom). The techniques illustrated in the marketing mix will also be taken into account.

## Chapter 3. Case studies: assessment of alternative regulations

### 3.1 Introduction

In this chapter alternative regulatory models will be described. For this the regulatory models for alcohol marketing of six European countries are analysed: Finland, France, the Netherlands, Norway, Poland and the United Kingdom.

First, a general description of trends in the rates of consumption and sales in the countries will be given. In the second part of the chapter recent evolutions in the regulation of alcohol marketing will be discussed. In the last part, the regulatory systems will be described in detail per country.

### 3.2 Background of the cases

#### 3.2.1 Alcohol consumption and sales

According to World Health Organization (2018a) alcohol consumption rates are among the highest in European countries. Data of recorded alcohol consumption of the OECD (2018) shows that among the countries included in this research study, alcohol consumption rates are highest in France (11.7 litres pure alcohol per capita per year) and lowest in Norway (6 litres pure alcohol per capita per year) in 2016. In Belgium in 2015, an average of 10.4 litres of pure alcohol was consumed per inhabitant older than 15 years of age, as well as in Poland. The total alcohol per capita in both the Netherlands and Finland in 2015 is estimated at just over 8 litres of pure alcohol per capita. In all countries alcohol consumption rates are relatively higher for men than for women (OECD, 2018).<sup>2</sup>

Of the total alcohol consumption, beer is the most commonly used type of alcoholic beverage among the countries included in this research study. In Poland (55%), the Netherlands (47%), Finland (46%) and Norway (44%), beer accounts for about half of the total alcoholic drinks consumed. France is the only country where not beer, but wine is the most used type of alcoholic beverage (56%) (World Health Organization, 2014). The popularity of wine is attributable to the social and cultural embeddedness of wine production and consumption within French society. Although wine consumption has

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<sup>2</sup> Note that data on alcohol consumption are based on sales of alcoholic beverages. It does not include home-produced alcohol products, or beverages that have not been supplied in a regular manner.

steadily decreased since the 1960s, it still remains the most consumed alcoholic beverage among French citizens (Beck, 2017).

Although the total alcohol consumption in France is the highest of the countries included in the analysis, it is also the country with the highest drop in alcohol consumption per capita over the last thirty years. Alcohol use peaked in 1989, with an average of 17 litres pure alcohol per capita. Also in Belgium the total consumption has decreased over the last three decades from 13.2 litres of pure alcohol per capita in 1987 to 10.4 litres in 2015. Nevertheless, the average alcohol use in Belgium has fluctuated. In 1998, the lowest quantity of alcohol consumed was measured (9.9 litres of pure alcohol per capita), after which consumption rose again to an average of 12.2 litres of alcohol per inhabitant in 2005. In Finland, Poland and the United Kingdom a similar trend is visible, respectively with a peak in alcohol use per capita in 2004 (United Kingdom), 2007 (Finland) and 2008 (Poland), preceded and followed by a downward trend in alcohol consumption. The alcohol use in the Netherlands and Norway slightly changed during the last decades, but has remained relatively stable (OECD, 2018).

There is a distinction between the countries where the total alcohol consumption is the highest and the prevalence of harmful alcohol consumption. According to the World Health Organization (2014), heavy episodic drinking was the most common in 2010 among the Finnish population (36.5%), followed by Belgium (34.3%), France (29.4%) and the United Kingdom (28%). In Norway (11.9%), the Netherlands (5.9%) and Poland (5.3%), and hazardous drinking on one occasion seems to occur less frequently.

### **3.2.2 Minimal legal drinking age**

The minimal legal drinking age varies between countries and may be different for off-premises sales and on-premises sales of alcoholic beverages. When looking at the minimum age limit, it is noticeable that unlike the other countries in the analysis, Belgium is the only country where certain types of alcoholic beverages (i.e. beer and wine) can be purchased from the age of 16. The most prevalent minimum age for purchasing any type of alcoholic beverage is 18. In France, the Netherlands, Poland and the United Kingdom, this is the minimum age for the purchase of any type of alcoholic beverage. In Finland, one has to be 18 years old to purchase an alcohol beverage with maximum 22% abv ("Domestic alcohol policy - Finland - ALKO," 2015). In order to purchase stronger alcohol

## Case studies: assessment of alternative regulations

beverages one has to be at least 20 years old. To order alcohol in restaurants, it is enough to be 18 years old for all type of beverages. In Norway, the legal drinking age for spirits is 20 years in all cases (World Health Organization, 2014).

Table 3. Based on WHO Global status report on alcohol and health (2014)

National minimum legal drinking age		
Country	For on-premises sales (beer/wine/spirits)	For off-premises sales (beer/wine/spirits)
Belgium	16/16/18	16/16/18
Finland	18/18/18	18/18/20
France	18/18/18	18/18/18
Netherlands	18/18/18	18/18/18
Norway	18/18/20	18/18/20
Poland	18/18/18	18/18/18
United Kingdom	18/18/18	18/18/18

### 3.3 Finland

#### 3.3.1 National context

All alcohol advertising was prohibited until 1995. Legislative regulation is included in the Alcohol Act (Alkoholilaki) from 1994 and the 13 Decrees issued under the Act. The current Alcohol Act was updated in 2015. The Act and the Decrees laid down on the basis of the Act will be combined during the reform as comprehensively as possible into one law (Canadean, 2005; Ministry of Social Affairs and Health, 2016c).

Regulations in Finland encompass statutory regulations as well as non-statutory regulations. Alcoholic beverages advertising is currently controlled by legislation that prohibits advertising for products over 22% abv (“strong alcoholic beverages”) and constrains it for other products over 2.8% abv (“weak or mild alcoholic beverages”). The rules are more strict for advertising in public places, there alcoholic beverages are those with at least 1.2% abv (see 1.3.1 Volume restriction). Because of the strong legislative environment, self-regulation is not an important element for alcohol advertising. There is no specific alcohol self-regulatory code but it is covered in a general sense by the ICC Code applied by the Council of Ethics in Advertising (Canadean, 2005). The Finnish regulation

## Case studies: assessment of alternative regulations

has as a general rule of thumb 'media-neutral evaluation'. This means any rule is applicable to all media types. It is not permitted to present materials on the Internet that are prohibited from being part of traditional media (p.58).

The following measures play a key role in Finnish alcohol policy implementation (Ministry of Social Affairs and Health, 2009):

- Establishing early intervention as a permanent working model in primary health care and occupational health care.
- Increasing the tax on alcohol and tobacco.
- Reducing the use of alcohol by parents and the harm to children resulting from alcohol use by purposeful policy on substance use.
- Ensuring the treatment of pregnant women who have substance use problems.
- Ensuring sufficient support services for children whose parents have substance problems.

Based on research, the harm caused by alcohol could be more effectively reduced by (Ministry of Social Affairs and Health, 2016g):

- Increasing the tax on alcohol.
- Limiting alcohol advertising.
- Monopolising the retail sale of alcohol.
- Restricting the times when alcohol can be sold.
- Improving the effectiveness of work to stop drink-driving.
- Making social and health care procedures more effective.

The governmental institution in charge of domestic alcohol policy is the Ministry of Social Affairs and Health. The policy's first aim is to reduce the costs and causes resulting from alcohol consumption. That said, in their own press release about the current evaluative process, the Ministry indicates wanting to make policies more liberal in order to balance a reduction of public health harms and the needs of Finnish business and industries (Ministry of Social Affairs and Health, 2016f).

In addition to the MSAH, the National Institute for Health and Welfare coordinates the implementation of the Alcohol Programme, and the National Supervisory Authority for Welfare and Health (Valvira) oversees compliance with legislation on alcohol. Alko, the state owned limited company is also administered and supervised by MSAH (Ministry of

Social Affairs and Health, 2016g).

Regulations include volume as well as content regulations. There is a total ban on marketing of alcohol beverages with an alcohol degree per volume higher than 22%, the so-called strong alcoholic beverages or 'spirits'. Communication of spirits is only permitted when in the Act. The Act constitutes that communication in these specific cases are not considered advertisements, and therefore allowed.

Partial bans are in place for alcoholic beverages with less than 22% abv, but if applicable also count for the cases where communication of spirits is allowed. These can be marketed, but there are content as well as volume restrictions. Restrictions are formulated in a negative way. They thus state what is prohibited, not what is permitted.

By limiting the alcohol distribution and its availability, the domestic policies try to control the level of consumption ("Domestic alcohol policy - Finland - ALKO," 2015). In 1995 Finland became a part of the European Union and due to this, more liberal policies were introduced which resulted in an increasing consumption of alcoholic beverages. However, in 2011 alcohol taxes were raised in order to better control consumption and reduce average consumption.

The goal of the current proposal is to strike a better balance between reducing the negative impacts of alcohol and taking into account the needs of the related industry (Ministry of Social Affairs and Health, 2016c). That said the primary goal of the Act remains *"... to prevent detrimental societal, social and health effects caused by alcoholic substances by controlling the consumption of alcohol."*(Ministry of Social Affairs and Health, 2016g). The reform is also related to the Government's deregulation project. The current act contains some outdated and cumbersome norms from the previous Spirits Act (Väkiviinalaki) of 1932 and Alcohol Act of 1969 (Ministry of Social Affairs and Health, 2016l).

In 2016 the Ministry of Social Affairs and Health launched a request for opinions of stakeholders on the draft government proposal to the Parliament on the Alcohol Act (Ministry of Social Affairs and Health, 2016f). During the spring session of 2017 the revised proposal should be submitted. Simultaneously with circulation for comments, a notification procedure for the Alcohol Act will be initiated, in which the European Commission and other Member States will assess whether the proposed legislation is



compatible with EU law. The procedure will last no longer than six months. The Alcohol Act may not be approved in Finland prior to completion of this notification procedure (Ministry of Social Affairs and Health, 2016i).

The reform was prepared in close cooperation with other ministries and expert bodies: the National Supervisory Authority for Welfare and Health (Valvira), the National Institute for Health and Welfare (THL), the Ministry of the Interior, the Ministry of Employment and the Economy and Ministry of Finance. Aside from these governmental bodies, separate meetings were organised with agencies representing the alcohol industry: Federation of the Brewing and Soft Drinks Industry, Finnish Microbreweries' Association, vineyard entrepreneurs, Alcoholic Beverages Industries Association, Association of Finnish Alcoholic Beverage Suppliers, Hospitality management services, Finnish Grocery Trade Association (PTY), Finnish Association for Substance Abuse Prevention (EHYT) administrative bodies, member working groups and key persons (Ministry of Social Affairs and Health, 2016d).

There are three main areas of change: retail sale of alcohol, serving of alcohol and marketing of alcohol (Ministry of Social Affairs and Health, 2016c).

The principles of the reform include maintaining Alko's current retail monopoly and the current licensing system, and dismantling all unnecessary, outdated or cumbersome norms included in current legislation. These norms mainly have burdened the restaurant industry (Ministry of Social Affairs and Health, 2016c).

It is proposed that retail stores be able to sell alcoholic beverages containing up to 5.5% abv (instead of the current 4.7% abv) and the requirement that the beverage is prepared through fermentation would be eliminated. This means grocery shops, petrol station, mobile stores providing for residential and seasonal clients (e.g. festivals and public events) and kiosks can from then on also sell strong beers, ciders and long drinks made using spirits (Ministry of Social Affairs and Health, 2016c, 2016f, 2016k). It is also proposed to allow independent breweries and microbreweries to sell their own craft beers (not those mixed with soft drinks). Production limits would not change, and producers must be independent. This is to avoid exceptions to Alko's retail monopoly becoming too extensive, without excluding wine and beer producers from other EU member states (C-198-2014 Visnapuu addresses these exceptions)(Ministry of Social

Affairs and Health, 2016c, 2016j).

The current rules concerning foreign online sales of alcoholic beverages, i.e. cross border distance selling, are ambiguous. Import of alcoholic beverages for personal consumption is permitted if the person ordering the goods or a person unconnected to the seller transports the alcoholic beverages. The ban on distance selling means that online stores operating outside of Finland are banned from sending alcoholic beverages to Finland. Conditions under which consumers that purchase alcoholic beverages from abroad are to be included in the new law. The case addressed in the European Court of Justice (C-98/2014 Visnapuu), approving an interpretation related to the distance selling of alcohol has been taken into consideration in the Government proposal for the new Act. It is up to the national courts to determine whether the existing right to sell vineyard wines is limited to the extent that the Finnish retail trade system will not exclude producers from other countries (Ministry of Social Affairs and Health, 2016a, 2016b).

It is proposed to liberate regulations on restaurants' opening times (Ministry of Social Affairs and Health, 2016f, 2016h, 2016m). Licensed restaurants may sell alcoholic beverages for customers to take away, and are bound by the same norms as normal retail stores (Ministry of Social Affairs and Health, 2016e).

The proposal includes some suggestions for marketing (Ministry of Social Affairs and Health, 2016c, 2016n). Though in general advertising norms would not be changed, restaurants and bars would now be allowed to advertise 'happy hour' discounts. Currently, only Alko and other retailers can publish printed or online price listings for spirits. In the future, producers, wholesalers and restaurants would also be permitted to present their own products in, for example, online price lists.

### **3.3.2 Aim**

The goal of the Finnish Alcohol Act is to prevent harm to alcohol consumers, other people in the environment of the drinker, and the society as a whole. Therefore the law prescribes rules that enable restricting and controlling the related economic activities.

### **3.3.3 Definition**

The Finnish Alcohol Act applies different restrictions to different products. As a rule, advertising is permitted for mild alcoholic beverages and prohibited for strong ones.

There is a complete ban on advertisement of strong alcoholic drinks, which are drinks that entail over 22% abv. All drinks between 2.8% and 22% abv are considered to be mild alcoholic beverages. A whole range of partial restrictions regulates this set of drinks. No further specifications are made. The Alcohol Act does mention that all provisions that are developed to regulate to advertisement of mild alcoholic beverages in restaurants as well as in general also apply to the exceptions formulated in case of strong alcoholic beverages. The remainder of this subsection distinguishes between these two types of products.

### 3.3.4 Volume restrictions

The ban applies to **individual expressions**. The Alcohol Act respects the freedom of expression in a sense that private persons can refer to these alcoholic beverages as a means to express their artistic freedom. However, if a person can benefit from advertising strong alcoholic beverages, for instance a blogger who is paid to talk about spirits, then the ban is applied in the same way as it applies to people with an executive position in a company that manufactures, sells or imports spirits (Valvira, 2014). In the case of the blogger, talking about these spirits is considered direct advertisement to the consumer.

Individual people can advertise for mild beverages. In that case, all restrictions related to mild alcoholic beverages apply. Furthermore, these advertisements are only permitted when directly addressed to those involved in the sale of alcoholic beverages. In brief, this group includes professionals directly involved in the sales process. The group is extended with students doing catering and other people like personnel indirectly involved in sale (e.g. those working in companies that produce, import, convey or market alcoholic beverages). The whole target group is clearly defined in the documentation of Valvira (2014).

Employees of corporations not involved in the industry, who professionally purchase alcoholic beverages for representation and other uses, are not involved in the sale of alcoholic beverages in the manner as referred to by law. Therefore, advertising and promotional activities addressed are subject to the same rules as other consumer advertisements. Additionally, editors and writers of newspapers and former employees of companies in the alcohol sector will be treated as persons who are not directly involved in the sale of alcoholic drinks.

Advertisements for any kind of alcoholic beverage in or close to a **public place** is

prohibited. Valvira differentiates in their evaluation of advertisements between public and private places based on their intended or de facto use, not based on characteristics of the public that accesses these places. A public place is public when its intended or de facto use, temporarily or permanently, are in general use, regardless of who owns the place. This includes ads on private places (e.g. courtyards, private piece of land) adjacent to a public place.

The Alcohol Act defines public places as (1) places that can be accessed without passing through a gate (e.g. streets, pedestrian or bicycle paths, parks, parking lots for public use and open space like sports courts, hiking trails, sports courts and camping areas) (2) public buildings and locations which have an enclosure, walls or ceilings and in general with a door or gate that one passes to enter on site. The locations may be closed to the public at certain times, for example at night or when there are no public events organized in them. Examples of such places are shopping centres, service stations, car parks, cinemas, galleries, museums and similar. The access to a public place may be limited in some way, for example an age limit, entrance ticket, a key card or security checks. Further examples of places where advertisements are prohibited include public transport (e.g. buses and trams), the outside of distribution vehicles of the alcoholic industry while traveling through public places, clearly visible or large cans, bottles or other structures or advertising campaigns reminiscent of an alcoholic beverage or widely known symbol of one.

Some locations are considered exceptions where advertisements for mild alcoholic beverages, and in some cases also strong alcoholic beverages, are allowed. Valvira (2014) refers to five exceptions: places permanently assigned for public events during (1) as well as outside such an event (2), aircraft and in licenced premises on ships when they are in international traffic (3), in sales locations (and in the immediate vicinity of them) like retail stores/manufacturing sites/catering businesses (4) and restaurants (5).

**Licensed premises** are permitted to advertise strong alcoholic beverages in their interior space but this should not be visible from the exterior. It is allowed to inform the public about the extent of the licensed rights (e.g. fully licensed). It is also allowed for staff, or furniture, to have symbols of strong alcoholic beverages on them but these items should not leave the premises. Indirect advertising is thus prohibited as it is not allowed to advertise through products that are supposed to be taken away from restaurants (e.g.

postcards and recipe booklets), by giving promotional material (e.g. shirts and keychains) as prizes in a lottery, or to offer taste samples. It is prohibited to advertise on the outdoor premises or through the Internet (e.g. Facebook page of a restaurant). Likewise, one cannot advertise the drinks list, even in general terms, if it also includes strong alcoholic beverages or beverage mixtures made of strong alcoholic beverages. These mixtures, though not always containing 22% abv or more, are considered to comprise promotion for spirits so fall under the same restrictions.

The allowed advertisements for strong alcoholic beverages must be in line with additional content restrictions: no product name, no reference to a product (without a name), no references through euphemisms (e.g. 'drink that may not be mentioned'), no pictures of bottles or labels, no established symbols, and no ads for the full range of drinks (including spirits – "all for one dollar").

**Restaurants** as a location of consumption and sale of alcoholic beverages, aside from the requirement to obtain a license, are subject to a range of further restrictions considering the location as well as the content of advertisements for mild alcoholic beverages. Advertisements may not refer customers to other sales points. The availability and price can be shown in the licensed window, a pavement talker in the immediate vicinity, licensed premises' awnings and on parasols in the outside seating area.

Alcohol advertising in serving areas like restaurants is further regulated in separate paragraphs in the Alcohol Act. Regulations state that it is prohibited to attract customers to a restaurant by offering a free alcoholic drink or by offering a cheaper price the more you drink or by giving free samples. This is considered improper and attractive for weak consumer groups like heavy drinkers and young people. Offering a free drink on the house is allowed as an expression of hospitality. This is also allowed during an opening party or a party for invited guests. Free alcoholic drinks include mild beverages only, not strong ones. For closed loyalty events further restrictions apply: the invite should state the exact timing, events like this can happen once or twice a year. At exhibitions, licensed serving areas are not allowed to serve free alcohol or offer samples.

**Price lists** for strong alcoholic beverages are as a rule allowed but guided by a range of content restrictions about what is allowed and what is not. Manufacturers, wholesalers and restaurants may only publish price lists on their own web pages and not send them

out in any form to customers. They can have a price list but this should include only factual information on alcoholic beverages and all types of beverages should be presented in a uniform way, refraining from highlighting any type of alcoholic drink.

**Tax free shops** fall under the rules of the advertising law if they are within the Finnish border, though sales-wise they form an exception to the monopoly and statutory system of licensing law. For instance, ships, ports and airports that are not retail locations or serving areas where advertising of strong alcoholic beverages is prohibited. In a retail shop where one can purchase strong alcoholic beverages, one can advertise for weak and strong alcoholic beverages in a uniform manner. Any price list should not be sent to customers. They can be available online as well as on paper, but can only contain objective, factual product information and informative product descriptions. Likewise it is prohibited in newspapers and the television ads of these shops or materials sent home to consumers.

Indirect advertising of spirits encompasses **product placement, sponsorships, and the use of symbolic representation of a specific strong alcoholic beverage** (original symbols or symbols that were previously used for other products). For instance, candy packages with a symbol that refers to a vodka brand are considered a form of advertising (Utlände 232/41/03) (Valvira, 2014).

A further media type that is restricted in public places considers a ban on advertising of a drink containing more than 1.2% abv associated with the **sales or promotion of another product or service**. This prohibition cannot be circumvented by for example sponsoring an event to use the name of an alcoholic beverages as the name of the event or by paying manufacturers or other products to use the name of an alcoholic beverage on their own products. This restriction not only accounts for one product but for the whole product family. In other words, it is also not allowed to advertise products containing less than 1.2% abv if they are part of a product family that also includes stronger alcoholic beverages. Furthermore, this restriction also implies that if music bands or sports teams have been named after alcoholic beverages, they are only allowed to advertise matches or concerts without creating an association with that specific brand.

**Branding** of all kinds of alcoholic beverages, in the form of pure business advertising in order to create a positive image, is allowed. Companies can talk about their operating

principles, goals, history and product quality to create a positive corporate image and promote the sale of their products. Companies that fall under this provision include those who manufacture, import, sell or convey spirits. If the company's official name includes the name of a strong alcoholic beverage, it is one of the company's basic rights to use the name in public. The name may not be used with the clear purpose to advertise strong alcoholic beverages.

Advertising and promotional activities of spirits are prohibited even if they do not endorse a specific **brand** (e.g. coffee and cognac for 10 EUR) because they aim to boost the sales of spirits in general regardless of the brand. Only when it can be considered to boost the sales of a different product than the spirit (e.g. chocolates which taste like cognac liquor) it is allowed. That said, branding of strong alcoholic beverages is prohibited if the advertisement refers to specific *products*, causes an *association* with a specific product (e.g. through the use of flavours or shapes), uses the *name* of a product in a recognizable way (e.g. through images or in wording) or if it contains an *emblem or a slogan* commonly used in advertising for spirits, either in Finland or abroad (Valvira, 2014).

It is sometimes necessary or inevitable to mention the name of the products as part of a company's information activities (e.g. annual reports, job listings, and company brochures). The assessment of whether the activity is lawful is based on what audience the information is addressed to, how conspicuous the mentioning of product names is, and if information is provided in a style similar to advertising (e.g. images or emblems).

**Printed media** provisions capture editorial content, trade publications and foreign publications. **Editorial content** (e.g. textbooks, cookbooks, encyclopaedias, etc.) is permitted but not when it is paid for by the alcohol industry or aims to promote a particular drink (Valvira, 2014). **Trade publications** are those where most of the editions are directed to professionals involved in the sale of alcohol beverages. Regulations of this media type are combined with a more detailed definition of the target group. In previous decisions, Valvira adopted the practice of assuming around 80-90 percent of the edition is targeted to professionals. If one can freely subscribe to the publication, the publisher must ensure that subscribers are for the large part involved in sale and that the share of non-members does not become too great. The rules for advertising apply to **foreign publications** if it concerns alcoholic beverages in the Finnish market and are intended to

be made available especially in Finland. Rules do not apply if a foreign operator has published in a foreign magazine or on a foreign website intended for consumers in that country, even if it can be read in Finland. They also do not apply to satellite channels which can be seen throughout the northern hemisphere.

**On-screen media** includes provisions on foreign broadcasts as well as cinema, TV and radio more generally. **Foreign TV-broadcasts** are permitted if they are also permitted in the European country of origin. However, reproduction of such transmission (e.g. showing the video at a marketing event) can be interpreted in the same way as Finnish broadcasts (Valvira, 2014). **Cinema, TV and radio** are more restricted than other media types. TV and radio are restricted through a watershed (below), while in cinema an additional target group is defined (only alcohol adds for movies explicitly rated 18+, thus not those rated 7+, 12+ or 16+).

The restriction for TV and radio takes the shape of a **watershed**. As of January 1<sup>st</sup>, 2015, alcohol advertising is banned on radio and TV between 7 am and 10 pm. TV and radio broadcasting means linear broadcasting in real time that is the same for all recipients. The transmission technology does not play a role, thus live broadcasts from Finland intended to be received over the Internet are included as well. TV or radio-on-demand falls outside the scope of this provision as users themselves choose at what time they listen/watch.

Advertisement through **games, lotteries and contests** is prohibited from January 1<sup>st</sup>, 2015. This means that a manufacturer, importer or holder of a license is not allowed to organise a lottery or contest where alcoholic beverages are a prize. The way it is implemented does not play a role, the ban is general thus it also includes contests on the Internet as well as on licensed premises like restaurants and retail shops. Likewise, the way prizes are distributed is irrelevant (e.g. chance or the through abilities of the participants). At licensed premises, it is allowed to organise competitions as long as they do not relate to alcohol. Games and so on used for the marketing of other products can have mild alcoholic beverages as prizes as long as product names or other symbols, or the name of the manufacturer, provider or distributor are not shown. That would be considered 'improper'. Furthermore, if prizes are mild alcoholic beverages, the organisers need to make sure participants are at least 18 years of age. Strong alcoholic beverages cannot be used as a raffle prize or as part of a promotion for other products. If there is some financial gain possible, this would also mean an impeachment of the monopoly and



licensing system of the Alcohol Act (if the permit is in question).

A similar reasoning is applied for communication about spirits through **websites** and **exhibitions** focusing on spirits. In both cases, access should not be possible for consumers. Websites should prevent in a reliable way (e.g. identification procedure) access by the general public. If free samples are given at exhibitions, it needs to be made sure participants fall under the target group 'involved in the alcohol industry'. A remark here is that when professional exhibitions only serve mild alcoholic beverages, representatives not involved in the sale of alcohol may participate but only to a certain extent and based on a specific invitation (e.g. representatives of wine and beer clubs and corporations purchasing alcohol). However, servings of samples at events open to the general public is contrary to morality, and considered as promotion of sales of spirits.

Since January 1<sup>st</sup> 2015 additional restriction for advertising on the **Internet** are in place. These permit:

- Advertising mild alcoholic beverages on traditional websites.
- Advertising mild alcoholic beverages in social media (but limitations on the use of sharing, and consumers should not be able to leave comments or text that can be considered advertising).
- User-generated content and sharing features are allowed in the marketing of services other than alcoholic beverages. If the main message of the text is not related to alcohol, it does not need to be removed.

The following are prohibited:

- Calls to share alcohol.
- The use of social media buttons: sharing features such as links to social media services related to alcohol advertising on traditional websites controlled by the advertiser.
- News feed advertising related to alcohol, intended to be shared by consumers in social media.
- Traders are prohibited from publishing:
  - o Ads for strong alcoholic beverages.
  - o Price lists of restaurants, if they also contain strong alcoholic drinks or mixed drinks manufactured by them.

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- Links that are placed on webpages that advertise alcoholic beverages and that lead to web pages that are located on foreign servers containing ads for spirits.
- Ads for mild alcoholic beverages that use marketing techniques that are forbidden under §33.2 of the Alcohol Act.

For internet specifications the only thing that counts is the traders' location. If this is in Finland, aside from the target audience, then they fall under the Finnish Alcohol Act. The sole exception is: if they are situated abroad but have the purpose to circumvent the national rules designed to protect public health. Then the overall impression plays a role.

**Promotions** includes provisions of free samples, price promotions, supplementary goods and co-deals.

Sales promotion of strong alcoholic beverages through **free samples** is not allowed unless it is specifically permitted in the provisions of the Alcohol Act. It is allowed when sent out to people involved in the alcohol industry, not to people in other professions.

**Price promotions** are regulated in the sense that quantity discounts are prohibited and advertising of price offers concerning alcoholic beverages should last longer than two months. The ban on quantity discounts also includes a ban on price offers like "two for the prices of one". The price can be lowered at, for instance, private parties in a restaurant if it is not done merely to increase the sales of alcohol. A restaurant can for example give a discount of ten cents per goal that is scored during a live broadcast sports match. In that case, the discount may not be announced beforehand or promoted.

Single packages can be cheaper as they become larger. Bonus systems are subject to additional regulations. The bonus system must not be limited to merely apply to alcohol; compensation must be reasonable and not in the form of alcoholic beverages; customers should be free to choose; and the bonus system should not market alcoholic drinks as providing bonus points. Happy hours, and similar deals do not meet the requirement of two months, so advertisement for alcoholic beverages through these means should not be placed at locations where it is visible without a serving at the restaurant/retail site (so from outside, so not on social media sites). Likewise, loyal customer offerings should also last at least two months.

**Supplementary goods or promo deals** (= two or more products sold at a common price

where the additional one(s) is(are) for free or at a cheaper price) are subject to more restrictions than other consumer goods because alcohol is known to be abused. Therefore, only additional items that have an objective link with alcohol are allowed as supplementary goods (e.g. decanter, corkscrew, and drinking glasses). These products should not be presented as collector's items. Alcohol should not be the main message of the ad, it should not attract customers to increase the amount of purchase by making the benefit obtained dependent on the quantity purchased (e.g. collecting caps to gain better benefits).

Licensed restaurants and retail shops have to follow the general rules concerning **co-deals**. Licensed restaurants are permitted to offer a dish and one alcoholic beverage in a total price as long as it is not portrayed as a 'bargain', or the main message and applies to only a single serving of alcohol. Ticket and entry fees may include a welcome drink or drinks served at the event as long as they also count for alcohol-free options and do not relate to strong alcoholic beverages. It is also not permitted to use these co-deals to attract consumers to drink more alcohol. Retail shops as well are not allowed to use these co-deals to increase the purchased amount of alcohol. For instance t-shirts that are not considered necessary for consuming the drink are not allowed. Benefits that depend on people collecting caps or other parts of alcoholic beverage packaging are prohibited as well. If alcohol is used to promote other products this might conflict with the monopoly of Alko Ltd and holders of serving or retail licenses to sell alcohol intended for consumption. For example, a printing company cannot offer a bottle of wine for the price of an entry fee.

**Tastings or hospitality services** are restricted in terms of location and target group. Tastings cannot be intended to attract consumers. Therefore, they cannot be arranged in places where the retail sale of alcoholic beverages is conducted, in sales establishments, in restaurants or eateries, at public events or on ships/trains/buses in domestic traffic nor in public places. Tastings can only be arranged for customers in two situations: manufacturers or wholesalers in their showrooms for pre-arranged groups, and cafés during non-public events with invited guests from sales establishments after closing times and with prior notification to the police. Wholesalers cannot arrange tastings when they also sell alcohol beverages, or when they have purchase as a requirement of participation. This would require a license.

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**Business gifts** coming from companies that represent spirits in the form of strong alcoholic beverages are only allowed in specific pre-defined cases. There is a clear distinction as to what is permitted and not permitted:

Not considered as 'advertisement'	Considered as 'advertisement'
Give/send gift for anniversary of company to employees of the company.	Give/send/serve alcohol for company's anniversary to people not involved in the company's business or not part of the alcohol industry.
Give/send gift in case of one of the business life prevailing standards (e.g. 50th birthday, retirement).	Organise tastings/free samples in the company's showrooms for unions or other group tours or company visits.
Guests receiving spirits when eating in the company's restaurant.	Sending/providing events (e.g. other groups/parties/competitions) spirits they represent.
Give/send free samples to people involved in retail services/licenced wholesalers/licensed serving places/people who buy alcoholic beverages on behalf of these organisations.	Give/send/provide free samples of spirits to editors/media representatives who are not working for specialized publications ("trade publications" – considered as involved in the sale of spirits).

Examples of cases of business gifts include, for instance, where a company can provide one of its own products as a commemorative gift. This particular product should be made with a special label relating solely to a specific commemorative occasion, and thus not including any information or symbols of the spirit that is included (Statement 15/42/97). A manufacturer is not allowed to provide for instance a free sample in the form of a 0.5l bottle of a product to newspaper editors when informing them about the anniversary of the product for which samples are provided. It is also prohibited to write the message in a style using advertising language, and to reproduce it wholly or largely unchanged in the newspaper (Prohibition 27/42/96).

**Business gifts** have the additional requirement of not giving the impression that the company sells alcohol. Alcohol must be obtained separately from the packaging at a licensed location. The package should not contain any reference or symbol of an alcoholic product. Illustrations may not include any symbols of strong alcoholic beverages in a recognisable form.

### 3.3.5 Content restrictions

#### 3.3.5.1 Alcoholic nature: quality and quantity

As a general rule, advertisements should not be contrary to **good morality or include misleading information**. Advertising is considered by Valvira (2014) as having a large impact on values and attitudes. If it conflicts with the prevailing values of society or is likely to offend a particular group of people than it is considered as acting against ‘good practice’. This includes offensive seditious conduct, and the use of racial, religious or sexual discrimination.

It is forbidden to emphasize the alcoholic content of a beverage as a **positive quality**. This means for instance that the use of words like “strong” or “powerful” to describe an alcoholic beverage is considered as directly referring to its alcoholic content. The association is only considered ‘broken’ if the advertisement clearly explains that “strong” refers to the original characteristics of the product. Likewise, it is prohibited to display the alcoholic content in a way that attracts attention.

In a separate provision, it is mentioned that advertisements should not depict heavy alcoholic **consumption** in a positive light, nor abstinence or moderate consumption in a negative way. This means for instance that describing strong intoxication as positive is prohibited, and also not permitted are ads that idealise people drinking multiple alcoholic beverages after each other or who have a good tolerance for drinking alcohol.

Similarly, one should not portray abstainers in a negative way or in terms of their social status, beliefs, or physical or mental ability. For instance, users should not be considered as more successful, better dressed/better looking or happier than abstainers even when there is no actual comparison with these abstainers.

As mentioned above, campaigns using sports stars and famous athletes are considered as inappropriate as well. Athletes represent a drug-free and healthy life style. It can be contrary to morality to portray them in alcohol advertisements. However, in sporting competitions symbols of mild alcoholic beverages such as in the competition area or on competitor’s gear and clothing are allowed as long as the majority of the contestants or audience are adults and not minors, and the symbols are not on the clothes of underage athletes (see also section ‘Attractive to youth’).

The aspect of **humour** is mentioned in the guidebook of Valvira (2014) as well. Although a humorous advertisement in itself does not make it contrary to good practice, it is argued one should estimate or take into consideration how seriously a message is supposed to be perceived. It is thereby commented that a humorous ad can be more effective than a serious one and may be offensive to some audiences.

Under this title an additional target group of consumers is defined: young people (see also other articles) and heavy drinkers. These weak consumer groups, as they are called, are more sensitive to advertisements and ads. Targeting these groups should be considered in a more serious way than usual. Application of this provision does not require evidence that actual harm is being done nor that the advertisers knew they would target these groups beforehand.

**False claims** are demonstrably not true, so advertisers using factual statements should be able to provide evidence for their statements. Misleading information is giving information on product characteristics that do not correspond to reality - for instance, by omitting information when presenting data, or by designing misleading pictures, diagrams or layouts. This includes the information provided by the packaging label.

### 3.3.5.2 Influence performances

It is not permitted in advertisements to show a person being drunk nor consuming alcohol before **driving**, while driving, or during a pause in a drive.

The link with alcohol consumption can be either direct or by association. The restriction for example also includes TV/radio broadcasts, sports magazines related to motor racing and road traffic. It is not allowed in such instances to visualise the name of a mild alcoholic beverage, its manufacturer nor any other symbol. Nor is it allowed to use a mild alcoholic beverage for naming a motor race, or using the name of a motor sports competition to promote such a beverage or as part of the packaging. Even so, practitioners of motor sports should not advertise for alcohol outside competition (Statement 24/42/95).

The ban includes advertisements that are deemed to present alcoholic beverages as providing a status of **success in social life in terms of increasing sexual attractiveness**. This also includes advertising alcoholic beverages as increasing sex drive. Not only direct communication but also creating the impression of such a connection should be considered prohibited, for instance by portraying people that are known for

extraordinary mental or physical performances. This link is strengthened if the people in the ad are actually drinking alcohol or recommend drinking it.

The provisions state that alcohol cannot be portrayed as having a **therapeutic effect** by relieving mental or physical problems, curing diseases or relieving pain or symptoms of illnesses. For instance, ingredients may not be imaged or presented as taking stress or insomnia away, or enhancing sexual performance. Likewise, it may also not be associated with advertisements that promote general health or disease-fighting effects. Pharmacies, hospitals, doctors, nurses, and medical equipment should not be part of any advertisement.

Following the same reasoning, it is also prohibited to present energy drinks that include alcohol as refreshing or keeping consumers awake. Here we find an example of how content restrictions for mild alcoholic beverages also affect communications about strong alcoholic beverages. A specialized publication that advertises for spirits, falling under the exceptions presented above, associated this spirit with the stimulating properties of a Chinese potion known for enhancing erotic pleasure. This ad was considered as contrary to the above described restrictions.

### **3.3.5.3 Attractive to youth**

Advertisements should not be designed so that they are attractive to minors. This effect can be direct (e.g. attracting them to actually buy alcohol) but indirect as well. Indirect effects include ads that create positive associations and attitudes towards alcoholic beverages and the use of alcohol in general among minors. This includes for instance names of other symbols for alcoholic products being used for promoting products/services/events that are intended for minors. Examples of products include toys, movies, games for the general public that are attractive to young people as well as tools specifically developed for children and adolescents.

Considering sports sponsorship this counts as well. In principle it is not improper to refer to sports teams in the advertisement of mild alcoholic beverages. However, if the team logo contains a figure that interests children and young people like a cartoon or legendary figure, and the advertisement is produced in such a way that it is attractive to children, this team logo might be prohibited. Likewise, if athletes are idols for children and young people, then portraying them in advertisements can result in advertisement of mild

alcoholic beverages towards children. They then are no longer seen as athletes who are symbols or role models for a healthy and drug-free life style.

Similarly, the content of the advertisement cannot be intended for minors. For example, magazines, web games, music or videos, musical, cultural or other events that are intended for minors. Alcohol is also prohibited at such events. It is also prohibited to advertise for alcohol in educational settings or facilities primarily aimed at or frequented mainly by people under 18 years old. Likewise, famous athletes, youth culture idols (TV, movie or rock stars) who are admired by youngsters should not take part in advertisements for alcoholic beverages. Additionally, ads should not be placed on athletes' clothing or equipment.

For example, Duff beer is not allowed on the market in Finland because of its association with the Simpsons, a show frequently watched by children (Prohibition decision 430/99/002/2011).

### 3.3.6 Stakeholder marketing

**Price information** is regulated in the sense that it should always be provided alongside the advertisements. It should be easy to see and to understand in an unambiguous manner by customers. Retail points should advertise, in addition to the selling price, also the unit

As labels on the packaging of alcoholic beverages can be part used for marketing purposes, the **labelling** of alcoholic beverages must comply with the requirements as stipulated in the Alcohol Act. In addition, the labels need to be in line with the provisions laid out in other relevant food and alcohol legislation. The labelling requirements are based on Regulation 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers. Further requirements on language and batch identification code are stipulated by the Ministry of Agriculture and Forestry's decree on the provision of food information to consumers (834/2014). According to this decree, every alcohol beverage label needs to include:

- The name of the beverage (either the legal, the customary, or the descriptive name).
- The net quantity.
- The alcohol content.
- The date of minimum durability.



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- Conditions and instructions for storage and/or use.
- The place/country of origin.
- The name of the business operator.
- A beverage or bottling batch, or a "use by" date.
- The substances and products that can cause allergies or intolerances.
- A Warning message when the beverage consists of substances like caffeine and liquorice.
- Details of ingredients containing genetically modified organisms.
- Information on the use of sweeteners.

Furthermore, all mandatory labelling must be displayed in Finnish and Swedish and the information must be easy to read and understood. It is recommended to provide a list of ingredients in descending order of weight, and to include a nutrition declaration when a nutritional claim is made on the beverage, such as "diet". Including a reference to the organic production of a beverage is only possible when the product has been submitted to a control system (European Council regulation on organic production 834/2007).

### **3.3.7 Complaints system**

#### **3.3.7.1 Council of Ethics in Advertising**

The Council of Ethics in Advertising, part of the Chamber of Commerce, issues statements on whether an advertisement or advertising practice is ethically acceptable. The Council deals with issues like discrimination, decency and social responsibility. The Council is not empowered to make statements regarding misleading advertisements or comparative advertising. These matters are dealt with The Board of Business Practice.

The Council mainly deals with requests from consumers and with issues that are deemed to have public significance. Complaints from consumers are handled free of charge. A charge of €2,000 is levied if the complainant is a company. In cases where the complaint is exceptionally extensive the fee is €2,500.

#### **3.3.7.2 Valvira**

Supervision happens at the national as well as the local level. Valvira (the National Supervisory Authority for Welfare and Health) monitors the advertising of alcoholic beverages which covers the entire country, or which takes place in more than one

Regional State Administrative Agency territory. It provides supervision and guidance to manufacturers and importers to ensure that they meet their duties under the Alcohol Act and Food Act. Valvira conducts inspections of commercial premises and, as the supervisory authority, is entitled by law to obtain samples required for supervisory purposes free of charge. Valvira also supervises the sale of alcoholic beverages as part of its market surveillance remit. Regional State Administrative Agencies are responsible for supervising advertising and promotional activities for alcoholic beverages within their respective regional administration.

In case of activities that are in violation of the regulation, Valvira or the Regional Administrative Authority shall give the necessary instructions to remedy the termination of the activities and shall set a timetable within which this must be done. The penalties for marketing offenses are prescribed in § 48-50 of the Alcohol Act. The sanctions can be directed to both those who have ordered promotional activity or sales promotion as well as the person performing the task and their employees. Sanctions may also be directed personally to an individual who is employed by either the company that ordered the advertisement or the company that has produced it. This prevents instances, for example, in which the ban might be circumvented and the prohibited activities continued under the name of a new company or legal entity.

If Valvira finds that marketing techniques contrary to Article 33 of the Alcohol Code are being used, it may prohibit such advertising and take steps to prevent the unlawful activity from continuing or recurring in the future. Valvira can even (a) prohibit alcoholic drinks from being placed on the market; (b) or oblige the party that has placed an alcoholic beverage on the market to remove them from the market if the product or the presentation of them conflicts with the existing rules and regulations, without compensation for the costs. This also applies if the drink's quality or the harmful effects and risks to health not has been checked in an appropriate manner, or if a ban is otherwise justified for the protection of human health. In urgent cases, Valvira can issue a temporarily ban, before the matter is finally determined. This temporary ban is effective immediately and may be withdrawn before the end of the process through which the matter is decided. Likewise, if the imposed penalties are not met, Valvira or the Provincial Office can enforce their application. Lastly, these institutions can also withdraw the permits of companies permanently or temporarily.

Valvira can enact criminal penalties for advertising that is contrary to the Alcohol Act. Anyone who wilfully, directly or indirectly, advertises weak alcoholic beverages or drinks that contain at least 1.2% abv, or otherwise promotes the sale of such beverages in violation of 33 §, is subject to a fine (art. 50, §4, 9° in Alcohol Act). Whoever in violation of the Alcohol Act promotes the sale of strong alcoholic beverages, targeted promotion of mild alcoholic beverages to minors, or depict minors in the advertising of mild alcoholic beverages, can be convicted on the marketing of alcoholic beverages to a fine or imprisonment not exceeding six months (30 Ch. 1 a § in Criminal Code). Penalties imposed should be in proportion to the parties' ability to pay and any other relevant circumstances.

Valvira and the Regional State Administrative Agency decisions should be respected even if the appeal authority decides otherwise. Appeals considering a decision to ban or temporarily ban, or the decision to impose a fine or forced execution, may be brought to the Market Court within 30 days after receiving notice of the decision or order. Other decisions taken by Valvira or Provincial Office can be appealed to the Administrative Court in accordance with the Administrative Procedure Act (586/1996).

### **3.3.7.3 Pre-screening**

Copy advice is the provision by a self-regulatory organization (The Council of Ethics in Advertising, MEN) of an opinion as to whether an advertisement complies with the ICC rules. It is provided on a confidential basis. Copy advice is provided on request to advertisers, agencies or the media. The copy advice is available to all companies. The copy advice is provided by the MEN's jury. The copy advice is given within 2 weeks. A fee for copy advice from MEN is €750 per request.

Seeking copy advice at an early stage in the preparation of a campaign provides advertisers and agencies with a degree of reassurance that it complies with the highest standards of practice. It also prevents time and money being wasted on campaigns which breach the rules and are therefore likely to be short-lived.

Copy advice can also help to avoid embarrassment and damage to the reputation of an advertiser or a brand caused by adverse publicity if a complaint is upheld. In a wider context, copy advice helps protect the reputation of advertising in general.

## 3.4 The Netherlands

### 3.4.1 National context

The first formulation of alcohol policy was the 1986 “Alcohol and society”, and in 2007 a more recent alcohol policy document was developed (NL: *Hoofdlijnenbrief alcoholbeleid*). In 2016, the State Secretary of Health, Welfare and Sport (Martin van Rijn) sent an evaluation of the Alcohol Licensing and Catering Act to the parliament. The document was discussed in February 2017.

Advertisement of alcoholic beverages is mainly controlled by a self-regulation code, the “Advertisement Code for Alcoholic Beverages” (amended in 2000). The Advertisement Code for Alcoholic Beverages is attached as a special Code to the Dutch Advertising Code (NRC), which is supervised by the Advertising Code Committee (“*Reclame Code Commissie*”). The Advertising Code is applicable to all types of advertising, regardless of the type of medium, unless the code explicitly provides an exception.

The Advertising Code for Alcoholic Beverages includes the European regulations as described in the Audio Visual Media Services Directive (STAP, 2017). To date, the Netherlands is the only European country that has chosen not to incorporate these rules in any statutory law. The responsible minister replied to STAP questioning that the reasoning behind this choice was that “self-regulation was deemed fitting, sufficient and effective” to reach the goals of the European directive (STAP, 2017). The advertisement codes stipulates in the general provisions its reach. The code applies to all advertisements specifically aimed at the Netherlands and to all alcoholic beverages, as well as all non-alcoholic beverages as far as these are meant to be consumed together with an alcoholic drink.

The Alcohol Licensing and Catering Act is a statutory law regulating the selling and serving of alcohol, under the responsibility of the minister of Health, Welfare and Sport. The Dutch Parliament agreed in 2012 to adjust the then existing regulations after debating it for about 12 years.

The **competences of the local authorities** considering alcohol policy became more extensive. Their new powers include prohibition of extreme price promotions (e. g. happy hours and price breakers in grocery or liquor stores); enforcement of rules about selling

alcohol; prohibition of sale of alcoholic drinks by grocery stores frequently violating underage drinking regulations. The local authorities are also responsible for deciding upon and providing sales licences. Local authorities, as of January the 1<sup>st</sup> 2014, also have developed their own regulations concerning alcohol use.

As of January 1<sup>st</sup> 2014 there is one **age limit** for strong (more than 15% abv) as well as mild (between 1.2% and 15% abv) alcoholic beverages. Before that mild alcoholic beverages were prohibited for individuals under 16 years old. As of January 1<sup>st</sup> on and off-premises purchasing of alcoholic beverages (as well as cigarettes) is a punishable offence for those 18 years and younger. Users as well as places that sell alcohol to minors are subject to fines or can lose their licence to sell alcohol for a maximum of 12 weeks. There was no transitional period for those who were 16 years old in 2013. Evaluation research, as ordered by the Minister of Health, Welfare and Sport did put forward that youngsters as well as adults seem to drink on fewer occasions but on these occasions they tend to drink more alcoholic beverages than before the law changed.

The change in age limit was accompanied by a social marketing campaign and a change in the obligated educational message. The social marketing campaign focused on the 'nothing under 18' – message (<http://nix18.nl/>). The age limit for alcohol consumption changed together with the age for purchasing tobacco. Instead of 16, one has to be 18 years old to buy tobacco products legally. The organisation NIX provides artwork on the website, to be used for instance for bracelets at parties:



The Alcohol Licensing and Catering Act contains one article which explicitly gives the minister of Health, Welfare and Sport the right to regulate alcohol advertisements. However, to date there is no such regulation in place.

As such, the only statutory regulation directly referring to alcohol advertisements is the Media Act (STAP, 2007b). Since 2008 this Act contains provisions on decreasing the risk

of over-exposure to advertising for alcoholic beverages by young people. More specifically, a time ban was introduced prohibiting any alcoholic advertising on radio and television between the hours of 6 AM and 9 PM. Aside from this time ban, the Media Act also includes policy regulations considering sponsorship by the alcohol industry and product placement of alcoholic beverages (see further details below) (STAP, 2017).

### **3.4.2 Aim**

Alcohol policy has public health aims. Important target groups are youngsters and problematic alcohol users. The Dutch alcohol policy aims to prevent young people from drinking alcohol until they are 18 years old and encourage people older than 18 years to drink responsibly. Furthermore, the objective is to decrease the number of people that are physically or psychologically addicted to alcohol and to minimize the consequences of alcohol abuse (e.g. nuisance on public roads, violence in households or traffic accidents).

To reach these goals there are six policy instruments:

- Alcohol Licensing and Catering Act (2013).
- Regulations on alcohol advertisements and marketing (Advertisement Code for Alcoholic Beverages and Media Act).
- Sanctions for drunk driving.
- Levy excise duty and taxation (TVA).
- Education and awareness programmes.
- Treatment.

The aim of the Advertisement Code for Alcoholic Beverages is to combat excessive drinking.

### **3.4.3 Definition**

Article 1 of the Alcohol Licensing and Catering Act specifies that an alcoholic drink includes any beverage that contains at least 0.5% abv. Premises that want to provide beverages with more than 0.5% abv are required to obtain a license (STAP, 2017). Considering alcohol marketing article 1 of the Alcohol Licensing and Catering Act further differentiates between low alcoholic drinks (less than 15% abv) and strong alcoholic drinks (more than 15% abv).

According to the Dutch Advertising Code for Alcoholic Beverages, advertising for alcoholic

beverages can be described as “any public and/or systematic, direct or indirect recommendation of alcoholic beverages and of non-alcoholic beverages as far as these are recommended for consumption together with alcoholic beverages by an advertiser or entirely or partly on behalf of this advertiser, whether or not by means of any third parties”.

The Dutch regulatory code on alcohol marketing stipulates that the code applies to advertising and services for alcoholic beverages. Alcohol advertising includes any public and/or systematic, direct or indirect promotion of alcoholic beverages and of non-alcoholic beverages, in case these are recommended for consumption together with alcoholic beverages by an advertiser or entirely or partly on behalf of this advertiser, whether or not by means of any third parties.

### **3.4.4 Volume restrictions**

#### **3.4.4.1 Target groups**

Article 9 of the Advertising Code for Alcoholic Beverages (RvA) states that alcohol advertisements cannot be addressed specifically to pregnant women. As described in the content regulations, there is an agreement on a specific symbol warning pregnant women not to drink alcoholic beverages.

Since 2000, there is a voluntary advertising ban on all media if 25% of the audience (viewers, listeners, readers or visitors) is under 18 years. This volume restriction is accompanied by a range of content restrictions. Four articles of the Advertising Code focus on regulations considering advertisements towards minors. These articles focus on the targeted people, the portrayed individuals, the message of maturity and the offering of ‘premiums’ (i.e. goods that carry the brand name and/or brand logo of an alcoholic beverage and that are offered as part of a hospitality promotion, or as a present when an alcoholic beverage is purchased) (see also below for further discussion of content regulations).

The reach of an audience is determined over a representative measuring period and is based on the concrete circumstances of the case (among others its location, medium, impact, and proportionality) and calculates means of reach figures that are as objective as possible. This also applies to locations of catering industry promotions, events, internet

sites and their subpages. The burden of proof always falls on the advertiser. STIVA advises companies not to advertise if they cannot determine with certainty that more than 25% of the visitors are younger than 18 years old (Art. 21, RvA).

In case of events, the attendance figures are the standard for determining the reach of advertising messages. The burden of proof regarding the reach of advertising messages falls on the advertiser, who have to base their figures on generally accepted viewer or listener ratings in the market or any other valid and representative evidence. As far as web sites and their subpages are concerned, one should make a reasonable case for using user profiles.

Art. 21 RvA is not applicable to advertising messages that are part of the regular street scene and to incidental situations over which the advertiser has no influence. A regular street scene includes all those situations that you may reasonably expect in the street scene which are also in accordance with this Code, such as light boxes with the brand name and/or logo of the brands that are on draft or served in the front of cafes and/or restaurants and kiosks. Incidental situations are situations with a single character, such as the entry of Santa Claus ('Sinterklaas') in a part of the town or a village. Another example is a situation where a promotion team moves from one outlet to another one without actively advertising and come cross a group of minors.

### **3.4.4.2 Restrictions specifically formulated for media types**

Since 2009, the Media Act includes a watershed for alcohol advertisements on **television and radio**. Broadcasters are not allowed to transmit advertisements for any kind of alcoholic beverage between 6AM and 9PM. The ban does not apply to non-alcoholic beverages with the same brand name as an alcoholic beverage, unless the commercial directly or indirectly refers to alcoholic products of the same brand (CVDM, 2018).

The self-regulation Advertising Code contains two provisions regulating radio and television. Art. 22 RvA states that advertising messages for alcoholic beverages may not be broadcast on radio and television immediately before, during, or directly after programs that, according to viewer or listener rating figures generally accepted in the market, are listened to or viewed by more than twenty-five percent (25%) minors (see also the description of the target group) and more generally, broadcasting stations for youngsters may not advertise for alcoholic beverages (art. 23, RvA). The radio and



television broadcasting stations which are defined as youth stations are notified annually by means of a press release.

Furthermore, the Advertising Code stipulates advertising messages for alcoholic beverages may not be shown in cinemas before children's films, family films dubbed in Dutch and before children's matinee films and school film programs. As to other films, advertisements for alcoholic beverages may only be shown if minors form no more than 25% of the audience (art.28, RvA).

Specifically about **printed media**, the Advertising Code refers to magazines on the one hand and outdoor ads on the other. The regulations concerning magazines are linked to the target group of minors. Art. 23§2 RvA argues magazines that are specifically aimed at minors may not advertise for alcoholic beverages. Annually, STIVA publishes a list of publications that need to be considered as youth magazines. The list of magazines is not exhaustive.

Outdoor ads are limited in the sense that a range of locations are excluded in art. 28§1 RvA of the Advertising Code. More specifically, advertising for alcoholic beverages is not permitted on billboards, banners, bus shelters and illuminated street advertising columns that are in view of alcohol rehabilitation centres or educational centres that are attended primarily by minors, or along motorways or other routes outside built-up areas.

All rules of the Advertising Code for Alcoholic Beverages apply to **online advertising messages** in the form of internet marketing and also to the content of third parties. For advertising messages in the form of active internet marketing, the extra requirements of paragraphs 2 through 5 are applicable (art. 24, RvA). The instructions based on the legislation and regulation in the framework of privacy and data protection apply as well (at present e.g. the Personal Data Protection Act, the Telecommunication Act, and the Distribution of Advertising by email Code). These provisions include the consent requirement, supplying of and pointing out the possibility to unsubscribe, and the duty of information disclosure, as far as is applicable.

The Code defines active internet marketing as all advertising messages which are distributed or made possible by the advertiser, completely or partly for his own benefit, on and/or through the Internet (e.g. the active sending of advertising messages by the advertiser through the Internet, to selected receivers; advertising messages on or through

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an internet platform, among which is included a social media platform, by the advertiser; as well as advertising messages by a third party, completely or partly for the benefit of the advertiser, as far as this concerns an internet platform where the advertiser can to some extent determine or influence the showing or the content of the message).

Additionally, art. 24§2 to 5 RvA include further regulations that specifically address active internet marketing. The second paragraph stipulates that any advertising messages from the advertiser which consist in whole or part of any moving images and which are intended for distribution through the Internet, whether or not by the advertiser, the educational slogan should be mentioned clearly on the screen (see also content regulations).

The other paragraphs further regulate messages on internet platforms of the advertiser. If the advertisers themselves post messages, these should comply with all regulations of the Advertising Code. If someone else posts messages on these internet platforms then, additionally, the advertiser should make sure the poster is at least 18 years old. If there is any doubt, it is the responsibility of the advertisers to prevent this poster from putting up any message (e.g. selection or admission control, or post on a visible spot that this platform is for 18+ only) (art. 24§3, RvA). Article 24§4 RvA adds that if the receiving party can be selected (e.g. email, posts on social media accounts belonging to someone other than the advertiser, or through cookies), the advertiser should make sure that a minimum age of 18 years is used as an effective selection criterion, or another such selection criterion from which this minimum age follows, or; the receiving party must have declared that he/she is at least 18 years old. If this kind of information is missing, the advertiser shall make sure that no more than 25% of those receiving the communication are minors.

Article 24§5 RvA specifies that prior to posting or responding to a message on a social media account of someone other than the advertiser, the advertiser must have made sure that the owner of this social media account is at least 18 years old. If this has not become clear or is not possible, posting a message is not allowed. For this reason “liking” by the advertiser on posts, status, pictures or other messages of third parties or “retweeting” is not permitted at this moment, unless it can be demonstrated that the owner of the relevant social media account is at least 18 years old e.g. in instances where the owner is an official account of a company or a generally well-known natural person. If it concerns

a natural person who is generally not known, the advertiser should be able to reasonably determine, through information on his/her profile page, that it concerns a person who is 18 years or older.

On websites in general, an age check is required if the brand name or trade name of the alcoholic beverage is also part of the domain name (article 26, RvA). Visitors to this homepage at the entrance of this internet site or preceding to the first page of the internet site, by means of an age check, must confirm whether they have reached the age of 18 years. The age check should at least consist of filling in or clicking on the date of birth (day/month/year) of the visitor. Admission to the internet site (or subpage in case the visitor directly ends up there) shall only be permitted if the visitor indicates that he or she is of age at the time he or she completed the age check.

**Sponsorship** can be shown and advertised on physical carriers. Events thus in principle can be sponsored by brands of alcoholic beverages (art 19, RvA). However, like all alcohol ads, these advertisements have to be in line with the regulations concerning reaching minors, risky situations, exhibitions and guided tours, and concerning sports. Moreover, the content of these advertisements has to be in line with all the content restrictions as stipulated in the Advertisement Code. However, members of the industry are not permitted to provide professional tap installations free of charge or for a symbolic fee at shows, events and festivities (art. 32, RvA).

The Advertising Code mentions risky situations where advertisements for alcohol are not permitted. Advertising in connection with events is not permitted, if it may reasonably be suspected that this will encourage disruption of the public order/and or disruption of the event concerned (art. 16, RvA) or that there is a risk for physical injury for spectators and/or participants (art. 17, RvA). This final aspect in article 17 RvA refers specifically to sponsorship of elements of competition and/or sports that can have aggressive behaviours or where bodily harm can be inflicted (e. g. boxing).

Article 30 further limits the potential of associating alcohol and sports. More specifically, advertising messages for alcoholic beverages may not be displayed on an individual sportsperson or sports team (art. 30§1, RvA), nor on vehicles and/or attributes that are used by the sportsperson or sports team in their active practice of sports (art.30§2, RvA). Furthermore, individuals who actively perform sports at the highest senior international

level (European or World Championships and Olympic Games) are not allowed to be hired by or on behalf of the advertiser for radio, cinema and television commercials and printed advertising messages that use staged situations with scripts. It is not allowed to portray such individuals on packages and labels either (art. 30§3, RvA).

The Advertising Code provides guidelines for minors on **guided tours** in breweries, distilleries or winegrowing companies. As a rule, it is not permitted to persons under the age of 18, except if they are accompanied by an adult during the visit; the exhibition or guided tour is predominantly aimed at the production process and/or workmanship and/or the connectedness with a city or region and focuses less on the recommendation of a certain brand of alcoholic beverage, and the on-the-spot consumption of alcoholic beverages should always take place in a space which is physically separated from the exhibition space or from spaces that are part of the guided tour, with the exception of tasting intermediary and/or end products of the brewing/distillation/fermentation process in small quantities and by way of explanation. All applicable laws and regulations, among which in particular those with regard to the age limits for providing alcoholic beverages, shall be complied with.

Additionally, during a specialized fair it is permitted to exhibitors to make buyers acquainted with their products (art. 31, RvA). The conditions considering catering industry promotions, mentioned in the notes of Article 26 do not apply here, since these criteria oblige catering promotions to take place within a licensed catering premises, and serve a limited amount of alcohol units per person.

The self-regulatory Code also involves specification about **price promotions and tastings**. Advertising involving an alcoholic beverage being offered by a member of the industry or with the active co-operation of a member of the industry to private individuals free of charge or at less than half the normal retail price is not permitted (art. 20, RvA). Advertising through free samples is allowed in tasting sessions and price promotions are allowed when the value of the discount is not more than half of the total value of the purchased product, including the (purchased) premium. The given discount thus can be maximally 50% of the normal retail price. This means that no alcoholic beverages may be given away as part of grocery packages or rewards in competitions/activities, even if the word 'free' or a synonym is not part of the message. STIVA mystery guests will randomly check one in ten promotions inside catering establishments, or at events. Therefore,

alcohol producers and importers are obliged to report their promotions to STIVA, at least five workdays before the promotion campaign. The notification costs amount to €25. In case of absence of the promotion campaign at the given time and location, the costs of the mystery guest will be charged to the requester (STIVA, 2018c).

The Advertising Code stipulates that tastings are permitted in a liquor store (see also art. 13 of the Alcohol Licensing and Catering Act) (art. 27§1, RvA). However, promotional teams are explicitly not permitted to have consumers taste alcoholic beverages in a liquor store (art. 27§2, RvA). Promotional teams, if desired dressed in the look & feel of the alcohol brand, may – if the relevant licensed victualler grants permission for this – be present in a liquor store to provide product information and to bring the tasting to customers' attention. These promotions are carried out by persons of 18 years or older (art. 27§3, RvA).

Catering industry promotions are regulated in a similar way. As such, promotional teams should not recommend alcoholic beverages to minors (art.26§1, RvA). It follows that this form of recommendation is not permitted in places where at that point in time more than 25% of the audience consists of minors. Catering industry promotions shall be carried out by persons of 18 years or older (art.26§5, RvA). During catering industry promotions it is not permitted to offer alcoholic beverages free of charge (art.26§2, RvA), nor is it permitted to sell alcoholic beverages at less than half of the normal retail price. In addition no more than one drink per customer may be offered with a discount per promotion (art.26§3, RvA). During catering industry promotions it is permitted to organize a tasting session (art.26§4, RvA).

Tasting sessions as part of a catering industry promotion may exclusively be held in a catering establishment that has a liquor license or at events which are exempt from the liquor license within the scope of Article 35 of the Liquor Act. Solely the following portions are permitted: for hard liquor 2cl, for wine 5cl and for beer and cider 7.5cl; a person may taste a maximum 1unit of one brand of alcoholic beverage. If during a promotional campaign several varieties of one brand are being promoted, a person may taste a maximum of 3 units in total. If during a promotional campaign several brands of one variety are being promoted, a person may taste a maximum of 3 units in total. If during a promotional campaign several varieties are promoted, a person may taste a maximum of 3 units in total. In these cases, all alcoholic beverages to be tasted should be different. It is

not permitted to taste beer, wine or liquor at the same time. All members of the promotion team, if required dressed in the look & feel of the alcohol brand, should be at least 18 years old.

### 3.4.5 Content restrictions

#### 3.4.5.1 Alcoholic nature: quality and quantity

The general Dutch Advertising Code stipulates that the Code needs to be interpreted in its letter and spirit (art. 16, RvA), also when it concerns a special code, like the Advertising Code for Alcoholic Beverages (art. 17, RvA).

As a general rule, the Advertising Code also refers to **good morality**. Ads for alcoholic beverages should not detract from human dignity and integrity and should not lack good taste and decency. The guidelines accompanying this article 5 RvA further explain that advertising should not unnecessarily hurt, insult or offend people. More specifically any discrimination on grounds of race, sexual inclination, religion and 'suchlike' is forbidden.

Article 1 RvA indicates that advertisements of alcohol beverages shall not show, suggest nor stimulate **excessive** or otherwise **irresponsible consumption**. Since 2014 an explanation is added as to what is to be understood as 'irresponsible consumption':

*“(1) the visible drinking of a full glass at one draught; (2) showing a glass which is at least twice as big as the standard glass (A standard glass of beer contains 250 ml, of wine 100 ml and of liquor 35 ml) for the category of that respective alcoholic beverage; (3) showing a disproportionate packaging, for example a bucket or similar object, from which can be drunk directly by several people, for example by means of straws. Showing a pitcher is exclusively permitted in the context that the pitcher is poured into several glasses.” (Article 1, RvA).*

It is permitted to provide promotional codes under the caps of non-resealable packaging. Pre-condition for such 'under-the-cap actions' is that consumers can also participate in the promotion in alternative ways (e.g. by visiting a website). This should be clearly communicated.

Article 2 RvA further states abstinence or moderate alcohol consumption may not be portrayed negatively. People may not be challenged to take up drinking if they do not

choose to do so themselves. That said, on the site of STIVA it is described that in cases of humorously intended exaggeration, this article is not applicable:

*“In the commercial ‘Automatiek’ two Belgians are making an effort to promote Palm beer in the Netherlands. Henk and Bert stop a passer-by who just took a minced-meat hot dog from an automat. They put him at a table on the street where an extensive lunch is served, together with a glass of Palm beer. Then a voice over says: ‘Become a Burgundian too. Palm, pure authentic beer’. The RCC judged that because of the humouristically intended exaggeration, there was no question of a negative portrayal of the abstinence of alcohol consumption”. (STIVA, 2017)*

Article 3 RvA states that advertising messages for alcoholic beverages may not arouse any confusion concerning the **alcoholic nature** and the alcohol percentage of the beverage. Furthermore, advertising messages for an alcoholic beverage, including the brand name, generic name and the packaging, may not arouse the impression that the beverage in question is a soft drink, lemonade or other type of non-alcoholic beverage.

The guidelines accompanying this article further stress that if non-alcoholic drinks and alcohol drinks are mixed, it should be sufficiently clear that the drink contains alcohol. For instance, it is recommended not to use words like ‘fruit juice’ or ‘soft drinks’.

Article 4 RvA further indicates alcoholic beverages may not suggest that the alcoholic content in itself is a positive feature nor that the lower percentage means that risks are eliminated. In brief, the alcoholic percentage has to be mentioned on every package of both low as well as strong alcoholic drinks but it cannot be emphasized (e.g. “super strong” as a way to advertise for a beer with 12% abv or more).

### **3.4.5.2 Influence on performance**

The link between **drinking and driving** is described in article 18 RvA. This article stipulates that advertising messages for alcoholic beverages may not establish a link between the consumption of alcoholic beverages and active participation in traffic using a vehicle of any kind. If a recommendation for alcoholic beverages is shown on a vehicle, then the vehicle shall also bear a clearly legible warning against active participation in traffic after the use of alcohol. This refers to all means of transport, including bicycles, boats and hot air balloons. When a person is shown who is driving a vehicle before he/she goes to a bar or arrives at a party, it is essential to show that this person will not be driving

again, for example by showing that the keys are being handed to a non-drinker. Exceptions are vehicles used for the transportation of alcoholic beverages, such as trucks, and vehicles for technical services of the hospitality and catering industry.

Advertisements for alcoholic beverages may not suggest alcoholic beverages might have positive effects on **physical or psychological performances** (art. 6, RvA). Alcohol advertisements may not portray alcohol as a solution to psychological problems. As such, these ads may not point to potential disinhibiting effects of alcoholic beverages, more specifically diminution or complete reduction of feelings of inner or social conflict or fears.

That said, one is allowed to refer to taste perception but the interpretation of this particular exception is difficult. The STIVA indicates that one is allowed to use the term 'refreshing' as this term refers to how the drink tastes, but one should refrain to use sentences like 'it refreshes' as this would suggest psychological or physical performance might be enhanced (STIVA, 2018b).

Article 6 stipulates advertisements may not portray alcoholic beverages as stimulating **sporting performances**. Article 8 adds that advertisements for alcoholic drinks may not suggest there is a causal connection between the consumption of alcoholic beverages and being **socially or sexually successful**. This causal connection can also arise when the alcohol is consumed without really showing alcohol consumption.

The guidelines of article 8 RvA further explain what is meant by 'social' and 'sexual' success:

*Social success:*

- *messages in which one or several people are portrayed in a 'before' versus 'after' situation, where in the 'before' situation one or several people evidently fail in social and/or interpersonal skills and after the consumption of an alcoholic beverage in the 'after' situation dispose of social and/or interpersonal skills;*
- *messages in which someone gets a job or a promotion at his work as a result of alcohol (consumption);*
- *messages in which someone evidently obtains more social status as a direct result of alcohol (consumption).*



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### *Sexual success:*

- *messages in which a situation in a bar or club or at a party is shown in which other people are only willing to dance with the central figure in the message after he/she has drunk an alcoholic beverage (and who evidently do not want to do this before that time);*
- *messages in which people are portrayed in a 'before' versus 'after' situation in which the successful picking up of someone in a catering facility or getting into a sexual relationship is portrayed, as a direct result of alcohol (consumption);*
- *messages in which a person takes off his/her clothes, takes up a more provocative position or evidently makes him-/herself sexually available with regard to either another person in the message, or the viewer, where it is abundantly clear that this is the result of alcohol (consumption).*
- *messages in which a man completely takes off his clothes or has someone else take them off completely or is completely naked (even if this is not evidently the result of alcohol (consumption));*
- *messages in which a woman takes off her clothes or has someone else take off her clothes until she is topless or completely naked, or messages in which she is topless or naked (even if this is not evidently the result of alcohol (consumption)).*
- *NB: showing one or several people who are (already) sexually or socially successful is in itself not in conflict with Article 8 of the Advertising Code for Alcoholic Beverages (RvA).*

Article 30 RvA further delineates what is meant by sporting success. Advertising messages for alcoholic beverages may not portray the active practice of sports on packaging of alcoholic beverages. Sportspeople are also not allowed to drink alcoholic beverages during active sports. Also after a game, sportspersons are not allowed to wear any clothes with brand names on them.

In the Advertising Code for Alcoholic Beverages this distinction between active sports and

passive sports perception is a guideline for this Article. Boarding along sports fields where adult players are the main participants is allowed, because this is aimed at the spectators and not at the players. Therefore, advertising should keep away from active sports perception and attributes that are used during sports. It should also be reserved in only showing images of active sports performance; after all this leaves little room for adding the context of celebration. Furthermore, it is permitted to portray active sports practice in advertising messages, but exclusively to portray the context of celebrating the performance afterwards. This means portraying alcohol after sports is permitted (art. 30§5 RvA).

Article 7 insists that advertisements may not portray alcoholic beverages as influencing **performance at work** in a positive way. The explanation provided by STIVA further delineates what is meant by ‘work performance’ (STIVA, 2018a):

*“It is not allowed to show people drinking alcoholic beverages in the workplace or if there is a direct link with the workplace. If the setting has to be that of a work environment, it should be clear that it is the end of the working day. However, an indirect link is allowed, for example if one drinks an alcoholic beverage at the end of the working day in another room of the work environment – in a canteen or recreation space”.*

Advertising messages for alcoholic beverages may not show any acceptance of, association with, or reference to illegal **drugs** such as described in the Opium act (e.g. heroin, cocaine, amphetamine, LSD, XTC, marihuana, and GHB) (art. 15, RvA). An image of hemp is also not permitted.

The Advertising Code provides a list of situations that incite or encourage **risky, violent or aggressive behaviour**. It is allowed to show risky behaviour to a certain extent, provided that the risk is reasonably limited and the ad does not incite audiences to imitate this particular behaviour. Forms of behaviour that are considered ‘risky’ include doing parachuting, paragliding, parasailing, kite surfing, rock or mountain climbing, fencing, white-water kayaking, bungee jumping, car racing and motorcycle racing. This list is not exhaustive.

### 3.4.5.3 Attractive to youth

Article 10 stipulates that advertisements cannot be aimed at minors specifically. The

further explanation provided in the Advertisement Code gives examples of what is meant by 'aiming at': messages in which teenage idols are used; messages/promotions in which promotional items are used (such as little dolls, cuddly toys, toy cars, games, stickers, buttons, soccer cards, beach toys or school-related articles) as far as these are specifically aimed at minors; music that can be downloaded for free, specifically aimed at teenagers; messages in which music is used that is specifically aimed at teenagers; messages in which the specific language of young people is used; messages that make use of situations that refer to teenage behaviour: puberty, adolescent infatuation, school parties, or examinations; messages in which Santa Claus appears, insofar as these are specifically aimed at minors; messages that make use of any style that at that moment is fashionable amongst minors.

The people portrayed shall not show any persons who are younger than or clearly look younger than 18 years old (art. 11, RvA). This limitation also is valid for Facebook and other social network sites where the content is managed by or on behalf of the advertiser and where the advertiser has editorial control. If the advertisement makes use of a script and models hired by the advertisers, no people who are or clearly look younger than 25 years old are permitted to appear.

Aside from portrayal, alcohol advertisements should not suggest that alcohol consumption is a sign of maturity nor that abstinence from it is a sign of immaturity (art. 12, RvA). Article 13 RvA to conclude adds that is forbidden to offer premiums during catering promotions to minors.

### **3.4.6 Stakeholder marketing: health information**

There is no statutory regulation concerning warning signs about drinking alcoholic beverages during pregnancy. The Dutch companies did not consider this necessary as this is provided in the self-regulation code of the alcohol industry. As of July the 1<sup>st</sup> 2016, 89% of all packages includes the symbol below (STAP, 2017):

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Figure 1. Dutch warning sign for drinking alcohol during pregnancy



Source: <https://stiva.nl/projecten/zwangerschapspictogram/>

The Advertising Code specifies the regulations considering the use of educational slogans. Every advertising message for an alcoholic beverage should show ‘Geen 18, geen alcohol’ (“No 18, no alcohol”). This slogan can be used in combination with ‘Geniet, maar drink met mate’ (‘Enjoy, but drink with moderation’) (art. 33 §2, RvA). This includes all printed advertising messages as well as commercials for alcoholic beverages on internet sites, social network sites and banners. Excluded are messages that are portrayed on the Internet and that are no longer part of a current campaign and banners that are equal to or smaller than 120 pixels wide and 60 pixels high (art. 33 §4, RvA).

In the case of advertising messages for alcoholic beverages that are broadcast on television, in cinemas, theatres and closed-circuit television, every broadcast shall in any case contain the – clearly visible – educational slogan (art. 33 §1, RvA). For the purpose of promotional advertising in the retail channel, another slogan can be used than the educational slogan mentioned in paragraph 2. Before the first use of another slogan, permission should be obtained from the Code Contact Person for the retail trade and STIVA.

The guidelines in the Advertising Code specify restrictions considering type of message, the font, type size, place and lay-out of the slogan. For commercials on TV/cinemas/Internet there are also regulations on the duration and timing of the slogan.

### 3.4.7 Complaints system

#### 3.4.7.1 STIVA (“Stichting Verantwoorde Alcoholconsumptie”)

The Dutch Advertising Code for Alcoholic beverages is managed by STIVA (“*Stichting Verantwoorde Alcoholconsumptie*”). STIVA is the Dutch foundation for the responsible use of alcohol. The foundation merges Dutch producers and importers of beer, wine, and

distilled beverages, in order to provide responsible alcohol marketing and alcohol consumption.

When the judged marketing practice is part of the packaging of an alcohol product, and it turns out to be in breach with the Code, STIVA will contact the alcohol producer and importer (if applicable). In cases where the decision of the Advertising Committee is not followed within three months, STIVA will send out a 'retail alert'. With this alert, all relevant stakeholders (i.e. supermarkets, liquor stores, and catering facilities) will be warned that the judged packaging is in breach of the Code (art. 34, RvA).

On the website of STIVA is stipulated that all producers and importers who are a member of STIVA, are obliged to ask STIVA for advice before broadcasting thematic marketing communications for alcoholic beverages on television, radio, or cinema. The provision is voluntary for all other types of alcohol marketing. Although requesting advice is obligatory for marketing communications that will be broadcast on television or radio, or in the cinema, the advice is not binding. A request for advice can be made by the advertiser, ad agency, or the advertising medium. A draft of the marketing communication needs to be submitted to STIVA at least ten days before broadcasting. Feedback is given by the advisory board, consisting of representatives of the industry and three independent experts on marketing, public affairs and science. Moreover, all cinema and TV commercials are assessed by a youth panel. The advisory board will check whether the submitted alcohol marketing communication is in line with the Dutch Advertising Code for Alcohol Advertising. In addition, the advice can contain some specific recommendations in order to prevent the advertisement from possible infringements. When these recommendations are followed, the advertiser is obliged to submit the marketing communication again to STIVA. The given advice is always confidential. The requester will receive the advice within five workdays after submission. The costs for asking advice is determined by STIVA and will be re-evaluated every year. In 2018, the costs amounted to €350 (tax not included)<sup>3</sup>. In case of a second judgement, the advice is free of charge (STIVA, 2009).

The marketing communication needs to be submitted in a letter, or through e-mail.

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<sup>3</sup> Last checked on 15 May 2018. Retrieved from : <http://stiva.nl/regelgeving/reclamcode-voor-alcoholhoudende-dranken/>

## Case studies: assessment of alternative regulations

Dependent on the type of marketing communication the submission needs to consist of:

- Advertisement: text and illustrations.
- Television-commercial: storyboard and text (preferably the complete text).
- Website: the complete text, location of the link(s), and illustrations.
- Other: text and illustrations.

### 3.4.7.2 Advertising Code Committee (“Reclame Code Commissie”)

The Dutch Advertising Code for Alcoholic beverages is part of the Dutch Advertising Code, which is coordinated by the Advertising Code Authority (see §3.4.4. , RvA). As a result, advertising practices of alcohol producers and marketers need to comply to both the Advertising Code for Alcoholic Beverages and the Dutch Advertising Code, unless it is stated that certain provisions are not applicable.

The Dutch Advertising Code Committee (RCC) is authorized to supervise the Advertising Code for Alcoholic Beverages. The committee is part of the Advertising Code Authority (SRC), which is the self-regulatory body concerning advertising in the Netherlands.

The members of the Advertising Code Committee are chosen by the SRC. The committee consists of five persons, comprising: one representative of the SRC; one member, on behalf of the organization of communication agencies participating in the SRC; one member on behalf of the organization of media participating in the SRC; one member, appointed on the recommendation of the Nomination Committee Consumer Members (“*Benoemingscommissie Consumentenleden*”); and one independent chair, a judge or another lawyer with judicial experience (art. 2(1) of the Regulations concerning the Advertising Code Committee and the Board of Appeal).

Complaints can be submitted to the SRC. Article 18 of the general Advertising Code states that corporations as well as consumers have the right to submit a complaint to the SRC. A complaint can be submitted either by post, or via an online complaint form. The submission needs to consist of a reference to the concerning marketing communication and a reason as to why it is in breach of the code. Submitting a complaint is free of charge. However, when the complaint is declared unfounded, but the complainant wants to make an objection, it will cost €15. In case an appeal is lodged with the Board of Appeal (“*College van Beroep*”) against a decision of the Advertising Code Committee, the costs amount to

€30. When the complaint is submitted by a company with a commercial interest, the corporation is obliged to pay a fee of €1,000, except for companies that already pay an annual contribution to the SRC. If this contribution to the SRC is higher than €1,000, submitting a complaint is costless. For companies that paid less than €1,000 to the SRC, the costs will amount to €250 per complaint. In case an appeal is made at the Board of Appeal, the cost for companies who did not pay a contribution to the SRC amounts to €500, while the bill for corporations who did pay a contribution is fixed at €250.

Parties can ask the committee to deal with a complaint within 14 days. The chair will then have to assess whether the case is urgent.

When a complaint has been declared well-founded, the advertising committee will recommend that the advertiser(s) change their advertising practices in the future. The compliance department of the SRC monitors whether the advertiser has followed the recommendation of the committee. In the case of an ongoing infringement the RCC is authorized to impose a fine of maximum €50,000. A fine can only be imposed upon members of STIVA.

### **3.4.7.3 Dutch Media Authority (“Commissariaat voor de Media”)**

The Dutch Media Authority monitors compliance with the Dutch Media Act of 2008. The aim of the Media Authority is to protect the independence, diversity and accessibility of the media supply. With regard to alcohol marketing, the media authority supervises the time ban that applies to advertising and tele-shopping communications on television and radio (art. 2.94, art. 3.7, RvA), sponsored programmes (art. 3.16, RvA) and product placement (art. 3.19a, RvA).

The Dutch Media Authority can impose a fine of maximum €225,000 in cases where a broadcasting company has breached the Act (art. 7.12, RvA).

In order to improve the cooperation between the Advertising Code Committee and the and the Commissioner for the Media, both parties have concluded an agreement in November 2017. The agreement explicitly states that the Commissioner for the Media fundamentally will not monitor the content of advertising communications, unless this is mandatory in order to fulfil legal tasks. The agreement further stipulates that both actors will make efforts to exchange information, refer complaints to each other, and transmit indications of possible violations.

#### 3.4.7.4 Monitoring activities

From 2002 until 2013 the Dutch Institute for Alcohol Policy (STAP) was commissioned by the Ministry of Health, Welfare and Sport to monitor the advertising and marketing practices of the alcohol industry (STAP, 2017).

### 3.5 United Kingdom

#### 3.5.1 National context

The most important statutory code in the UK concerning the prevention of harmful advertising is the Communications Act 2003. This Act points out the main principles of the Codes, which more specifically aim to regulate alcohol advertising. The main part of the regulation of alcohol marketing is covered by three codes:

- The **UK Code of Broadcast Advertising** (BCAP Code): primarily aims to regulate advertising during radio and television broadcasting.
- The **UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing** (CAP code): primarily aims to regulate advertising in newspapers, billboards, posters, leaflets, social media, websites, emails and cinema.
- The **Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks** (Portman Group Code): primarily aims to target manufacturers and tries to regulate naming, packing and of alcoholic products, as far as it is not covered by the BCAP Code or CAP Code.

As mentioned above, some of the standards and objectives prescribed in the Communications Act 2003 serve as a general principle for the codes concerning alcohol advertising. Article 319 of the Communications Act states that the Office of Communications (Ofcom) is authorized to set and maintain the codes regarding standards for the content of radio and television services. Therein, one of the main duties of Ofcom is to prevent television and radio services from including advertising which can possibly be misleading, harmful or offensive, especially to minors. In order to fulfil their duties, Ofcom has contracted-out some of their functions to the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) (Office of Communications, 2014). Both CAP and BCAP are administered by the ASA. The division of powers is laid down in the Contracting Out



(Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004.

As the advertising regulator of the UK, the ASA acts independently from the Government and advertising industry. Due to the agreement with Ofcom, the ASA carries the legal responsibility for regulating the content of television and radio broadcasting. More specifically, the tasks of the Advertising Standards Authority consists of:

- Administering the CAP Code and BCAP Code.
- Treating complaints concerning infringements on rules stated in the CAP Code and BCAP code.
- Warn or sanction companies in case they violated the rules.
- Monitor ads in order to check if they comply with the codes.
- Conduct research by testing public opinion and identifying critical points for taking action to protect the public.

The Committee of Advertising Practice (CAP) is funded by advertisers and consists of members who represent the advertising industry (covering advertisers, media owners and agencies). The main task of the CAP is to set and maintain the non-broadcast Advertising Code and to offer advice and guidance on how to create an advertising campaign that is in line with the Code. Because the CAP fully consists of members of the advertising industry, all non-broadcast advertising, including newspapers, billboards, posters, leaflets, social media, websites, emails and cinema are subject to a self-regulatory system. Complaints will still be treated by an independent body, being the ASA. The ASA will investigate whether the advertisement breaches the CAP Code and should be amended or withdrawn.

The Broadcasting Committee of Advertising Practice (BCAP) is authorized to set and maintain the regulation code for television and radio (BCAP-code). The Committee consists of members that represent the traditional media industry. The main difference with the CAP-code is that OFCOM still needs to give an overall sign-off in case of major changes to the BCAP-code. The system that applies to broadcast advertising can be referred to as a self-regulation system within a co-regulatory framework. The industry itself determines the regulation, but OFCOM, as a statutory body, still has the power to intervene in cases where the Code is not fully in line with the standards and objectives as

stated in the Communications Act 2003. Beyond that, television and radio broadcasters are obliged to comply with the OFCOM code as terms of their license.

The Portman Group was funded in the UK in 1989, in order to pay more attention to responsible drinking, support the prevention of alcohol misuse and build a balanced understanding of alcohol-related issues. The name Portman Group refers to the offices of Guinness in London, Portman Square, where the first meeting of the group took place.

The Portman Group's Code is a self-regulatory code that applies to the naming, packaging and promotion of alcoholic beverages. The first Code was established in 1996. At the moment of publishing this report the fifth edition, published in 2015, is now in force. The Code is only applicable when there is no regulation through the ASA or Ofcom applicable on the same subject. Since actors of the alcohol industry itself are involved in the Portman Group, the main goal of the Group is not to discourage drinking alcohol, but to promote responsible drinking. The Portman Group states at their website that "a targeted approach with a focus on education and prevention is more effective than blanket controls in tackling alcohol misuse", referring to general statutory measures as less effective.

The Code primarily applies to the producers' actions, since they are mainly responsible for the naming, packaging and promotion of alcoholic beverages. However, all actors in the alcoholic drinks industry (producers, importers, wholesalers and retailers) in the UK are responsible for complying with these rules (§1.7 Portman Group Code). This means for example that retailers will follow requests of the board, when the board has concluded that a product or promotion has breached the Code.

The Portman Group Code is consistent with the BCAP Code and the CAP Code, which both are administered by the Advertising Standards Authority. If the Code Secretariat considers the received complaint as inappropriate under the Portman Group code, they will refer it to the ASA in order to reconsider the complaint under the BCAP and CAP code (§1.2 Portman Group Code).

All three codes start from the same principle, in which it is stated that alcohol marketing should not be targeted at people under 18 and should not imply, accept or support immoderate, irresponsible or anti-social drinking. The codes differ regarding the marketing channels they primarily concern. The BCAP-Code mainly focuses on advertising via television and radio, while the CAP-code applies to marketing

communications, like non-broadcast advertisement, sales, promotions and direct communications. Lastly, the Portman Group Code aims to regulate naming, packaging, marketing and promotional activity insofar as it is not covered by the CAP- and BCAP-codes.

### **3.5.2 Aim**

The principle of the UK alcohol marketing regulations is to prevent alcohol marketers targeting minors, or inciting excessive, irresponsible or antisocial alcohol consumption. The regulations on alcohol marketing needs to be respected, both in the letter and the spirit, by alcohol brands and marketers.

### **3.5.3 Definition**

The British codes that include rules on alcohol marketing apply to advertisements for alcoholic beverages or advertisements that feature or refer to alcoholic drinks. Alcoholic beverages are defined as such, when they contain at least 0.5% abv. Drinks that contain between 0.5% and 1.2% abv are defined as low-alcohol drinks. The distinction is made because in some cases an exception applies to marketing for low-alcohol drinks (for instance, when they are portrayed as preferable because of their low alcoholic content). However, marketing practice should not at the same time include the promotion of stronger alcoholic beverages or mixed soft drinks.

Restrictions regarding alcohol marketing in the United Kingdom are not centralized in one code. Instead, the rules that concern alcohol marketing communications are divided over several codes that apply to different types of media.

The regulations do not contain a definition of alcohol marketing.

### **3.5.4 Volume restrictions**

The British Ofcom Broadcasting Code 2013 has been taking into account article 10 of the European Convention on Human Rights. The article states that everyone has the right to **freedom of expression** and that the public has the right to receive creative material, information and ideas, without interference but subject to restrictions.

#### **3.5.4.1 Target groups**

As a general principle, the Code of Broadcast Advertising (henceforth referred to as BCAP

code), the Code of Non-Broadcast Advertising (henceforth referred to as CAP code), as well as the Code of Practice on the Naming, Packaging, and Promotion of Alcoholic Drinks (henceforth referred to as the Portman Group code) state that advertisements for alcoholic drinks should not be addressed to people under the age of 18.

The CAP code further elaborates that marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age (art. 18.15, CAP). Moreover, people shown drinking or playing a significant role can neither be, nor seem to be under 25. People under 25 may be shown in marketing communications, for example, in the context of family celebrations, but must be obviously not drinking (art. 18.16, CAP).

The CAP code further mentions that marketing communications should take care not to exploit the young, the immature or those who are mentally or socially vulnerable (art. 18.1.2, CAP) (see also below content restrictions).

#### **3.5.4.2 Restrictions for specific media types**

The protection of minors is the main objective of the Ofcom Broadcasting Act 2013. In order to do so, the Act provides a time ban for television and radio. The time ban is applicable between 05:30 am and 9 pm and concerns material unsuitable for children.

In order to avoid youth exposure to alcohol marketing on radio or television, marketing messages may not appeal to minors (see §3.4.2).

More specifically, the BCAP code states that alcohol advertisements on **television** (art. 19.15.2, BCAP) cannot include a person or character whose example is likely to be followed by people aged under 18 years, or persons who strongly appeal to young people under 18 years of age. Additionally, alcohol advertisements on the radio may not include a person or character whose example is likely to be followed by those aged under 18 years or who has a particular appeal to those aged under 18 (art. 19.16.2, BCAP). As licensees of Ofcom, broadcasting companies are required to follow the licence conditions.

The BCAP further stipulates that product placement of alcoholic beverages is prohibited during news-, children's-, religious-, consumer advice- or current affairs programmes. A watershed applies to material that shows frequent alcohol misuse, or videos in which the

use of alcohol is condoned, encouraged, or glamorised (art. 1.10, BCAP). This time ban is applicable between 05:30 AM and 9 PM.

According to BCAP, somebody cannot have a significant role in alcohol advertisements on television or radio when they are younger than 25, or when they seem to be younger than 25. However, the provision does not apply to marketing communications in which they appear in a familial context where alcohol is consumed responsibly by somebody who is at least 25 years (art. 19.7 BCAP).

In addition to the portrayal of individuals, broadcasters must exercise responsible judgement on the scheduling of advertisements and operate internal systems capable of identifying and avoiding unsuitable contradictions between advertising material and programmes, especially those that could distress or offend viewers or listeners. Advertisements for alcoholic drinks (in this case containing 1.2% abv or more) may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18. Moreover, drinks containing less than 1.2% abv when presented as low-alcohol or no-alcohol versions of an alcoholic drink may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to persons below the age of 16 (art. 32.1, art. 32.2 and art. 32.4, BCAP).

To conclude, article 32.19 and 32.20 stipulate that BCAP expects broadcasters to exercise responsible judgement in the placing of broadcast television text and interactive television advertisements and especially to consider the sensitivities of viewers likely to be exposed or attracted to particular editorial content. Advertisements that are unsuitable for children (including those for all alcoholic drinks) must be subject to restrictions on the time of transmission designed to minimise the risk that children in the relevant age group will see them. Broadcast television text and interactive television advertisements for these product categories must not:

- Be directly accessible from programmes commissioned for, principally directed at or likely to appeal particularly to children.
- Be directly accessible from advertisements that are adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children.

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- Appear on editorial pages (text or interactive) that are likely to be of particular appeal to a significant audience of children.

The CAP code contains explicit provisions considering **promotions**. Article 8.3 explains that promoters must do everything reasonable to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. This includes that alcoholic drinks must not feature in promotions directed at people under 18 (art. 8.4, CAP).

### 3.5.5 Content restrictions

#### 3.5.5.1 Alcoholic nature: quality and quantity

Furthermore the CAP states that marketing communications must be **socially responsible** and must contain nothing that is likely to lead people to adopt styles of drinking that are senseless. For example, they should not encourage excessive drinking. Care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable (art. 18.1.2, CAP).

Both codes explicitly refer to **excessive drinking** in their texts. The first part of article 18.1 of the CAP code adds that marketing communications must be socially responsible and must contain nothing that is likely to lead people to adopt styles of drinking that are unwise. For example, they should not encourage excessive drinking. Article 19.2 of the CAP code describes a similar issue but allows for some references to drinking alcohol to be made. *“Advertisements must not feature, imply, condone or encourage irresponsible or immoderate drinking. That applies to both the amount of drink and the way drinking is portrayed. References to, or suggestions of, buying repeat rounds of alcoholic drinks are not acceptable. That does not prevent, for example, someone buying a drink for each member of a group. It does, however, prevent any suggestion that other members of the group will buy a round”.*

The CAP code (art. 18.10; 18.11, CAP) as well as the BCAP code (art. 19.11; art. 19.12, CAP) includes further nuances. Aside from the above provisions, advertisements should not imply, condone or encourage excessive consumption of alcohol, nor feature alcohol being handled or served irresponsibly.

Both codes include provisions about the factual information considering **alcoholic**

**nature** of beverages. Advertisements may give factual information about the alcoholic strength of a drink. They may also make a factual alcohol strength comparison with another product, but only when the comparison is with a higher-strength product of a similar beverage. Advertisements must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. There is an exception for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength. In the case of a drink with relatively high alcoholic strength in relation to its category, the factual information should not be given undue emphasis (art. 19.10 of BCAP; art. 18.9 of CAP).

Article 19.18 of BCAP and 18.19 of CAP state they must not make any **health claims**, which include fitness or weight-control claims. The only permitted nutrition claims are "low alcohol", "reduced alcohol" and "reduced energy" and any claim likely to have the same meaning for the audience.

Article 18.19 adds a factual alcohol strength comparison with another product, but only when the comparison is with a higher-strength product of a similar beverage. Likewise, article 18.17 of CAP stipulates that marketing communications may give factual information about product contents, including comparisons, but must not make any health, fitness or weight-control claims. The only permitted nutrition claims are "low-alcohol", "reduced alcohol" and "reduced energy" and any claim likely to have the same meaning for the consumer.

### **3.5.5.2 Influence on performances**

Both the BCAP code (article 19.3;19.4;19.6, BCAP) and CAP code (art. 18.2;18.3;18.5, CAP) include statements about **social and sexual success**:

- Advertisements must neither imply that alcohol can contribute to an individual's popularity or confidence nor imply that alcohol can enhance personal qualities.
- Advertisements must not imply that drinking alcohol is a key component of social success or acceptance or that refusal is a sign of weakness. Advertisements must not imply that the success of a social occasion depends on the presence or consumption of alcohol.
- Advertisements must not link alcohol with sexual activity, sexual success or seduction or imply that alcohol can enhance attractiveness. That does not preclude linking alcohol with romance or flirtation.

The BCAP code further describes health effects in the sense that advertisements must not portray alcohol as indispensable or as taking priority in life. Advertisements must not imply that drinking can overcome problems or that regular solitary drinking is acceptable (art. 19.7 BCAP).

Both codes also refer to **sporting success**. In art. 19.13.2 of the BCAP code it is stipulated that advertisements may feature sporting and other physical activities (subject to other rules in this section) but must not imply that those activities have been undertaken after the consumption of alcohol.

Both codes also include a provision about **drinking and driving**: *“Advertisements must not link alcohol with the use of potentially dangerous machinery or driving. Advertisements may feature sporting and other physical activities (subject to other rules in this section) but must not imply that those activities have been undertaken after the consumption of alcohol”* (art. 19.13 CAP code; 18.12 BCAP).

Additionally, the CAP code explicitly refers to a prominent warning that should be included in advertisements. Aside from not encouraging consumers to drink and drive, marketing communications must, where relevant, include a prominent warning on the dangers of drinking and driving and must not suggest that the effects of drinking alcohol can be masked (art. 4.6 CAP).

Article 19.14 of the CAP code describes that advertisements must not normally show alcohol being drunk by anyone in their **working** environment. The BCAP code adds that only in exceptional circumstances may marketing communications feature alcohol being drunk by anyone in their working environment (art. 18.13 BCAP).

Advertisements should not refer to **relief of psychological/physical problems**. As such, they must not imply that alcohol has **therapeutic qualities**. Alcohol must not be portrayed as capable of changing mood, physical condition or behaviour or as a source of nourishment (art. 19.8 BCAP; art. 18.7 CAP). Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance (art. 19.8 BCAP). Article 18.7 of CAP adds that marketing communications must not imply that alcohol can enhance mental or physical capabilities; for example, by contributing to professional or sporting achievements.

Article 18.6 of the CAP code states that marketing communications must not imply that



alcohol might be indispensable or take priority in life or that drinking alcohol can overcome boredom, loneliness or other problems.

The BCAP code (art. 19.9, BCAP) as well as CAP code (art. 18.8, CAP) explicitly state that advertisements must not link alcohol to illicit **drugs**.

More generally, the BCAP code maintains that advertisements must not link alcohol with **risky behaviour** like daring, toughness, aggression or unruly, irresponsible or antisocial behaviour (art. 19.5, BCAP). Though formulated differently, the CAP code issues a similar statement: *“Drinking alcohol must not be portrayed as a challenge. Marketing communications must neither show, imply, encourage or refer to aggression or unruly, irresponsible or anti-social behaviour nor link alcohol with brave, tough or daring people or behaviour.”* (art. 18.4, CAP).

### 3.5.5.3 Attractive to youth

Printed media (art. 18.14, CAP) as well as television (art. 19.15, BCAP) and radio advertisements (art. 19.16, BCAP) must not be likely to appeal strongly to people under 18, especially by reflecting or being associated with youth culture or showing adolescent or juvenile behaviour.

Considering televised alcohol advertisements, article 19.15 of the BCAP nuances that these ads should not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18. Likewise, alcohol advertisements on the radio must not be targeted at those under 18 years or use a treatment likely to be of particular appeal to them. Nor may they include a person or character whose example is likely to be followed by those aged under 18 years or who has a particular appeal to those aged under 18 (art. 19.16, BCAP).

The BCAP code also details further provisions. Advertisements for alcoholic beverages should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage the young to drink. People shown drinking or playing a significant role (see also art. 18.16, BCAP) should not be shown behaving in an adolescent or juvenile manner (art. 18.4, BCAP).

Article 19.17 BCAP apply here as well: *“Alcohol advertisements must not feature in a significant role anyone who is, or seems to be, under 25 and must not feature children. An exception is made for advertisements that feature families socialising responsibly. Here,*

*children may be included but they should have an incidental role only and anyone who seems to be under the age of 25 must be obviously not drinking alcohol”.*

Content-wise, the conditions of article 19.18 apply here as well. As such, advertisements for alcoholic drinks may give factual statements about product contents, including comparisons, but must not make any health claims, which include fitness or weight-control claims (see discussion of ‘health effects’).

### **3.5.6 Complaints system**

#### **3.5.6.1 Ofcom (Office of Communications)**

The Office of Communications (Ofcom) regulates among others the TV, radio and video-on-demand sectors in the United Kingdom. Ofcom was established by the Office of Communication Act 2002 and now operates under the Communications Act 2003. Besides providing communication services to UK citizens, one of the main duties of Ofcom is to protect the public from harmful and offensive material (Part 1, §3, (2), (e), Communications Act 2003). In particular, persons under the age of 18 need to be protected by Ofcom.

Ofcom contracted out certain functions which are related to broadcast advertising to ASA and BCAP. Nevertheless, in the end Ofcom remains responsible for the implementation and enforcement of standards in broadcast advertising. The agreement is revised after a period.

Ofcom monitors television broadcasting. In case of violation of the Code by a broadcaster, the ruling of Ofcom will be published on their website, including an explanation of why the Code has been breached. Ofcom is authorized to impose statutory sanctions, in case the violation is very serious or deliberate, or when the broadcaster repeatedly has breached the Code.

#### **3.5.6.2 ASA/CAP self-regulatory system**

BCAP is responsible for the setting, reviewing and revising of broadcast advertising standards that apply to television and radio. They assess all the complaints regarding alcohol marketing communications on broadcasted media.

The ASA is responsible for the handling and resolution of complaints under the BCAP

code. The main task of the ASA has to do with the process, handling and resolution of complaints concerning the compliance of broadcasters with the code.

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are responsible for writing and updating the UK Advertising Codes.

The self-regulatory system consists of the Advertising Standards Authority (ASA), the Advertising Standards Board of Finance (ASBOF), and the Committee of Advertising Practice (CAP). CAP mainly writes and maintains the BCAP and CAP-Code. Besides that, CAP aims to generate greater compliance and to prevent parties from breaching the rules by offering bespoke advice, training seminars and online recourses (CAP, 2014: 101).

The ASA is responsible for investigating complaints regarding marketing communications of non-broadcasting media. The Council of the ASA judges whether a marketing communication breaches the Code. To safeguard the independence of the Council, the ASA operates independent of both Government and the marketing industry. All (twelve) members of the Council are selected to reflect a diverse background and experience. Members can serve for maximum two terms of three years. Vacancies will be publicly advertised.

The main goal of the sanctions provided by the ASA and CAP is to ensure that noncompliant advertisements will be amended, withdrawn, or stopped as fast as possible (CAP, 2014, 105). Due to the partly active character of the ASA and CAP, marketers can also be sanctioned without a preliminary complaint.

The CAP has the ability to employ sanctions when a marketing communication has breached the CAP-code. Depending upon the case, the CAP can choose between several measures:

- **Adverse publicity** by publishing the name of the marketer and a description of the infringement on the ASA website. Adverse publicity aims to damage marketers' reputations and warn the public.
- **Ad Alerts** to members requesting them to withhold services, like for example advertising space.
- **Withdrawal of trading privileges** by members of the CAP. CAP members have the ability to withhold or withdraw recognition and trading privileges of parties that have breached the Code.

- **Pre-vetting** of marketing material. Persistent or serious offenders can be obliged to pre-screen their advertisements before publication. The measure can last for two years.
- Removal of marketer's **paid-for search advertisements** on internet search websites. In addition, the CAP can feature the name and details of the problems of the advertising in the search engine results when consumers search for the company.

Infringements of the BCAP or CAP-code can also have an impact on other codes, for example when data is gathered as a result of misleading advertising messages. In that case also the Data Protection Act 1998 is applicable to the action.

In cases where marketing communications continue to appear despite the judgement of ASA to withdraw or stop the advertisement, the ASA Council can refer the case to Trading Standards which can apply for an injunction from the Court to prevent its further appearance.

### **3.5.6.3 Portman group**

Anyone who thinks that the Code is breached can make a complaint against a product or promotion. A board will decide if the manufacturer did breach the Code. When the code is violated, the Code Secretariat can notify retailers via a Retail Alerts Bulletin. The alert is meant to inform retailers about the decision of the board and advises them to stop refilling their stores with the concerned beverage until changes have been made (§5.3 Code of Practice on the Naming, Packaging, and Promotion of Alcoholic Drinks).

## **3.6 Norway**

### **3.6.1 National context**

Regulation concerning alcohol marketing is captured in the Norwegian Alcohol Act, chapter 9 (Lov om omsetning av alkoholholdig drikk m.v. 1989-06-02-27) and elaborated in chapter 14 of Alcohol Regulations (Forskrift om omsetning av alkoholholdig drikk mv. 2005-06-08-538). The statutory regulation of alcohol marketing starts from the principle that alcohol marketing is not allowed. The Directorate of Health argues on their website that there is broad political consensus that there should be a strict ban on alcohol advertising in Norway, and this is also something the major industry organizations on

alcohol support.

The ban on all direct advertising for beverages containing more than 2.5% abv was introduced in July 1975 and continued in the Alcohol Act 1989. The ban was proposed after it turned out that alcohol consumption had doubled in the previous twenty years (Recommendation. O. No. 61 1972-1973). Since 1997 the ban also applies to advertising of products that do not contain alcohol, but with the same brand name, trademark or characteristics as alcoholic beverages (Stortinget, 2018). The Directorate of Health has drawn up its own comments on the provisions. These notes are valid from 11 January 2015 and replace remarks in the Handbook Alcohol Act (Circular IS-5/2008). There are a list of 20 exceptions which determine what is accepted. These are listed in the Alcohol Regulations (§ 14.3). The exceptions allow the industry to make their products and their business known to others in the industry as part of the annual revenue business, and to better meet consumer needs and expectations of sober and factual information about alcoholic beverages. In any case, messages cannot contain promotional tools, provide a positive depiction of alcohol, be particularly prominent, facilitate communication of data in other channels or otherwise directly or indirectly encourage alcohol consumption.

In 2015, the regulations on alcohol marketing were eased by an amendment of the Alcohol Act 1989. From then on it is allowed for alcohol producers to provide information about products containing alcohol to customers, under the condition that the information is factual and presented in a sober way. The amendment has allowed domestic alcohol producers to raise awareness of their products and increase competitiveness.

### **3.6.2 Aim**

The aim of the Norwegian Alcohol law is to limit the possible individual and social harm caused by alcohol use. In line with the Act, the main purpose of the general alcohol marketing ban is to prevent exposure to alcohol marketing that could lead to an increased demand for alcoholic beverages. Furthermore, the ban aims to maintain the general understanding in the population that alcoholic beverages differ from other commodities and are in need of specific regulation that restricts alcohol consumption in Norway. To achieve these objectives, the ban is designed as a general ban on all forms of marketing of alcohol, but with some limited exceptions (Helsedirektoratet, 2016).

### 3.6.3 Definition

A product is labelled as an alcoholic beverage when it contains more than 2.5% abv. Advertising alcohol in a legal sense is understood as "*any form of mass communication for marketing purposes*" (Helsedirektoratet, 2016, p. 6). In a note to the Alcohol Act, the Norwegian Directorate of Health further specifies when something can be perceived as alcohol marketing. In order to determine whether something can be seen as advertising, the potential of the marketing communication to reach the public is taken into account, and not whether it actually does. Moreover, the primary purpose does not have to be to sell alcoholic beverages. In principle, any kind of support (either financial or content-wise) of an industry actor that may lead to the promotion of alcoholic beverages can be considered as alcohol marketing. This for example also includes links to reviews of editorial media or editorial articles about alcohol, or the mentioning of specific products on blogs. As a result, the alcohol marketing regulation cannot be circumvented by using reporters, bloggers or other actors.

In assessing whether there is a marketing intention according to article 14§2 "*emphasis be placed on the sender of the information, who takes the initiative to provide the information, content and form of the information and how the information is presented and disseminated*". The notes on the Alcohol Act further explain what is meant by the sender, the initiator, the nature of the information and the way the information is presented and disseminated.

The Directorate of Health's notes to the Alcohol Act state that the alcohol marketing ban is media neutral. This means that the law does not distinguish between different media, but applies to all possible media types. According to § 14-2 of the Norwegian Alcohol law, alcohol marketing may appear, among others, in the "*printed matter, film, radio, television, telephone networks, computer networks, illuminated advertising, posters, signs and similar devices, images, exhibitions and the like, distribution of printed matter, samples etc.*" (Helsedirektoratet, 2016). As the list is not exhaustive, new marketing channels are also covered. Therefore, media neutrality also means that online marketing is part of the Alcohol Act. The notes on the regulation further explain that one of the characteristics of social media is that it is web-based services where many can communicate with each other and that there is often a form of dialogue between the users. The content is user created, and users can share information. Social media is used not only by private

individuals, but has also become an important communication and marketing channel for businesses and other organizations. Examples of such online services include Facebook, YouTube, Twitter, Snapchat, Instagram, discussion forums and various games.

### 3.6.4 Volume restrictions

In general, the Norwegian Alcohol Act does not allow any form of alcohol marketing. However, the Act provides twenty exceptions to the alcohol marketing ban (§14-3, Notes on the regulation). In some of these cases, communications are not considered as advertising because they are expressions of individuals. Furthermore, some forms of communication regarding alcohol are allowed when the information is required for sales and under the condition that the information is requested by a customer, or that the group exposed to it is limited. Lastly, certain types of alcohol marketing are not banned, because the communications are created in a foreign country. The exceptions will be discussed below.

It is also considered advertising if owners and employees of alcohol businesses, or others with close ties to business mention the suppliers' products in blogs, webpages or social media profiles. According to the practice, it will for example be considered as a violation of the Advertising Act if an industry participant explicitly or implicitly encourage private individuals to post comments about the actor's products on the actor's home pages, profiles in social media or other websites. According to practice, further requests for information about alcoholic products must be answered individually, even if the question is posted on a public website. The same applies for activities in the peer group and the like, if an industry operator is actually behind the group.

**Expressions of individuals** are not considered advertising. However, it is a prerequisite that the private utterances do not appear to be on behalf of or initiated by an industry player in the alcohol market, or that private individual enjoys benefits by mentioning alcoholic products (§ 9.6.2) (e.g. sponsoring celebrities or bloggers with trips or sponsoring events). Actors in the alcohol industry have the right to participate in public debate on political expression, but this right is not directly affected by the advertising ban.

In some cases alcohol marketing may appear in mass media. The alcohol marketing ban does not affect alcohol advertising in **foreign television broadcasts**, if the advertisement is in accordance with the sending country's advertising rules and the TV coverage or

advertising is not specifically directed at Norway. This means that broadcasts of foreign television channels that contain alcohol advertising can be communicated. The exemption does not apply to ads that are directly targeted at Norway. It also does not apply to foreign programs which are bought for broadcast in Norway by Norwegian companies. In principle, any form of advertising, including product placement, fall under the general prohibition on the advertising of alcoholic beverages, if these are sent from radio transmitters.

Additionally, advertisements in **foreign printed media**, like newspapers and periodicals, are not affected by the ban on advertising as long as the main purpose is not to promote alcohol in Norway. What matters is whether the newspaper or magazine is primarily aimed at a different market than the Norwegian. These regulations do not preclude production of magazines with alcohol advertising in Norway, as long as these are to be exclusively distributed overseas.

Printed media includes provisions on editorials, foreign news publications and trade journals. **Editorial coverage** of alcohol in newspapers, magazines, television and other media is in principle outside the advertising scope, as long as the discussion does not intend to promote the sale of alcohol. The discussion should be assessed and presented by an independent editorial magazine and must be characterised by real editorial freedom. This means that the discussion should not be formed, initiated, influenced or financed by industry participants or others interested in the sale of alcohol. If an industry player links to or is informing about an editorial article that discusses the supplier's products, the actual reference could be considered to have the purpose of promoting the sale of alcoholic beverages, even if the article itself is legal. Among other things, paid product placement and so-called "content marketing" are prohibited. Customer magazines, mall newspapers and similar publications are not considered to have editorial freedom, as the purpose behind such publications would normally be promoting the sale of goods or services.

A **trade journal** is seen as any journal published by and addressed to an industry branch or a portion of an industry branch. It includes such communication as is a necessary part of the normal interaction process between actors in the alcohol industry, i.e. manufacturers, wholesalers and licensees and their employees. The information provided must be sober and informative. It can for example give orientation of the goods'



manufacturer or marketing and the item's contents, characteristics, application and storage. What is informative depends on the very nature of the ad (e.g. item's contents and characteristics, including information about what it can be used for and how it can be used, how it must be stored to be best utilized, and the name of the producer or marketer).

The target group is most important in establishing whether a journal can be seen as a 'trade' journal. The target group for trade journals must be substantially licensees under the Alcohol Act and industry employees. This target group needs to make out an *essential* part of the total target group, meaning "a substantially larger percentage than half". Who has the necessary link to the industry must be assessed in each case. Examples of persons covered by the audience, is controls, deputy purchasing manager, sommelier, maître d'hôtel and bar manager, while other employees in sales or licensed premises, accountant, porter, cleaning staff, etc., as a rule will not fall within this person circuit (Helsedirektoratet, 2016).

In general, branding is not permitted, though some exceptions are made for marketing practices that are related to **point-of-sale** on-site premises. First, an exception is made for the use of the name of alcohol producers and alcohol wholesalers in the "**ordinary serving equipment**" (i.e. equipment which are directly associated with the serving of alcohol, such as coasters, glass, paddles, pourer, drink mixes, and the like). The enumeration of products is not exhaustive. Provision of promotional material from importers and wholesalers to licensees or consumers, such as pens, balloons and matchboxes, are not allowed. It can also concern immaterial promotional material, distributed via e-mail, at fairs or exhibitions, in business or public or private area.

Second, a company name or trademark of alcoholic beverages as a name for a **tavern** is only allowed when it occurs at licensed premises (e.g. microbreweries). The exemption applies to both licensed premises which have a municipal liquor license with an extended right to manufacture, and those where the manufacture takes place at licensed premises. That said, the exception includes only single-pubs and licensed premises which have their own production (thus not for a chain) (Helsedirektoratet, 2016).

The Regulations provide access for all **sales and licensed premises**, including networks of sale (online store with a retail license), to advertise the site's name, address, hours of operation and licensing rights. This means that the alcohol producer's company name,

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names of alcoholic products or images of alcoholic beverages or drinking situations, prices, references to price level must not occur in the marketing communication. As part of price information are also considered concepts such as "Happy Hour," "Two for one," "Cheapest in town" or similar designations which inform about audiences about prices and price levels for alcoholic beverages. The exemption includes advertising in all media, including advertising on the Internet and on sales and taverns' own websites. Also online stores that sell alcoholic beverages are covered by the exception and will thus be able to advertise their online store and show or refer to their website.

Furthermore, the exemption allows for the retail and serving establishments to deploy **information signs** of small format in direct connection with the sale or licensed premises. The exemption is granted so that the retail and serving establishments should be able to convey that they are a retailing or serving of alcoholic beverages. Such signs may include neutral and informative details about the site's name, hours of operation and licensing rights.

In assessing what kind of signs are covered by this provision, it is important to distinguish between (1) signs with site name and (2) information signs specifying rights and opening hours. First, nameplates fall outside the alcohol marketing ban. In other words, it is allowed to put up signs where the site's name appears on retail or serving premises. If a retail or serving is at a mall, it could be informed that it is a retail or serving at the centre, as long as the sign is the same size as the other shop signs and it is not highlighted in particular. Some taverns have names that say something about what is offered on site. This is permitted in practice, on condition that it cannot be linked to specific products, product brands or manufacturers of the name and the design, and that the layout and size is of such a nature that it is not so conspicuous that it will be regarded as alcohol. Information should always be expressed in a neutral and informative way. It will on such signs be allowed to disclose that place is a special business. It will also be permitted to disclose that it is a liquor store, sales and licensed premises in a shopping centre as long as the sign is the same size as the other store signs and it is not highlighted in particular (standardized sign painter).

In the premises of the retail and serving establishments can be provided sober product and price information as well as images of the products on a neutral background. It is only material that is intended to provide information within the retail and serving premises

that are covered. Brochures, catalogues and other information materials that can be taken out of the premises cannot contain product-specific information.

Licensed premises may also present the entire product range in the same way as described below (see § 3.6.3), both in text and using any images on their **food and beverage menus**. On the menu boards and bulletin, when for reasons of space is not possible to present the entire product range in the same way, it may be sufficient with a representative sample of the different types of products. However, it may offer information on the alcoholic beverages to suit the individual cuisine served (product-specific recommendations), provided that it also states non-alcoholic options. It is not permissible for suppliers to buy space on such boards. In menus no products can be highlighted in over others. This means for example that it will not be allowed to have pictures of alcoholic products on the menu, unless it also contains images of alcohol free products.

Retail locations can give product information through a poster or bulletin in the immediate vicinity of the product. The information need not be designed in a manner which attracts particular attention, for example in terms of size and colour scheme of the information. Details of the alcoholic beverage must not accentuate alcoholic beverages in relation to other products sold at the site. It is also not allowed to highlight certain alcoholic products over others.

How an alcoholic drink is placed in the store itself may be affected by the ban on advertising. If alcohol is placed in such a way that it is highlighted over other products, it can be considered to be for marketing purposes. If the goods in addition are placed together with information about alcohol, this could be a factor which further suggests that this is the case. The placing together of alcoholic beverage with food or other goods is not allowed. It is also not allowed for producers or suppliers to buy favourable placement of their products.

The exception also provides that sales and licensed premises, alcohol manufacturers and-wholesalers are allowed to use their own company name or trade name for marking vehicles, office buildings, warehouses, packaging, service uniforms, business documents, web pages, advertisements and the like, so-called **institutional labelling**. The exemption only applies to the entity's own company brand. It would for example not be allowed for

a bar to mark their waitress uniforms with an alcohol producer, supplier or wholesaler company brand. The exception does not allow for labelling with the product name or trademark of alcoholic beverages. Furthermore, the use of designs, colours and other recognizable elements reminiscent of alcoholic beverages and/or specific products are not covered by the exemption and will be considered as alcohol advertisement.

It is also allowed to use the company name or trademark of an alcoholic beverage for **sponsorship for non-profit purposes**. The exception provides a very limited ability to use the same company name or trade mark as alcoholic beverages by sponsorship of voluntary activities that do not offer a commercial product or service or are intended to promote such goods or services, and where any surplus is returned to the business of promoting non-profit causes. Support can take the shape of funds and/or voluntary time and having a non-commercial purpose (e.g. local football tournament). It does not include sponsorship of other projects like parties or fashion shows with a commercial goal. The exemption further regulates the way the company name can be used. The use of the company name or trade mark (logo) must be sober. This means that no promotional text, expressions or images can be used to represent alcohol in a positive way, portray an alcohol brand in a prominent way, or facilitate the dissemination of information through other channels. The sponsor's trade name or company name can only be used in informational material from the one being sponsored. The information may be given in any ordinary communication channels for dissemination of information, such as advertisements for the event, the event's website, program and posters, but not on sports jerseys, advertising signs, and advertising materials. Sponsorship in broadcast or audio-visual booking services is not allowed.

Alcoholic beverages for offer to travellers on **international flights** may be accompanied by sober product and price information and product images on a neutral background. The exception only applies to sober product and price information as a basis for pre-alcoholic beverages for serving on international flights, and if the information is available only to travellers who have asked to get this information. This includes information through mail. Information posted on social media is not allowed when it increasingly spreads through such media to people who are not consciously seeking out information about alcohol. The exemption only applies to flights because compared with boats and tax-free shops, they have a very limited capacity to transport goods.

The Alcohol Act contains a special prohibition of all forms of **free distribution** of alcoholic beverages for marketing purposes (art. 9.6.2). As such, it is forbidden to hand out alcohol to consumers, at events, film and TV productions, bloggers, celebrities, etc. The ban affects the distribution of alcohol to consumers in the form of alcohol as a prize, product testing, tasting, etc., if the aim is to promote the sale of alcohol or other goods or services. The provision also affects the distribution at such a low price that it cannot be considered to be serving for a fee. This provision, however, will not affect the use of alcohol as a real gift, because in these cases there is no question of distribution for marketing purposes.

The regulations imply that it is not allowed to so-called **premiums** (i.e. provided with an additional product or form) to benefit from the purchase of the product or other additional effects that are intended to attract a buyer's attention. Examples include the distribution of tickets or other products with the purchase of alcohol, "2 for 1 deals", advertisement on gift wrapping and packaging with other functions beyond packaging (e.g. screw caps designed as glasses, gift boxes designed as "emergency kits", and purses or lanterns).

Another exception allows **Vinmonopolet or auction houses** assisting Vinmonopolet to give sober product and price information on alcohol to be auctioned off, as well as images of the products on a neutral background. This means they cannot be depicted with additional objects that are not part of the product. Typically it will be a white or grey-coloured background. The photos must be sober, in that they should not be disproportionate or prominent. This means that the image should be in proportion to the text (a product-specific summary) that it is presented with. With this means that the image must be in relation to the text (the product-specific discussion) that it is presented together with. The objective is that the consumer should be able to recognize the product. This information will provide a basis for assessing the value of products that are subject to auction and may only be given on their website or on request.

**At fairs, festivals, tours, travel arrangements, courses and lectures related alcoholic beverages**, sober product and price information and images can be provided. The exemption means that wholesalers, manufacturers, retail and serving establishments, including Vinmonopolet, can give sober, product-specific information and images, as well as provide information about their dealers at fairs, festivals, tours, travel arrangements, courses and lectures on alcoholic beverages, which are aimed at the consumer.

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Events covered by this exemption are only events where information on alcoholic beverages is the theme or rationale for the event, mainly food and beverage events such as wine courses, food and wine festivals, etc. It must be stated clearly to the consumer that information about the alcoholic drink will be given at the event. For example, music and leisure events are not covered by the exception. Areas where such information can be provided must be clearly delineated without access for people under 18 years.

Information may be about raw materials, manufacturing, fragrance, taste, colour, ways of serving, storage and applications, including product images on a neutral background. Pragmatic product information may also include short and substantive flavouring and storing descriptions and representations of characters for applications. It can also be specified who sells the products. It may also be disclosed on actors' home pages. Such information may also be provided in the channels where consumers do not actively seek to obtain this information, for example on posters or advertisements in newspapers. Information on specific manufacturers and wholesalers attending the event are only permitted at the event's own website. It is not allowed to use photos or illustrations depicting alcoholic beverages, information about corporate brands or products.

**Tasting of alcohol at fairs, festivals, tours, and courses** is regarded as serving and requires a liquor license. It is also not allowed with free tastings (§ 8-6a, Alcohol Act). One can either pay for each tasting, or payment may be included in the admission or tuition fees. It is not allowed to provide for tastings to take place in showrooms. Furthermore, it must be ensured that the process does not conflict with other rules in the Alcohol Act, including Alcohol Act § 4.7 for proper performance of the license. The amount of alcohol to which admission entitles the consumer, for example, must not be able to cause the consumer to be obviously influenced by alcohol.

With regard to licensed festivals and fairs, the license requirement will in practice be resolved in several ways. It is the responsibility of each municipality to assess which solution they want to use. The notes describe three possible solutions:

1. Tastings can only be in a tavern with a license: this solution means that samples can only be dealt or bestowed by licensed premises licensed which is a limited part of the fair, festival and tour area.

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2. Each stand gets its own liquor license: such a solution means that each stand (producer or wholesaler) has a separate license for the occasion.
3. A common license is given to the organiser of the event: this solution implies that the organiser is given a license to serve alcohol to the fair or festival as such, and that the licensee is responsible for all servings across the entire exhibition or festival area, including tastings from manufacturers 'and wholesalers' stands.

The Alcohol Act further states that websites of sales and licensed premises and those of manufacturers and wholesalers can provide sober product and price information, but information on social platforms such as Facebook, Instagram, Twitter, etc. is not allowed. Both types of websites are framed in further regulations. Photos of alcoholic products on the website of sales and licensed premises should also be placed in front of a neutral background. Selling, general and licensed premises must therefore present the full product range in the same way, both in text and using any images. According to this provision, however, eateries can also provide information on the alcoholic beverages to suit the individual cuisine served, so long as non-alcoholic options are also stated.

It will not be permitted to emphasize consumption of alcoholic drinks at home together with selected non-alcoholic products, such as along with recipes for food, suggestions for shopping lists or customer magazines on the homepage. It is also not allowed to cross-reference or make links between foods or recipes and alcoholic beverages, such as " *this* beer fits with *this* cheese ", or "customers who bought *this* also bought *this*". Furthermore, it is essential that the information published on the website is **soberly designed** and only shows the product and price information which are necessary to provide a basis for consumers to consider the beverage, the hospitality providers or the range of products available on the spot.

With regard to tax-free sale of alcoholic beverages at **international airports and means of transport** (e.g. airplanes and ferries), sober product and price information is allowed. It is not permitted to distribute catalogues, brochures and e-mails to passengers or to inform travellers about the possibility to request such information on the Internet.

On the **website of manufacturers and wholesalers**, including the holders of municipal sales or premises licensed with extended right to manufacture, it is allowed to publish product-specific information about the raw materials, the colour of the beverage, the

manner of serving, the way of storage, the applications and retailers. Furthermore, product images can be shown when they are placed on a neutral background. It is only possible for manufacturers and wholesalers to publish soberly designed information under some conditions:

1. Alcoholic beverages must not in any way be highlighted in relation to other products. Similar information must be provided for all other products (including non-alcoholic products) contained in manufacturers' and wholesalers' product range. This means, for example, that it is not allowed to have pictures of alcoholic products on the home page, if there are no images of other products in its range.
2. Ingredient list and nutrition labelling should be provided for those products where this information is available. This will not be regarded as an accentuation of these products. Providing this information is mandatory under the Regulation of 28 November 2014 No. 1497, on allergens, net content and alcoholic content.
3. One must also be informed about the harmful effects that alcohol can lead to. The Directorate of Health has the legal authority to establish more detailed provisions for the content, design and placement of such information on adverse effects.

**Webshops** can also give sober product and price information as well as images of the products on a neutral background. The exception is intended to include the product and price information which are necessary and natural as a basis for ordering goods over the Internet. There is an assumption that the products presented are products that can be ordered over the Internet.

The exception allows Vinmonopolet or the holder of a municipal license who also sells online to provide sober product and price information, as well as to post pictures of products on a neutral background, in the online store. Information on alcoholic beverages must correspond to the ordinary form of presentation for the entire product range and cannot be highlighted in relation to other products which are sold in the online store.

The advertising ban also covers advertising for "**other goods with the same brand or characteristic as alcoholic beverages**" (Alcohol Act § 9.2.1 second sentence). If the goods or company logo on a label for alcoholic beverages are also used for non-alcoholic beverages, this could mean that the advertising for the **non-alcoholic goods** will be affected by the ban on advertising. The purpose of the provision is to frame advertising



for non-alcoholic and low-alcohol products that in reality also serves as advertising for alcoholic beverages. The reason was that one had experience that the low-alcohol beverages, particularly in the case of light beer, was used to promote stronger beer.

If a non-alcoholic product has its own "*distinct brand/identifying marks*" (Alcohol Regulations § 14.1.2 and 3) however, information about the company name or trade mark might be included on the back label, although this is the same as for an alcoholic drink. Several breweries producing mineral water, non-alcoholic beer and similar with their own distinct trademarks or characteristics and a different logo. Advertising of such products will not be affected by the advertising ban. If a company name uses a trademark or characteristics in both the alcoholic and non-alcoholic products, this will however be in violation of the ban on advertising. It is not sufficient to add the "light beer", "light", "soft" or the like to the manufacturer's name or logo to evade the ban.

Often, low alcohol beverages have the same name or identifying marks as alcoholic beverages, but also other products of the same brand or characteristics alcoholic beverages covered by the provision. The ban affects such material as advertisements for food products, clothing, etcetera, which are of the same brand or have the same characteristics as an alcoholic beverage.

When the company name is associated with alcoholic beverages, the use of the company name in other contexts than in advertising for the drink can also be affected by the ban. If a producer of other types of goods starts production or distribution of alcoholic beverages, the company name might eventually be subject to the restrictions stated in the rules of the Alcohol Act.

The ban on advertising of other products of the same brand or characteristics as alcoholic beverages, does not prevent the provision of information about who is the producer of a commodity. This means that it is allowed to advertise, for example, light beer and mineral water where the brewery's name is used. This advertising type must be designed so that it is clearly indicated which beverage is being advertised, and the brewery logo and brand must not be used in such a way that the advertisement could be perceived as alcohol advertising.

**Product packaging** can also be a channel for marketing. However, there is more room to provide product information on the product itself, than there will be room for other mass

communication channels, as packaging and labels are part of the total product the customer purchases. There is therefore somewhat greater space to provide product information about this particular product on its packaging, than there will be via other mass communication channels. Traditionally, the assessment was that there should be sober, mainstream product information on the product itself, and to give the product a distinctive design point is normally not in conflict with the advertising (§9.2.2.3).

*"Ordinary product information"* is in practice understood as sober information necessary for enabling consumers to choose the right product and to use the product correctly. According to long-standing practice "ordinary product information" is understood as information about product name, order number, alcohol volume, bottle size, producer countries, supplier (producer or wholesaler) and additional information (declaration) in the form of information about ingredients, nutritional content, mortgage and tax status.

It is further allowed to add the name of the company and/or trade mark on the label or package pursuant to the exception as described in Alcohol Regulations §14.3 no. 6. Product information on packaging and labels can in practice also comprise short and sober flavouring, use and storage descriptions. In practice, it also indicates a means for contacting the manufacturer of the label or packaging, as this is necessary to give the consumer the opportunity to make direct contact with the manufacturer with any inquiries or complaints (e.g. address and/or phone number, or website).

It is emphasized that all product information must be presented in a neutral and objective way. It will for example, not be allowed to angle information in an alcohol positive way, using quotations from reviewers, etc. As such it is allowed to give sober, mainstream product information on the product itself as well as factual and sober taste, usage and storage descriptions. Other information will normally not be allowed, such as alcohol positive review and awards.

Importers and manufacturers are responsible for ensuring that the **packaging and labels** are in line with advertising ban. In addition, Vinmonopolet and other outlets for alcohol have the responsibility to ensure that products in their stores are in accordance with the regulations. Especially at the point of design of the product, there is in practice a relatively broad framework of what is permitted by the trappings and embellishment of the product, labels or ordinary packaging, provided that they only have ornamental value. This applies

to issues such as the colour of the bottle, art on the label, small trinkets, etc. Especially in regards to awards, symbols and other informative visual elements it will have the presumption that this use of informative, visual elements takes place with the aim of promoting sales of the product itself or other products. This applies, for example to the use of awards (medals), prices, emojis and symbols or images to show the product's social application (e.g. party, armchair). Such elements cannot be considered "Ordinary product data", and thus fall outside the above guidelines for information that is allowed on labelling or packaging.

What content located at the URL **QR code** links to, will be changed continuously. If the information that is linked could not be permitted on the product label or packaging, then the link will be in violation of the ban on advertising. This means for example that the QR codes that link to pages or sites that contain alcohol will be prohibited. Moreover, it implies that QR codes that link to the manufacturer's website, where other products are mentioned, would conflict with the advertising, as this information cannot be provided on the product label or packaging. QR codes leading to sites with sober non-product-specific information, however, will be allowed, cf. § 14.2 no. 8, because the consumer seeks out information through scanning the code.

It will primarily be the importers' and manufacturers' responsibility to ensure that QR codes does not lead to information that cannot be provided on the label itself, or is otherwise inconsistent with the advertising rules. Furthermore, Vinmonopolet and other outlets have a responsibility to ensure that requirements are met for products in their range, and possibly return products to vendors if they, after an assessment of the information, find that it is in violation of the ban on advertising. The requirement must be met at all times.

Furthermore, the Alcohol Act allows the presentation of sober and factual information about the alcohol contained in **the food and beverage packages at a tavern or experiences related to alcohol that is included in delivery arrangements**. The exception applies only in licensed premises, and it will therefore not be permitted for a grocer to offer similar, packaged deliveries of food and alcoholic beverages. It may not display images or illustrations of alcoholic beverages and the information should not be attributed to specific alcohol products or manufacturers. By "food and beverage packages" is understood packages where both food and drinks are included. This will include, for

example, a 3-course dinner with accompanying wine package. By “experiences related to such beverages” is meant instances such as travel experiences with an alcohol-related theme, where the description of the experience will not be adequate if alcohol cannot be discussed, or it is not possible to separate the alcohol as a separate product, such as a wine tour of Tuscany. Such information can be given in all channels, including in ads and on social media.

It is not allowed to advertise products with the same trademarks or characteristics as alcoholic beverages. The purpose is to frame advertising for **non-alcoholic and low-alcohol products which in reality also act as advertising for alcoholic beverages**. The ban affects advertisements for food, clothing, light beer, non-alcoholic wine etc. (paragraph 9.2.3). This would mean that if a producer of other types of goods starts with the production and sale of alcohol, all marketing of existing goods must cease. Promoting a business as such, may also be in violation of the ban on advertising, if a "substantial part" of the audience associate the company name with alcoholic beverages. This principle was first stated by Supreme Jersey Advertising judgment (Rt. 2000 p. 46) and is subsequently incorporated into Alcohol Regulations § 14-1. For example, it will normally not be allowed to use a brewery name as a theme or as stadium advertising, since the brewery also produces alcoholic beverages.

It is not allowed to include alcoholic beverages in the advertising of other products and services. Although an advertising ban primarily applies to goods other than alcoholic beverages, it is illegal if alcoholic beverages or products with the same brand or characteristics as alcoholic beverages are included in the advertisement. For example, pictures, illustrations or denominations of alcoholic beverages in the marketing of food, clothing, furniture, travel, adventure, hotel, housing or other goods or services are to be prohibited.

The exception in § 14-3 provides, however, a limited ability to promote other products and services have the same name as alcoholic beverages if the name of the alcoholic beverage is the manufacturer's own personal name. There is an assumption that the alcoholic beverage has its own distinct brand and label or packaging and does not provide clear associations with other goods and services through the use of words, combinations of words, slogans, names, letters, numbers, shapes, form, images, etc.

In practice this will mean that a person with an established and well-known name may use their personal name as a brand name on both alcohol and other goods and services if the alcoholic product in visual design differs from the non-alcoholic goods or services concerned.

The exemption applies only in cases where the person is the producer or co-producer of the alcoholic product. Whether this requirement is met will depend on an assessment of the individual case. In making this assessment it will be relevant to look at what role the person has in connection with the development of the product, or a potential interest in its production, if the person receives revenue from the sales, or the like. If the person's role is mainly related to the marketing of the product, this will not be sufficient to come under the exception. This means that it will not be allowed for celebrities and others to lend or sell their name to alcohol producers or that person's name to be used on the label.

### 3.6.5 Content restrictions

Advertisements can include **sober** information about alcoholic products. This includes pragmatic non-product specific factual information about alcoholic beverages, including non-product-specific images and other illustrations depicting alcoholic beverages.

The provisions in the Alcohol Act are accompanied by content restrictions. Information that may be granted under the exemption is price, raw materials, manufacturing, fragrance, taste, flavour, serving way, storage and applications, and that pictures of the products can be shown on a neutral background. Pragmatic product information may also include short and substantive flavouring and storing descriptions and representations of characters for applications. It will for example be allowed to inform about wine or olfactory descriptions of taste, such as "fresh", "fruity", "clean", "complex", "rich", "hints of apple," "long aftertaste", and the like. Information on alcoholic beverages must not emphasize the drink compared to other products which are sold on site. This applies to both alcoholic and non-alcoholic drinks as well as food, snacks, etc.

In mass communication channels it is required that if consumers themselves actively seek out information, it may be supplied as sober, non-product-specific information and pictures.

The exception provides for alcohol actors entitled to give sober and factual information about alcohol types, production districts, manufacture, applications and serving manner.

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The information cannot be linked to specific alcohol products or manufacturer. The information must be factual. It can include information about raw materials, manufacture, storage, applications and serving manner (e.g. temperature or type of glass).

It can also include non-product-specific photos and other illustrations depicting alcoholic beverages. The reason is that such images can help to expand and illustrate the written, non-product-specific discussion. Non-product-specific images need to be soberly represented. For example, it will be allowed to use the image section of different types of alcoholic beverages, in order to display colour nuances, structure and the like. Furthermore, it may appear in a neutral glass with similar alcohol content alongside a dish, for example a glass with red content next to a roast lamb. There will also be allowed a reading list of interior pictures of a sales or brewery production facilities, provided alcoholic beverages having a retracted position. It is emphasized that alcohol positive images are not allowed.

The purpose of the exemption is to give consumers the opportunity to obtain general information about the alcoholic beverage directly from industry representatives. The information must only be shared on purpose, with people who have actively searched for it. The term "must actively seek" means that information must be provided in a channel that consumers must seek (such as home, shop, or exhibition grounds) and the consumer needs to do something active in order to find the alcohol information provided in this channel. This means for example that the brochures with non-product specific mention of alcohol can only be granted to consumers who seek-out the actor and asks for such a brochure, or even takes it out of a rack in a shop where one can expect that such information exists because alcohol is traded there.

In some cases images of alcoholic beverages are allowed, but only when they are presented on a 'neutral background'. A **neutral background** refers to a background with no objects that are not part of the product. The objective is that the consumer should be able to recognize the product. Typically it will be a white or grey-coloured background. The photos must be sober, in that they should not be disproportionate or prominent. This means that the image should be in proportion to the text that it is presented with.

### 3.6.6 Supporting framework

Below the supporting framework of Norwegian alcohol marketing regulation will be

described.

The Norwegian alcohol marketing regulation system is mainly supervised by the Directorate of Health (Helsedirektoratet). In case of local matters, municipalities can also be involved in the enforcement of the alcohol marketing ban.

### **3.6.6.1 Directorate of Health**

The Norwegian Directorate of Health is a regulatory authority and responsible for carrying out the Ministry's policy. The agency aims to promote and improve health among Norwegian citizens (Helsedirektoratet, 2018). Among other things, the Health Directorate has the obligation to conduct the interpretation of alcohol regulations, set out in the Alcohol Act chapter 9 and Alcohol Regulations, Chapter 14. The directorate is also responsible for supervising alcohol marketing practices.

The Directorate of Health may conduct such investigations and inspections as it deems necessary to carry out its statutory duties. Everyone is obligated to provide the information necessary for the implementation of the directorate's tasks under chapter 9.

Section 9.3 of the Alcohol Act stipulates that the Statutory Health Directorate is responsible for overseeing the advertising provisions of the Alcohol Act. Furthermore the Directorate of Health shall inform, supervise and follow-up inquiries from individuals, county governors, municipalities and others. Directorate supervision does not deprive the licensing authorities of their responsibility to supervise its licensees, including a breach of the advertising rules.

All actors are obliged to provide the Directorate of Health with the necessary information in order to enable the supervision and enforcement of the alcohol marketing ban. If deemed necessary, the Directorate has the right of access to documents and other information deemed relevant for the performance of its task. The disclosure obligation is limited to information they actually possess. The obligation is triggered by orders from the Directorate.

Municipalities are responsible for supervision and enforcement of the alcohol marketing ban (§9.1, Alcohol Act). As such, municipality inspectors will mainly come across marketing practices related to points-of-sale (e.g. free tastings in premises without a licence). In case of violation of the act, municipalities are authorized to request rectification or impose a sanction. They can impose a fine, confiscate the grant of a

premises, or decide to withdraw the licence (§1.8, Alcohol Act). Confiscation is usually applicable in connection with other offenses. Municipal confiscation decisions may be appealed to the County Governor. The Directorate of Health will forward all reports of possible alcohol advertising on municipal sales or licensed premises to the local authority which is responsible, so they can be handled by the municipality.

### **Sanctions**

The Norwegian Alcohol Act gives the Directorate the legal power to impose administrative sanctions on offenders against the alcohol marketing ban. First, the Directorate has the power to impose a decision to end an infringement. In addition, a fine may also be imposed (§10.1), or a municipal or state licence may be revoked (§§ 1.8 & 6.10).

In case of violations of the Act, the Health Directorate is authorized to make a decision and oblige one or more actors to rectify the given situation. Furthermore, the agency can impose a fine when a certain actor does not comply with the decision within a set time period (§ 9.03). Directorate decisions on violations of advertising regulations can be appealed to the Market Council.

The Directorate of Health can order a violator to bring an unlawful situation to cessation. The Agency may set a deadline, over a reasonable time period, for restoring the situation. In addition, the Directorate may also request a written commitment to rectify the unlawful condition. If the written undertaking is not fulfilled, the Directorate can still pursue the case. Often, in addition to such an order, the offender is also obliged, for example, to stop advertising or to remove promotional material from their own business.

The Directorate of Health is able to impose a fine, which can be determined in terms of time or fixed liquidated damages. Daily fines apply especially in situations where the deadline for rectification has expired (and run until the situation is corrected). Fixed sum fines are only used when it is considered particularly necessary that the situation will be changed before the set deadline. All fines need to be paid to the Norwegian state. If the Agency suspects that a new violation will occur within a year, it can state that the fine will start from the moment a new violation is committed.

The amount of the fine is determined on the basis of a number of criteria:

1. The nature and extent of the violation.
2. The financial situation of the responsible actor.



3. The cost of rectification.
4. The potential financial gain for the actors involved if the situation is not restored.
5. The objective of maintaining respect for the regulations.
6. Other elements that can be important for the assessment.

The aim of the Directorate is to ensure that the fine is sufficiently high to restore the situation. At the same time, however, it should also be proportionate and not too high. The sanction needs to be effective, without being unreasonable (Helsedirektoratet, 2016).

To prevent some actors from repeatedly violating the rules, the Directorate of Health is able to impose predetermined fines. This is for example possible in case of short-term advertising campaigns that will be finished before it has been assessed by the supervisory authority.

A predetermined fine can be imposed under three conditions. Firstly, a predetermined fine must be determined without undue delay after an offense is identified. Secondly, there must be sufficient evidence to believe that the offender will commit another violation. Previous violations are an important indication. Nevertheless, the risk must be determined on a case-by-case basis. Thirdly, it must be clear that possible future violations are not affected by a rectification order or an ordinary fine.

Every decision of the Directorate of Health needs to include a comprehensive description of what is required for the fine to take effect. The explanation should include whether the proposed fine takes effect in the event of any violation of the alcohol marketing regulation, or only applies to a specific number of rules.

The decision imposing a predetermined penalty payment may be reviewed at the request of the actor concerned or by the Directorate itself. For example, a decision can be revoked if it appears that the deadline to rectify a situation turned out to be not feasible. Furthermore, a decision to fully or partially waive a predetermined penalty can be taken when the new violation is less severe or because other sanctions are imposed.

Several actors may be sanctioned by the directorate. However, in most cases, a fine will be imposed on an advertiser and not the mediator. For instance, broadcasting media can be sanctioned by the Broadcasting Act (§10.3). The fact that a broadcasting company may be sanctioned by the Broadcasting Act will be a factor in assessing whether it would be appropriate to impose a penalty against a broadcaster. This will be a factor in assessing

whether an imposed fine will be waived wholly or partly. Decisions of the Directorate of Health can be appealed to Markedsrådet (the Market Council) (§9.5, Alcohol Act).

## 3.7 Poland

### 3.7.1 National context

For most of the 1980s, alcohol was regulated relatively restrictively in Poland. Selling alcoholic beverages happened exclusively by the State and on regulated hours, and a total advertising ban was applicable for all alcoholic beverages. Parallel to the liberalization and privatization of the Polish economic market, the State control on sales and promotion of alcohol softened. With regard to alcohol marketing, the biggest reform of the Act occurred from 2001. From that moment on the ban on alcohol marketing no longer applied to all types of media and advertising for beer was no longer prohibited (Cooke et al., 2004; Moskalewicz, 1993).

The 1982 Act on Upbringing in Sobriety and Counteracting Alcoholism (hereinafter referred to as the Sobriety Act) is the Polish statutory body by which alcohol marketing is regulated. The Sobriety Act came into force after a period in which Poland was confronted with alcohol-related problems, as a result of rapidly growing rates of alcohol consumption. Despite the rapid growth in consumption, Polish authorities and media expressed no concern about the possible risks of heavy consumption (Moskalewicz, 1993).

The starting point of the Act is that “sobriety is a necessary condition of the moral and material well-being of the Nation”<sup>4</sup>. In order to achieve sobriety, the Act provides a number of measures to limit the consumption of alcoholic beverages and change the structure of consumption (art. 1, Sobriety Act 1982). These measures include: providing conditions that increase the motivation to refrain from alcohol consumption; involvement in awareness raising activities; limiting the availability of alcohol; providing assistance for people with an alcohol dependency problem; reducing violence in a domestic context; financial support for social integration centres; determining the level and structure of the production of alcoholic beverages meant for Polish citizens; and preventing society from

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<sup>4</sup> Cited from the English translation of the Act on Upbringing in Sobriety and Counteracting Alcoholism 1982 (version 2009-09-28), retrieved via: [http://parpamail.nazwa.pl/parpa\\_en/images/docs/ACT.pdf](http://parpamail.nazwa.pl/parpa_en/images/docs/ACT.pdf). Last consultation on 7 May 2018.

alcohol abuse and its possible negative impact (art. 2, Sobriety Act 1982). Responsible for preventing society from alcohol-related problems is the State Agency for Prevention of Alcohol-Related Problems (*Państwowej Agencji Rozwiązywania Problemów Alkoholowych* (hereinafter referred to as 'PARPA')) (art. 3, Sobriety Act 1982). The Agency is subordinate to the Polish Minister of Health. The rules that are applicable to alcohol marketing are mainly covered by article 13<sup>1</sup> of the Sobriety Act.

Ever since the establishment of the Sobriety Act on October 26<sup>th</sup>, 1982, the text has been changed several times. Primarily dictated by the political leadership at the time, alcohol policy moved towards either stricter regulation or a more liberal policy (STAP, 2007b). In particular, the restrictions that applied to beer advertising have become less strict in the recent decades. Although the initial Sobriety Act of 1982 banned all kinds of alcohol marketing, the act of 27<sup>th</sup> April 2001 amending the Act on Upbringing in Sobriety and Counteracting Alcoholism 1982 excludes beer from the advertising ban. From that moment on marketing practices concerning beer were allowed, as long as it conforms to the restrictions that are stipulated in the law.

In 2003, the Act was amended again on several issues related to alcohol marketing. The amendment of the law meant, among other things, a relaxation of the restrictions on: sponsoring events; broadcasting beer advertisement on radio, television, cinemas, or theatres; narrowing concepts of content restrictions (e.g. reformulating "association with sport" to "physical fitness"); advertising on pillars and billboards, and lists of places in which there is no ban applicable (PARPA, 2014).

The ban on alcohol marketing applies to both private and legal persons, and organizations without a legal personality (art. 13<sup>1</sup>.10, Sobriety Act 1982). As such, also manufacturers, distributors and other corporations that sell alcoholic beverages to retailers, need to comply with the rules of the statutory code (art. 13<sup>1</sup>.8, Sobriety Act 1982). The ban is not applicable when the marketing practice is only visible inside the premises of a wholesaler, on a separate stand, inside a premises that provides on-site consumption (e.g. to restaurants or pubs), or on a specialized point-of-sale exclusively selling alcoholic beverages (art. 13<sup>1</sup>.9, Sobriety Act 1982). In the latter case, at least 70% of the total sales value needs to consist of alcoholic beverages (art. 2<sup>1</sup>, Sobriety Act 1982).

Marketing communications regarding non-alcoholic beverages can be part of the

prohibition in cases where the promoted product or service carries the same name as any alcoholic beverage, or when it uses similar trademarks, graphic forms, or packaging. Also using symbols that can be linked to an alcohol beverage is not allowed according to article 13<sup>1.3</sup> of the Sobriety Act.

The Sobriety Act further stipulates that companies need to pay “a fee amounting to 10% of the value added tax base on the taxable goods and services resulting from this service” (art. 13<sup>2</sup> item 1, Sobriety Act 1982). The fee will be deposited in the account of the Fund of leisure and Sport Activities for Students and managed by the Minister of Physical Culture and Sports (art. 13<sup>3</sup>, Sobriety Act 1982). The received resources of the Fund will be used for financial support of sport and leisure events for students. Sports clubs that have the potential to be financed by the Fund, need to operate as a non-governmental organization or associations whose activities at least partly aim to popularize sport and a physical culture among children and youngsters. The fund is also available to local authorities wishing to organize an activity (art. 13<sup>3</sup> item 4, Sobriety Act 1982).

Alongside the above mentioned statutory Sobriety Act, some additional restrictions are described in the Polish Brewers Advertising Code of June 8<sup>th</sup>, 2005 and the Code of Good Marketing Practice for the Polish Spirits Industry of February 8<sup>th</sup>, 2011. In contrast to the Sobriety Act 1982, these two codes are non-statutory and are only applicable to all signatories and their members. Both codes primarily focus on the content of the message, and determine to which rules alcohol marketing communications need to comply. The Advertising Code of the brewing industry is attached as an Annex to the Code of Ethics in Advertising, which is established by the Polish Advertising Council (*Rada Reklamy*). As the Union of the Polish Brewing industry (*Browary Polskie*) is member of the Advertising Council, both the Advertising Code and the Annex are binding on all members of the union (Browary Polskie, 2012). Chapter IV of the general Advertising Code is not applicable to beer brewers, because that chapter stipulates provisions for advertisement addressed to minors. Since the Sobriety Act almost fully prohibits alcohol advertising for alcoholic beverages other than beer, the Code of Good Marketing Practice for the Spirits industry only applies to marketing communications in places where the Sobriety Act allows it to be present.

### **3.7.2 Aim**

The aim of the Polish Act on Upbringing in Sobriety and Counteracting Alcoholism 1982 is to reduce alcohol consumption and alcohol-related harm, and initiate and support alcohol consumption habits (art. 1, Sobriety Act 1982). As the title of the law suggests, the law aims to promote austere alcohol consumption and abstinence (art. 2, Sobriety Act 1982). A partial ban on alcohol marketing is one of the measures that is included in the Act that needs to contribute to this aim.

### **3.7.3 Definition**

Article 2<sup>1</sup> of the Act on Upbringing in Sobriety and Counteracting Alcoholism 1982 describes the promotion of alcoholic beverages as “*public tasting of alcoholic beverages, distribution of gadgets connected with alcoholic beverages, organisation of sales promotions of alcoholic beverages, as well as any other form of public encouragement to purchase alcoholic beverages*”. The advertisement of alcoholic beverages is defined as “*public promotion of alcoholic beverage trademarks and graphic symbols connected with such beverages, as well as the public promotion of names and graphic symbols of entrepreneurs producing alcoholic beverages, which do not differ from the names and graphic symbols of alcoholic beverages and are used in order to promote alcoholic beverage trademarks*”. According to this definition, advertisements of non-alcoholic products can be considered as alcohol marketing if they bear the same name or graphic symbols. Furthermore, the article however stipulates that a communication is not perceived as alcohol advertisement when the information is used “*for trading purposes by entrepreneurs professionally engaged in the production, wholesale turnover and retail trading of alcoholic beverages*”. As such, it allows information exchange between professional parties (i.e. alcohol producers, wholesalers and retailers). With regard to alcohol marketing a distinction is made between beer and other alcoholic beverages. The act does not define a minimum % by volume for a beverage to count as alcohol.

### **3.7.4 Volume restrictions**

#### **3.7.4.1 Target groups**

Although the Act on Upbringing in Sobriety and Counteracting Alcoholism 1982 initially prohibited all kinds of alcohol marketing, the ban has been weakened over the last decades. Since 2001, the Sobriety Act no longer bans advertisement for beer. Also for

other types of alcoholic beverages the ban is less comprehensive than it was when the initial Act came into force. Nevertheless, even when advertising of alcoholic beverages is allowed according to the Polish Sobriety Act, the marketing communication may never aim to target **minors** (art. 13<sup>1</sup> item 2, Sobriety Act 1982). This provision is repeated in article 9 of the Beer Advertising Standards (attached as an Appendix to the Code of Ethics in Advertising) and §3 item 6 of the Code of Good Marketing Practices of the spirits industry (2011). The Brewers' code further forbids beer producers, or their representatives, to pay or provide any benefits for advertising that mainly addresses minors and will be distributed publicly (art. 10, Beer Advertising Standards). The article is also applicable to messages and product placement that appear in movies. In addition, article 5 of the Code of the spirits industry states that it is prohibited for the signatories of the Code to direct their marketing messages to **pregnant or nursing women**. The statutory Sobriety Act as well as the self-regulatory Code of Ethics in Advertising and the attached Advertising Beer Standards do not provide such an article.

#### **3.7.4.2 Restrictions specifically formulated for certain types of media**

The statutory regulation includes further restrictions on **printed media** (art. 13 §1, Sobriety Act 1982). As such, beer advertising cannot appear on the cover of a daily newspaper or magazine. For magazines aimed at children and teenagers, no alcohol advertising is allowed. The Act does not stipulate which criteria are used to define printed media that address children and teenagers.

The Sobriety Act prohibits placing alcohol advertisements on **advertising pillars, billboards** and **other fixed spaces**, or on **mobile surfaces**. An exception is made for promoting beer, under the condition that at least 20% of the surface is covered by a warning message about the harmful consequences of alcohol consumption, or an explicit reference to the fact that selling alcoholic beverages to minors is prohibited (art. 13<sup>1.5</sup>, Sobriety Act 1982). Article 13<sup>1.11</sup> stipulates that the Minister of Health will specify by way of regulation the size, content, design and manner of incorporating written information. These specifications have been stipulated in the Ordinance of the Minister of Health of 6 November 2003 on the content, size, design and type of insertion on the beer ads' inscriptions informing about the harmfulness of alcohol consumption or the sale of alcohol to minors (Journal of Laws of 2003 No. 199, item 1950). According to the

Ordinance every marketing message on a fixed or mobile advertising surface needs to state that “1/2 liters of beer contain 25 grams of pure ethyl alcohol” (“1/2 litra piwa zawiera 25 gramów czystego alkoholu etylowego”). Next to this sentence, the inscription needs to consist one of the following messages:

1. “Even this amount damages the health of pregnant women and is dangerous for drivers” (“*Nawet taka ilość szkodzi zdrowiu kobiet w ciąży i jest niebezpieczna dla kierowców*”);
2. “Selling alcohol to people under 18 is a crime” (“*Sprzedaż alkoholu osobom do lat 18 jest przestępstwem*”).

The Ordinance further provides that the inscription needs to be placed horizontally in the upper part of the advertisement. The field in which the message is placed needs to cover at least 20% of the total surface. The message needs to be placed in such a way that the distance of letters from the lower and upper edges of the background is not greater than 1/4 of the height of the letters, and the distance between lines is not greater than the height of the letters (§1.2. of the Ordinance). The text needs to be typed in Avalon, Avant Garde, or Arial, in capital letters, and coloured in red on a white background, or in white on a red on white background (§1.3 of the Ordinance). Illustrations of how the message should be portrayed on an advertisement surface, are attached to the Ordinance. The ordinance also applies to advertisement of products of the same brand as a beer type (§2 of the Ordinance).

Advertisements and promotion of beer on **television, in radio, cinema** and **theatre** is not allowed between 6.00 a.m. and 8.00 p.m., with the exception of advertisements presented by the organizer of a competitive or professional sport event during the event itself (art.13<sup>1</sup>.2, Sobriety Act 1982). On this issue, the Sobriety Act has been changed several times. The first change came with the amendment of the Sobriety Act in 2001. From that moment on, beer is excluded from the general ban on alcohol advertising. A time ban between 6 a.m. and 11 p.m. is implemented for promoting beer on television, radio, cinema and theatre. The 25<sup>th</sup> May 2003 amendment of the Sobriety Act further lowered the watershed, by changing the end time of the time ban from 11 PM to 8 PM. Currently, the watershed is under revision and will probably be extended again to 11.00 PM. The Sobriety Act further determines that advertising and promoting beer cannot be provided on **videotapes or other media** storage devices (e.g. CD, DVD, and Blu-ray). (art. 13<sup>1</sup>.3, Sobriety Act 1982)

Among many other issues there has always been a discussion concerning the rules regarding TV advertising. One of the amendments of the Act of October 26<sup>th</sup> 1982 on Upbringing in Sobriety and Counteracting Alcoholism from 25<sup>th</sup> May 2003, allows beer producers to advertise their products on the TV channels after 8 PM (in the past there were many different options: after 11 PM, only non-alcoholic beverages were allowed to be advertised etc.). The second document, the Polish Brewers Advertising Code of June 8<sup>th</sup>, 2005, is non-statutory and refers only to beer advertising. Most of the rules from this regulation are reflected in the statutory one. So when making any complaints, organizations and institutions usually act on the basis of the Act of October 26<sup>th</sup> 1982 on Upbringing in Sobriety and Counteracting Alcoholism. Some of the elements of the Council Recommendation are reflected in the Polish regulations, both in the statutory and non-statutory formulations (STAP, 2007b).

Informing about the **sponsorship** of mass events, sports events, or music concerts is in general prohibited for corporations whose main task is to produce or sell alcoholic beverages. However, for beverages containing maximum 18% abv the Act accepts that the name of the producer or distributor of the drink is placed inside daily newspapers or magazines, on invitations, tickets, posters, products, or information boards linked to the relevant event (art. 13.1.5, Sobriety Act 1982), or distributed via television or radio (art. 13.1.6, Sobriety Act 1982). When broadcast via radio or television, the information may not be presented by an individual, or in relation to a portrayed person (art. 13.1.6, Sobriety Act 1982).

Until 2001, a total ban on alcohol marketing for all types of media was in force in Poland. In order to avoid the prohibition, alcohol producers started to use **brand-stretching** practices by advertising non-alcoholic products with the same brand style and logo as alcoholic beverages. As a result, producers could still market their brand without violating the alcohol marketing ban (Cooke et al., 2004). After PARPA found that alcohol producers paid more for promoting non-alcoholic drinks than the money they got in return from the sales of these products, PARPA argued that it seems more likely that the real aim of producers is to promote the brand name and expect returns from the sales of their alcoholic beverages (Cooke et al., 2004). In 2001, the Polish authorities anticipated this practice of alcohol producers by including a phrase in which it is stipulated that it is not allowed to advertise for products and services with a name, trademark, graphic layout, or



packaging that is similar to an alcoholic beverage, or that uses symbols which can objectively be linked to alcoholic beverages (art. 13<sup>1</sup>.3, Sobriety Act 1982). Additionally, it is also prohibited to promote a business or other entity that uses a name, trademark, graphic design, or packaging in their marketing communication that can be linked to an alcoholic beverage, alcohol producer, or distributor (art. 13<sup>1</sup>.4, Sobriety Act 1982)

### 3.7.5 Content restrictions

#### 3.7.5.1 Alcoholic nature: quality and quantity

As a rule, article 3.1 and 3.2 of the Brewers' code stipulate advertising should adhere **good morality**: *"Beer advertising may not use images, symbols, persons and topics, which can be regarded as offensive, derogatory or humiliating. Beer advertising may not cause offence to prevalent religious norms"*.

Statutory as well as self-regulatory codes contain provisions on **responsible consumption**. As such, it is prohibited to advertise and promote alcoholic beverages in Poland, except for advertising and promoting beer, provided that the beer advertisements do not encourage excessive use of alcohol, do not present abstinence or moderate alcohol consumption in a negative way, and do not highlight high alcohol content of beverages as a factor positively influencing their quality (art. 13<sup>1</sup>.1, Sobriety Act 1982).

Art. 8 of the Brewers' code adds that beer advertising may not present or encourage irresponsible or excessive consumption of beer; present intoxicated people or in any way suggest that state of intoxication is socially approved; encourage consumers to prefer a given beverage due to its ability to create intoxication; suggest that consumption of beer with lower alcohol content does not lead to alcohol abuse nor present refusal to consume alcohol or consumption in moderate quantities in a negative light.

The Marketing of Spirits Code refers to '**responsible drinking message**' in article 10: *"It is very important for advertising messages to present only moderate and responsible consumption of alcohol. The signatories of this Code shall not be indulgent towards or encourage the excessive or irresponsible consumption of alcohol, nor make reference in a friendly manner as to the consequences of alcohol intoxication. Additionally, they shall not present persons drinking a lot or quickly, nor suggest that such behaviour is attractive or appropriate."*

In article 6 this Spirits' Code refers to the responsibility of its signatories to use correct labels for their products. This means, no communication should be confusing in terms of the nature of alcoholic beverages or their alcohol content. Furthermore, although trade communication may present information for consumers on the subject of alcohol content, it should not emphasize high alcohol content as the dominant element in communication materials of any brand. On the other hand, announcements cannot suggest that the consumption of alcoholic beverages with low alcohol content causes the avoidance of their abuse.

### 3.7.5.2 Influences on performance

Article 13.1 of the statutory regulations further issues that alcohol advertisements for beer should not link alcohol consumption with physical fitness or **driving**. Article 2 of the Spirits' Code adds that all activities covered by this Code shall not show nor suggest that any consumption of alcoholic beverages is permissible or tolerated before or during the operation of any mechanical vehicle, including automobiles, motorboats, jet skis, snowmobiles or aircraft etc.

Both self-regulation codes include provisions considering **risky behaviour**. As such, article 4 of the Brewers' code stipulates beer advertising may not encourage aggressive or anti-social behaviour, while in article 6 of the same code it is stated that: *"Beer advertising may not present beer consumption in circumstances which are commonly regarded as irresponsible, inappropriate or in breach of law, in particular before or during any course of action which requires sobriety"*.

Article 3 of the Spirits' code includes a similar provision, when describing that advertisements for spirits should not suggest that consumption of alcoholic beverages is acceptable before or when operating potentially dangerous equipment or the undertaking activities that require concentration for their safe execution, or when undertaking a potentially dangerous activity connected with recreation or work. Furthermore, the second paragraph of this article stipulates that alcoholic beverages will not be presented as consumed by a person who is or will be immediately engaging in any activity that requires a high degree of concentration or physical fitness.

Both the statutory regulation as well as self-regulatory codes include provisions dealing with **social, sexual and professional success**. For instance, article 13.1 §8 of the

statutory regulation maintains that alcohol advertisements for beer should not evoke associations with sexual attractiveness, work or education, personal or professional success.

The self-regulatory codes mainly address sexual success. As such, article 5 of the Brewers' code insists that "Beer advertising may not use or promote sexual promiscuity, consent to sex or nudity, nor suggest that beer consumption can have a positive influence on sexual performance". In a similar way, article 8 of the Spirits' Code stipulates that all activities covered by this Code shall not suggest that the consumption of alcoholic beverages is required for social acceptance or achieving success, or contribute to achieving any type of success. Article 9.1 adds that these activities shall not suggest that the consumption of alcoholic beverages enhances sexual potential, attraction or leads to relationships of a sexual nature. Moreover, marketing materials for alcoholic beverages should not rely on sexual prowess or sexual success as an argument for choosing a given brand (art. 9.2) and they should not contain or present an image or unnecessary nakedness, overt sexual acts, sexual freedom or obscene images or language (art. 9.3).

Aside from perceived increased success, all regulations refer to **therapeutic qualities** of alcoholic products. Article 13<sup>1</sup>, of the Sobriety Act 1982 decrees that beer advertisements shall not contain statements about medicinal, stimulating or calming properties of alcohol, present alcohol as a means of resolving personal conflicts or link it with relaxation and resting. Article 6 of the Brewers' Code stipulates that beer advertising may not create the image of beer as a means of overcoming life's problems. Additionally, article 12 declares that beer advertising may not suggest that beer has healing properties or prevents illnesses; suggest that beer has properties of a stimulating, anaesthetic or sedative drug.

The Spirits' Code contains further provisions stating that advertisements for spirits cannot create the impression that the consumption of alcoholic beverages is relaxing or therapeutic. This means, they cannot give the impression that the consumption of alcoholic beverages strengthens mental abilities or **physical fitness** or has a stimulating effect, e.g. when performing actions requiring concentration in order for their safe performance. Likewise, spirits should not be portrayed as energizing beverages (art. 7).

Article 1 of the Spirits' Code maintains that marketing, promotion or communication activity shall not present – directly or indirectly – the consumption of alcoholic products

as improving mental efficiency and ability, or contributing to gaining success. Article 4 of this Spirits' Code further states that as a rule marketing, communication or promotional materials shall not contain any statements relating to health, and shall not suggest nor maintain that alcoholic beverages' properties have treatment effects or that their consumption can prevent, help, cure or treat any illness or improve human **physical fitness**.

### **3.7.5.3 Attractive to youth**

Article 13<sup>1.1</sup> of the Sobriety Act 1982 states that it is prohibited to advertise and promote alcoholic beverages in Poland, except for advertising and promoting beer, provided that the beer advertisements are not aimed at minors and do not depict minors.

Article 11 of the Brewers' code details that beer advertising may not contain images of people who are less than 25 years old; use images of people or figures who influence minors in a special way; or suggest that beer is essential to becoming an adult or to achieve success in work or areas of social activity.

As a general rule, article 1 of the Spirits' Code declares that no brands, names and logos of articles other than alcoholic beverages shall be used, such as games, gaming equipment, clothing and sports equipment, or other subjects that are mainly directed to minors or other subjects that minors are attracted to in the marketing, promotional or communications activity for alcoholic beverages. Moreover, marketing, promotional or communication activity shall not – directly or indirectly – present the consumption of alcoholic beverages in a manner that associates them with the status of adulthood, reaching adulthood, or rituals of passing into adulthood. In addition, no identifying marks of alcohol, including logos, trademarks or names shall be used or licensed for use on toys or games for children, or on any other materials directed mainly to minors.

### **3.7.6 Stakeholder marketing: obligated information**

Article 13.2 of the Sobriety Act 1982 stipulates that information about the **harmfulness of alcohol consumption** should be made visible at points of sale and serving alcoholic beverages (see also above in the discussion of volume restrictions on printed media, in which it is stated that beer advertisements are only allowed in these media types if 20% of the advertisement's surface is covered with visible and legible written information about the

harmful effects of alcohol consumption or the ban on selling alcoholic beverages to minors).

As also mentioned in the discussion on content restrictions, article 10 of the Spirits' Code insists that all advertisements, promotional and informational materials should contain a visible message concerning the **responsible consumption** of alcohol. Moreover, all promotional campaigns should contain a component devoted to the responsible drinking of alcohol (e.g. banners/advertisements on tables containing such a message and/or programs for safely driving home or using a designated driver). The message of responsible consumption should be clearly legible for any average consumer; hence its size should depend on the carrier, location of the message and shape of the advertisement. Additionally, all websites of brands shall contain a statement on behaving socially responsibly in business as well as links to websites of social organisations of which the advertiser is a member of e.g. to the Portman Group or Century Council.

### **3.7.7 Supporting framework**

The State Agency for Prevention of Alcohol-Related Problems (PARPA) is a State budget entity that functions under the responsibility of the Polish Minister of Health. The prime task of the State Agency is to resolve alcohol-related problems and to protect Polish society from the harmful effects of alcohol consumption (art. 3.1, Sobriety Act 1982). The Agency aims to contribute to state legislation concerning alcohol, monitor the implementation of the Sobriety Act and to suggest or propose policy changes. From the 1990s onward, PARPA has also operated as a watchdog for the ban on alcohol marketing (Cooke et al., 2004). Article 3.3° of the Sobriety Act 1982 specifies the activities of the State Agency. One of the duties of the State Agency is to intervene in cases where one or more provisions of article 13§1 of the Act are breached. In that case PARPA will act as a public prosecutor before the court. The director of the Agency is appointed by the minister of Health. The process for selecting a Director of PARPA is described in article 3 of the Sobriety Act 1982.

When an advertisement or promotion is perceived as an infringement of the Act a complaint can be made by PARPA, local community governments, prosecutors or the police. Depending on the actor who starts the procedure of complaint, marketing activities can continue as long as the legal proceedings are ongoing (EUCAM, 2017). In case of an

infringement of the provisions of the Act concerning the advertisement or promotion of alcoholic beverages, as stipulated in article 13§1 of the Act of October 26<sup>th</sup>, 1982 on Upbringing in Sobriety and Counteracting Alcoholism, the persons involved can be obliged to pay a fine between 50,000 PLN (€2,200) and 500,000 PLN (€112,000). The person in charge of ordering or managing the advertising of alcoholic beverages is liable for the act when it is committed within the scope of the entrepreneur's business activity (art. 45§2, 3<sup>o</sup>, Sobriety Act 1982). The proceeding is conducted on the basis of the provisions on criminal proceedings. As a result, the duration of the proceeding depends on the workload of the court. The public prosecutor has the ability to publicly announce the result of the procedure (EUCAM, 2017).

Next to the statutory Act on Upbringing in Sobriety and Counteracting Alcoholism, the actors of the marketing, media and beer industry have stipulated their own rules in the Code of Ethics in Advertising 2014. Compliance with the Code is supervised by the Advertising Council. Proceedings before the Advertising Ethics Commission can take place parallel and independently from proceedings of the court (Regulations for the Conversion of the Complaints, 2014).

Complaints regarding infringements of the Code of Ethics in Advertising can be made on the website of the Advertising Council (Rada Reklamy). The Regulation for the Conversion of the Complaints stipulates that every natural person, legal person and organizational unit without legal personality can submit a complaint. The complaint treatment is done by the Advertising Ethics Commission (*Komisja Etyki Reklamy* (KER)). They can decide to:

- 1) Reject the complaint because it is not considered as subject to the Code.
- 2) Dismiss the complaint because of a lack of proof.
- 3) Agree that the ad violates the Code.
- 4) Ask the advertiser to amend the advertisement as soon as possible, so that the violation will stop.
- 5) State that the advertiser needs to stop the advertising as soon as possible.
- 6) Set a deadline in case of violation of the Code.
- 7) Revoke the right to use the slogan "I am ethically advertised", the "KER Signer" trademark and refer to the KER Certificate in case of heavy or persistent violation of the Code (translation of 38<sup>o</sup>, Regulations for the Conversion of the Complaints, 2014). The ban can last for no longer than three months.

8) Publish the resolution in selected media in the industry.

All resolutions of the Commission will be published on the website of the Advertising Council within seven days from preparing the decision in writing. Within ten days from the publication of the judgement all parties can appeal against the decision of the Commission. The appeal will be considered by three KER members who did not participate in the previous judgement.

If the adviser fails to comply with the decision of the KERR, or if the Advertising Council believes that the ad also violates other applicable standards, the Advertising Council can ask the KERR to suspend or stop the certificate's right to use the KERR trademark, slogan, or certificate, granted by the Advertising Council under a license agreement. The sanction can apply to the advertiser, the advertising agency and to the media that disseminated the advertisement. The appeal panel can either dismiss the appeal, or include the appeal in whole or in part.

## **3.8 France**

### **3.8.1 National context**

Since the 1960s, a range of measures have been implemented that contributed to the decrease in alcohol-related harm in France. However, until 1991 alcohol marketing was not regulated by law. Under influence of a range of non-governmental organizations and doctors, attention increased towards youth exposure to alcohol marketing.

Advertisements for all alcoholic beverages are not prohibited but "framed". The essential goal of the Evin Law is that advertisements should not in any case be an incentive to use alcohol. The legislators use two mean to reach this objective:

- Providing a limited list of type of media through which alcohol advertisement is allowed.
- Providing a limited list of approved content, which can only consist of objective information which informs the consumer about the product and its characteristics.

Advertising has to be primarily informational in containing only those mentions authorized by the law, in order to present any objective information about the product, its nature, composition, its designation, its denomination, and the ground from which it is

extracted, so that the consumer can make an informed choice.

During the debates in the National Assembly in 1990, it was clearly foreseen and accepted that the provisions of the Evin Law, as developed to limit risks and harms due to the consumption of alcohol, would also have economic consequences. It was considered that this law was not contrary to the principle of freedom of trade and industry, nor against the freedom of information. Restrictions on freedoms and economic rights are recognized by the Constitutional Council if they are justified on grounds of general interest. Issues of health undeniably are of general interest, all the more so since the right to protection of Health is guaranteed by the preamble to the 1946 Constitution. Consequently, the legislature had been good enough to give priority to the principle of general public health.

It can be seen in practice that the Evin Law did not mark the end of advertising for alcoholic beverages. Advertising expenses for the sector of alcohol production amounted to €459 million in 2011. In comparison, in 2006 they amounted to €306 million while amounting to only €237 million in 2003.

In its original spirit the Evin Law had wanted to prohibit all advertising media which are targeted to all people (particularly younger) and which do not fall under a voluntary choice such as television, cinema and billboards mainly (the Internet was not developed at the time, it is not mentioned, but in the case it probably would have been prohibited as well). Simultaneously, the legislators wanted to authorize those advertisements through which consumers can exercise their freedom of choice.

Over the past 25 years, the spirit of the Law has been partly distorted by progressive "nibbling". Authorization by the Law HPST in 2009 of the advertising on the Internet media - where the advertisement imposes itself to all, and which is massively used by young people, and even children- illustrates the shift between the original objective and the amended text. Already in 1994, the Evin Law had been weakened by the reinstatement of the authorization throughout France for advertising through posters, whereas it was previously permitted only in areas of wine production.

ANPAA defends the Evin Law on advertising because its provisions are a strong signal to the public about the risks associated with alcohol consumption. Its sole purpose is to have an impact on the behaviours. On the other hand, combined with other devices such as the investment in prevention, taxation (e.g. contribution to public health and minimum price)



and measures on the availability and visibility of the product, it is one of the indispensable pillars of the fight against alcoholism.

Despite the statutory general ban on alcohol advertising, some non-statutory regulations are also in force. The French Regulatory Authority for Advertising (*Autorité de Régulation Professionnelle de la Publicité* (ARPP)) creates and monitors a range of ethical advertising rules. The rules of the ARPP are not binding, but they can declare that an advertisement is not in line with their requirements and ask the advertiser to amend or remove the ad.

### 3.8.2 Aim

The current French statutory regulation system on alcohol marketing was implemented in 1991. The first aim of the Evin Law was to protect young people from alcohol marketing (Gallopel-Morvan et al., 2017).

### 3.8.3 Definition

The Evin Law applies to any drink containing more than 1.2% abv. The law makes no distinction between light-alcoholic and strong-alcoholic beverages. Some exceptions in the law do apply to alcoholic beverages produced in France and having a cultural link to a certain region.

The French law defines alcohol marketing as any type of expression with an advertising goal, targeting consumers, independent of the type of media.

### 3.8.4 Volume restrictions

The French statutory regulation states that direct and indirect advertising of alcoholic beverages is prohibited when it might target minors. Therefore, initially alcohol marketing bans were introduced to media that are attractive to youth populations. In contrast, alcohol marketing in less popular media was allowed. However, when the Evin Law came into force in 1991, digital media were not included.

The Public Health Act (*Code de la Santé Publique*) includes a number of exceptions in which a range of media types are authorized to promote alcoholic beverages (art. L3323-2 (V)):

(1) In the **printed press**, excluding publications intended for young people, as defined in

the first paragraph of Article 1 of Act No. 49-956 of 16 July 1949 on publications intended for young people.

(2) By **radio** broadcasting for the categories of radios and in the time slots determined by decree of the *Conseil d'Etat*. As such it is allowed to advertise alcoholic products (1.2% abv or higher) on Wednesday between midnight and 5 am and on the other days between midnight and 5 pm (Art. R3323-1).

(3) In the form of **posters** and signs in production areas, in the form of posters and objects inside licensed premises, under conditions defined by decree of the Council of State (Article R3323-2). As such it is not allowed to advertise in gas stations, but upon receiving a license local producers, kiosks and retail shops can provide advertisements within the conditions provided in art. L.3331-1 and L.3331-2. Likewise, restaurants and hotels can show a picture of an alcoholic drink on the tables or on the counter, provided it complies with the article. Any further publicising of alcoholic drinks is limited in the sense it can only include the name of the producer or distributor and the brand (without any slogan)(art. L. 3323-3 and 3323-4).

(4) In the form of consignments, messages, **trade circulars**, catalogues and brochures by producers, manufacturers, importers, dealers or warehousemen, provided that these documents contain only the particulars provided for in art. L. 18 and the conditions of sale of the products they offer.

(5) On **vehicles** used for normal beverage delivery operations, provided that such registration includes only the description of the products and the name and address of the manufacturer, agents or custodians, excluding any other indication.

(6) At traditional **festivals** and **fairs** devoted to local alcoholic beverages and within them, under conditions defined by decree of the Council of State. Except within precisely defined exceptions, it is forbidden to give free samples '*à volonté*' for commercial purposes or against a fixed amount of money. A festival or fair is considered 'traditional' when the event takes place at least once every two years, when it is organized for at least ten years, and when the last edition of the event was in the last five years.

(7) In **museums**, **universities**, or brotherhoods or oenological **initiation courses** of a traditional nature, as well as for presentations and tastings under conditions defined by decree.

(8) In the form of an offer for free, or for a low price, under the strict condition that the alcoholic beverages are marked with the name of the manufacturer, when the offer aims to sell the beverage directly to the distributor or consumer, or when it takes place at the site of the manufacturer.

(9) Via **online communication services** as long as the provided promotion or advertisement is neither intrusive nor interstitial; it is not published by sports associations, societies and federations or professional leagues. Beyond that, the marketing communication may not be primarily intended for youth, by its character, presentation or purpose.

The Deliberation of June 17<sup>th</sup> 2008 on the Exposure of Tobacco Products, Alcoholic Beverages and Illicit Drugs adds that advertising for food containing alcohol is permitted as long as the presence of the alcohol is not promoted. The Deliberation further stipulates that alcoholic drinks can be portrayed or mentioned when:

- 1) The topic is subject to a news item or documentary on radio or television and the presentation is not promotional in nature, complacent or laudatory.
- 2) A direct or indirect reference is made to the production of alcohol, in particular wine, during a report. Such kind of references are not seen as alcohol advertising because oenology and viticulture are perceived as part of the French heritage.
- 3) An occasional reference is made to alcohol beverages in a program devoted to gastronomy, where the beverage is part of the dish, or is mentioned in order to guide the choice of wines that best suit the dish.
- 4) The alcoholic beverage is an indispensable part of a seasonal event with a high notoriety, for example during the sale of the “Beaujolais Nouveau”.

Apart from the exceptions listed above, **product placement** of beverages containing more than 1.2% alcohol is not allowed (Chapter V. - *Produits et services ne pouvant faire l'objet d'un placement, Délibération du 16 février 2010 relative au placement de produit dans les programmes des services de télévision*). Any **sponsorship** operation is prohibited when the prime activity of the sponsoring company consists of the manufacturing of alcoholic beverages (Art. 19, Decret n°92-280, 1992). Despite the ban on sponsorship, the name of a manufacturer or distributor of alcoholic beverages can be published when the company is the initiator of a philanthropic event. The dissemination is limited to

mentioning the name in documents that circulate in connection with the operation or in memorial media dedicated to operations concerning the restoration of natural or cultural heritage.

In order to avoid situations in which alcohol advertising appears during international events, the Code of good practice for the retransmission of sporting events involving billboards for alcoholic beverages (*Code de bonne conduite pour la retransmission d'événements sportifs comportant des panneaux publicitaires pour les boissons alcoolisées*) stipulates how to deal with alcohol advertising during international sporting events. The code differentiates between sporting events in France and events organised in a foreign country. In the former situation, there is no exception made on the ban and therefore it is not allowed to promote alcoholic commodities. Sporting events outside France are treated differently in certain circumstances, when the advertising does not primarily aim to reach French citizens and when the French broadcaster has no control over the recordings. In order to determine if the event aims to target French citizens the Code makes a distinction between multinational manifestations and binational manifestations. When an event is multinational it means that a range of countries are involved during the event. Because of the involvement of a lot of nations and thus the presence of foreign alcohol brands, it is allowed that these alcohol-related messages will be broadcast in France. Binational manifestations are events in which there are just two nations involved. Because the amount of countries is limited, the code expects the involved parties to act responsibly and prevent the public from seeing alcohol advertising. In order to comply with the rules the Code states that the French broadcaster needs to inform the organizer about the French ban on alcohol advertising. Depending on the material possibilities the broadcaster also needs to check the place where the event will take place. Lastly, the French broadcaster needs to use their technical features in order to hide alcohol advertising during the broadcasting of an event. An exception is made when one of the teams or athletes involved carries a special reputation and the event that takes place is a friendly match, a match for the qualification of a final, or matches that take place before the 1/16 final of the UEFA European league (C2).

The Public Health Act allows premises to sell alcoholic beverages for a reduced **price**, under the condition that also non-alcoholic drinks are offered with a discount (art. L 3323-1).

Despite the general ban on alcohol advertising in France, the alcohol industry has agreed upon self-regulation. The self-regulatory code (ARPP code) serves primarily as a guideline for the media and advertising industry in order to legally comply to the statutory regulation. In these situations, the signatories voluntarily restrict their right to advertise further:

- They refrain from **outdoor advertising** in French sports fields during sporting events (art. 3.4-1, ARPP code).
- Further than the strict implementation of the 2009 July 21th law, **online marketing** communications comply with all the rules set in this Code. Access to brand websites is conditional upon the obligation of stating one's age or date of birth. The access must be denied if the age is below 18 (art. 3.4-2, ARPP code).
- **Delivery cars** must indicate the name of the producer with a legible and visible super indicating "company" or any other word, abbreviation or logo showing the legal status of the company. The name of the producer can be replaced by or joined to the name of the brand. In that case, the health message must be present (art. 3.4-3, ARPP code; see also see §3.33).
- **Professional animation** activities should comply with the general rules applicable to marketing communications as well as those concerning minors. Initiators of promotional animations must comply strictly with the provisions of the French Public Health Code concerning alcohol sale and distribution (even for free). They make sure sufficient information, controls and prevention campaigns are provided in order to prevent alcohol consumption by minors and pregnant women, or excessive consumption by any consumer. Tasting sessions are proposed in adapted quantities and limited numbers. They don't organize professional animation activities at points of sale which don't have the sale license (consumption in place or to take away). They commit to making prevention and information campaigns concerning the risks of alcohol while driving, notably addressing young drivers.
- In accordance with the 1991 January 10<sup>th</sup> law (modified in 2003), when **patronage** is provided by the producer or the distributor, and that the name used by the producer is also a brand or the label of a product, the word "company" or "foundation" must appear next to the name of the producer or distributor in a legible and visible way, or any other word, abbreviation or logo defining the company.

- Even though companies can't legally control the **distribution and the arrangement on the shelves** of their products, the signatories of this Code will warn the distributors and resellers that alcoholic products must be presented on a different shelf from non-alcoholic beverages, and all legal provisions must be respected and notably the ban on sale to minors, as well as the ban on automatic distributors (art. 8, ARPP code).

The CSA states in their annual report 2016 that an increasing number of audio-visual materials are offered on online video sharing platforms. In general the ban on alcohol advertising is applicable to publishers of **on-demand** services. A part of this referred to as on-demand broadcasting. Article 2 of the Law on relative freedom of expressions and communication 1986 (*Loi Léotard*) states that audio-visual services can be labelled as on-demand when spectators have the possibility to choose their preferred material out of a range of programs, whose selection and organization is controlled by the publisher of this service. Services provided by individuals in order to share and exchange within a community of interest, fall outside the definition of on-demand broadcasting. The difference is important, because CSA is not competent to deal with content generated by individuals within a small social context. The right to free communication does apply in both situations, but when the publisher aims to reach a large public, the service can also be a threat to public health. In that case the protection of public health prevails above the freedom of expression and communication.

All packages of alcoholic beverages need to contain a compulsory health statement in which is stated that "the abuse of alcohol is dangerous for health". The rule does not apply to commercial circulars intended for persons acting outside the profession, or when the information is subject to a registered mail, a placard, menu, price, or objects within specialized sales premises (art. L3323-4). In addition, all packaging units need to carry a statement advocating the absence of alcohol consumption by pregnant women (art. L3322-2; article 5, Law of February 11<sup>th</sup> 2005 for equal rights and opportunities, participation and citizenship of people with disabilities).

The ARPP guide of recommendations states that a health message in written press needs to comply to several conditions in order to be clearly legible and visible. The characters should be bold and in a sharp colour that stands out from the background. No letter must be smaller than 1/100<sup>th</sup> of the surface of the advertisement. Taking into account the dimensions of the format, the size and font can be adapted for legibility reasons (art. 3.3.2,

ARPP code). The ARPP guide stipulates the health message “The abuse of alcohol is dangerous for your health, consume with moderation” (*“l’abus d’alcool est dangereux pour la santé, à consommer avec modération”*). Only the first part of the sentence can be used for reasons related to the size of the format (art. 3.3.4, ARPP code). The message can only be positioned horizontally (art. 3.3.1, ARPP code). For radio broadcasting the health message is “For your health, pay attention to alcohol abuse” (*“Pour votre santé, attention à l’abus d’alcool”*) (art. 3.3.5, ARPP code).

Furthermore, the name used for marketing a product cannot (1) mislead about the alcoholic nature of the product; (2) encourage excessive consumption; (3) imply violence, aggression, or dangerous situations; (4) suggest sexual success; or (5) capitalize on the high alcohol degree of a beverage.

Further to the compliance with the legal provisions concerning packaging and information at sale points, the signatories of this Code commit to respecting the following rules:

- The alcoholic nature and the alcohol degree must be clearly indicated on the packaging.
- The high degree of alcohol can't be the dominant theme of a packaging or of the information delivered at sale points.
- In cases of a blend between alcohol and a non-alcohol beverage, the latter can't be the dominant theme of the packaging or of the information delivered at sale points.
- Conception and design of the packaging can't be based on or resemble the characters or products linked to adolescent culture, nor suggest sexual success.
- Packaging can't imitate the forms or objects associated to dangerous behaviours for health or society (such as bombs or needles).

### **3.8.5 Content restrictions**

The kind of content information that is allowed in marketing communications is limited to an exhaustive list, stipulated in article L3323-4 of the Public Health Code. Instead of stating what is not allowed, the law stipulates what is allowed. Anything that is not listed is not allowed.

First, advertising may give an **indication of the alcohol per volume**. The ARPP clarifies that the term ‘indication’ gives a certain freedom to express via text, sound, or images.

When a human being is represented, the person needs to correspond with an existing professional function, in the past or present. The person must be part of the development, the distribution or the presentation of the beverage to the consumer, like for example a sommelier or chef (art. 3.1.1, ARPP code). The communication message cannot be based on the volume degree of alcohol (art. 3.1.2, ARPP code).

Next to an indication of the alcohol degree, a marketing communication can refer to the **name** and the **origin**. The term 'name' includes both the name of a beverage and the name of a brand (art. 3.1.4, ARPP code). The ARPP states in their guide of recommendations that 'origin' can be defined as the historical or geographical origin of the product, or the raw ingredients used for the production of the beverage. In all cases the relation with the product must be justified (art. 3.1.3, ARPP code). In addition, advertising can contain **references** to the **territory of production**, to **obtained distinctions** (when official or recognized by the profession), or to the **protected designation of origin** (as stated in article L115-1 of the French Consumption Code) and geographical indications. These notions cover the place of production and, by extension, the environmental factors that influence the features and quality of the beverage (the nature of the soil, the exposure to water and sun, the local climate, etc.). Additionally, cultural aspects in relation to the soil, habits, region, or tastes of the inhabitants can be part of the marketing communication, as long as the link with the product is incontestable (art. 3.1.10, ARPP code).

Any **ingredient** or **component** may be highlighted as long as it is significant to the beverage and the link with the product is clear and unambiguous. The ingredient does not necessarily have to be mentioned on the label (art. 3.1.5, ARPP code). References to the **colour**, **olfactory** or **taste** characteristics of the beverages are allowed under same conditions as the references to ingredients and components (art. 3.1.11, ARPP code).

The marketing communication can show the **name** and **address** of the **manufacturer**, agents, or distributors. The guide of recommendations of the ARPP clarifies that in fact all participants in the commercial distribution can be mentioned, as long as the link with the beverage is precise and unquestionable (art. 3.1.6, ARPP code).

The **method of elaboration** can be portrayed or described as long as it refers to the necessary actions to create the beverage, to the way it is bottled, or to the creation of the packaging and the final presentation to the customer (art. 3.1.7, ARPP code). The same



rule applies for the **selling modalities**. According to the ARPP guide, 'selling modalities' include all selling techniques (e.g. packaging and bundles) and the various legal forms of promotion (art. 3.1.8, ARPP code).

The marketing communication can provide information about the **mode of consumption**, concerning the conditions to serve and taste the beverage, or culinary associations. It is prohibited to portray customers (art. 3.1.9, ARPP code).

The packaging of alcoholic beverages may only be reproduced if it complies with these provisions (art. 3323-4).

Taking the total ban on alcohol advertising as a general principle, the French statutory Acts, primarily point out the exceptions in which direct or indirect promotion and advertising of alcoholic beverages is allowed. The self-regulation codes complement the statutory Acts by stipulating the rules that apply to marketing communications when the general prohibition is not applicable.

The ARPP consists of representatives of the advertising professions (advertisers, media and advertising agencies). Their aim is to achieve a fair, truthful and respectful environment for advertising, while reconciling the freedom of expression of the professions and respect for the customers (ARPP, 2017). In order to support advertisers and media services, every once in a while an updated guide with recommendations is published. The version of 2017 states that alcohol advertising may not:

- 1) Encourage excessive consumption or criticize abstinence, or sober drinking behaviour (art. 1.1, ARPP code).
- 2) Create confusion about the nature and the alcoholic degree, nor suggest that the consumption of beverages with a low volume of alcohol may prevent the consumer from excesses, or portray the high alcohol volume of a drink as a positive feature (art. 1.2, ARPP code).
- 3) Suggest that the consumption of alcoholic beverages has therapeutic, stimulating, sedative, or conflict solving effects. In addition, it is not allowed to refer to alcohol as a substance that can improve psychic or intellectual performances (art. 1.3, ARPP code).
- 4) Portray the use of alcohol as a solution to resolve individual problems, or as a way to achieve successes (art. 1.4, ARPP code).

- 5) Suggest that alcohol helps one to be successful in social life, sexual life, love, or sports. Showing the consumption of alcoholic drinks as a sign of maturity, or an attribute of virility is also prohibited (art. 1.5, ARPP code).
- 6) Relate alcohol consumption to situations of luck, utilization, daring behaviour, or participating in a sport (art. 1.6, ARPP code).
- 7) Link alcohol consumption with driving motor vehicles, or operating potentially dangerous machineries (art. 1.7, ARPP code).

The ARPP-guide emphasizes that minors may not be portrayed or heard in a marketing communication and that scenes or characters that are attractive to children must be avoided. If the marketing communication is spread via radio, television, press, or an online website, the audience must consist of at least 70% adults.

### **3.8.6 Supporting regulatory system**

The French *Conseil Supérieur de l'Audiovisuel* (CSA) actively searches for violations of the Public Health Act when the marketing communication is disseminated via an electronic communication service (TV, radio, or an interactive service). The CSA operates as an independent authority in which the parliament, senate and government are represented.

When an infringement of the Act is detected the first step of the CSA will be to send a formal notice to the publisher, distributor, or network operator. The formal notice serves as a warning and can be followed by a firm reminder. If the actor does not comply with the formal notice, the Council can impose a sanction, based on the seriousness of the breach.

Infringements of the provisions of the Public Health Act, concerning alcohol advertising are handled by the French Court of Justice. The Court may impose a fine of €75,000. In addition, the fine can be increased by 50% of the total amount of the illegal operation (L3351-7). Article L3351-1 of the Public Health Act further stipulates that omitting a warning message on alcoholic beverages directed to pregnant women will get sanctioned with a €6,000 fine.

The provisions of the Evin Law and the Public Health Act are defended by the National Association of Prevention in Alcoholism and Addiction (*Association Nationale de Prévention en Alcoologie et Addictologie* (ANPAA)). The ANPAA is a non-governmental organization that specifically focusses on the harmful effects of addictive substances and

practices, including alcohol. In order to protect people from the health risks of alcohol misuse, the ANPAA promotes protective public health policy in France and Europe. The Association aims to improve and apply for legislation and regulations relating to public health (art. 3, *Statuts Association nationale de prévention en alcoologie et addictologie*).

The ARPP provides legal and ethical advice for advertisers and media during the development of a commercial marketing communication. All commercials intended for television must be screened by the ARPP before broadcasting (ARPP, 2017).

### 3.9 Comparative analysis

In this paragraph the regulation models of the countries involved in this analysis will be compared on legal basis, volume and content restrictions.

	Finland	France	Norway	Poland	The Netherlands	UK	Belgium
Total Ban							
Partial bans							
No Ban							

#### Volume restrictions

Of the countries involved in the study, only Norway has a total ban on alcohol marketing. However, also in some other countries partial bans are applicable. In France, for instance, there is a ban on lifestyle content of alcohol marketing. The primary aim of the French regulatory system is to prevent youth exposure to alcohol marketing. As such, alcohol marketing is not allowed when a significant part of the audience consists of minors, or when marketing communications may be attractive to young people. In Poland and Finland, alcoholic beverages with a higher alcohol content are more strictly regulated and marketing of stronger alcoholic beverages is generally prohibited.

Poland in general prohibits marketing communications concerning alcoholic beverages, although an exemption is made for advertisements aiming to promote beers. In the Finnish Alcohol Act a comparable distinction is made between mild beverages (containing a maximum alcohol volume of 22%) and strong beverages (containing more than 22% abv alcohol) (Chapter 1, §3, Alcohol Act 1994). In general, advertising and promoting mild

alcoholic beverages is allowed, while advertisement of strong alcoholic drinks is prohibited. For all four countries (i.e. Norway, France, Finland and Poland) exceptions are applicable in certain situations. The Netherlands and the United Kingdom in general allow alcohol marketing communications, although the marketing utterances do need to comply with a range of rules.

Volume restrictions can aim to limit the dissemination of alcohol marketing to the general public, or to protect specific **target groups** from the harmful effects of alcohol marketing. In contrast to the other countries, the Norwegian Alcohol Act does not particularly aim to protect a specific group. Since the ban is general, it applies to every Norwegian citizen. However, in the case of exceptions, where alcohol marketing is allowed, it is explicitly stated that no minors may be exposed to the marketing practices. For example, at trade fairs or festivals where the presentation of product-specific facts is a necessity, the selling actor needs to make sure that the information is not accessible for people under the age of 18 years (§14-3, 16, Alcohol Regulations, Norway). In France, efforts have been made to ban alcohol marketing in media channels that may lead to exposure to minors (e.g. sponsoring sports events) and at times when children in particular consult a particular media channel (e.g. broadcasting alcohol advertising during the day). Article L3323-2 of the French *Code de la Santé Publique* for instance stipulates that advertising in written press is allowed, as long as it does not target minors.

In line with article 22 (a) of the EU Audiovisual Media Services Directive 2010, Finland, Poland, the Netherlands and the United Kingdom pay attention to the position of minors and therefore aim to protect them from alcohol advertising exposure.

In the United Kingdom, all codes regarding the promotion and advertisement of alcoholic drinks (the CAP code, the BCAP code & the Portman group Code) start from the principle that alcohol advertising may not target minors. The Dutch and British regulatory systems both aim to restrict marketing communications that aim to reach underage people, or to portray minors in a context of alcohol consumption, or show drinking alcoholic beverages as a sign of maturity. Alcohol marketing should not be directed at minors through the selection of media (e.g. in a children's magazine), or in the context in which they appear (e.g. during a family movie) (art. 18.15, CAP). Media channels with a more general audience need to make sure that at most 25% of the spectators is under the age of 18. In

addition to that, marketing communications may not be associated with themes or cultures that strongly appeal to the living environment of minors, or showing related behaviour (art. 18.14, CAP; art. 19.15, BCAP). People under the age of 25, or persons that seem to be younger than 25, cannot be shown in marketing communications, in case they play a significant role in the consumption of an alcoholic beverage. However, in the United Kingdom it is allowed to show adults responsibly consuming alcoholic drinks in a context of family celebration. It needs to be clear then that the persons under 25 are not drinking (art. 18.16, CAP; art. 19.17, BCAP). The Dutch Advertising Code further specifies that on social network sites of the advertiser or websites where the advertiser has the editorial control, pictures cannot contain underage people (explanation art. 11, RvA).

Although most countries do not have a statutory law that specifically focuses on alcohol marketing, some Acts apply to a part of the subject. The use of harmful content during television can for example be prohibited by law when a substantial amount of the public is younger than 18 years of age. The act then does not specifically concern alcohol advertising but indirectly applies to the subject, given the possibly harmful effects of alcohol advertising. Most countries therefore specify these more general principles in a self-regulatory code. For example, in the UK the Communications Act 2003 prescribes some main objectives for advertising by broadcasting which are further elaborated in the BCAP-Code (non-statutory regulation).

In some countries (Norway and Finland) a distinction is made between **freedom of expression** and advertising. In both countries, any individual is free to refer to an alcoholic beverage, as long as the person does not derive any financial benefit from it and as long as the action is not initiated by an alcohol brand. In Norway, for example, actors in the alcohol industry have the right to participate in public debate on political expression, but this right is not directly affected by the advertising ban. It is considered advertising if owners and employees of alcohol businesses, or others with close ties to business, mention the suppliers' products in blogs, web pages or social media profiles. Other regulatory models do not refer to freedom of expression.

Alcohol marketing shown on **television** and **radio** can be subject to different kind of restrictions. The United Kingdom, the Netherlands, Finland and Poland in general allow alcohol advertising via TV and radio, under the condition that it does comply with some

rules. In the Netherlands (06:00 AM-09:00 PM), Finland (07:00 AM-10:00 PM) and Poland (06:00 AM - 08:00 PM) a time ban is applicable to alcohol advertising on television and radio. In France, a distinction is made between radio and television. Although direct and indirect marketing communications for alcoholic beverages on television are prohibited, it is allowed during radio broadcasting between midnight and 07:00 PM on Wednesday and between midnight and 5:00 AM on all other days of the week. In the United Kingdom a time ban is applicable, but it does not generally include alcohol advertising. The time ban only applies to featuring alcohol misuse or abuse that is shown during a program that mainly is made for children, or where the misuse or abuse is condoned, encouraged, or glamorised (art. 1.10, Ofcom Broadcasting Code 2013). In Belgium, a temporary time ban is in force that applies to alcohol marketing communications that appear from five minutes before until five minutes after broadcasting a youth program (art. 11.2). However, no definition of a 'youth program' is given. In contrast, article 21 of the Dutch Alcohol Advertising Code specifies when something can be perceived as addressed to minors. The code stipulates that advertising for alcoholic beverages is not allowed when 25% of the audience or more consists of minors. The percentage of minors shall be determined on the basis of "the most objective rates" possible and the concrete circumstances of the case.

Furthermore, the BCAP-code (art. 19) in the United Kingdom, the Alcohol Act in Finland (art. 33), the Polish Act on Upbringing in Sobriety and Counteraction Alcoholism (art. 13) and the Code of Ethics (art. 11,), and the Advertising Code on alcoholic beverages (art. 11) in the Netherlands stipulate that every person involved in alcohol marketing must seem to be at least 25 years of age. Additionally, marketing communications in Finland, Poland, the Netherlands and the United Kingdom may not include persons, materials, packaging, forms, or illustrations which can be attractive to minors. Article 23 of the Dutch Advertising Code on alcoholic beverages further stipulates that advertisement of alcoholic beverages can never be broadcast on television or radio channels meant for youngsters.

An important exception remains for alcohol marketing communications hosted by foreign media services. Because of the country-of-origin principle (see art. 4 AVMSD) marketing actions need to apply to the regulation of the country of origin. Therefore, Norway allows foreign alcohol marketing as long as it does not specifically targets Norwegian citizens.

## Case studies: assessment of alternative regulations

The five other countries do not have such a strict regulation and therefore do not make a distinction between foreign and domestic alcohol marketing.

Related to the above mentioned exception, the French regulation model does allow alcohol advertising when it appears during a live broadcast sporting event in which more than two countries participate, or when the event or athlete has received a special status. In that case, the athlete or event is included within an exhaustive list. In Poland an exemption is applicable on the watershed in case it concerns a competitive or professional sports event, presented by the organizer.

In all countries, except Norway, alcohol marketing in **printed media** is allowed under certain circumstances. All countries state that alcohol marketing is banned if the magazine or newspaper targets minors. In Poland, only marketing communications for beer are allowed (but not on the cover of a newspaper or magazine), while in Finland only products with maximum 22% abv can be advertised. In addition, in Finland and Norway a distinction is made between advertising and **editorial content**. Reference to alcohol in editorial content is allowed as long as the article is not sponsored by the alcohol industry.

In Norway and Finland there is a general ban on **outdoor marketing**, while in Poland it is allowed for the promotion of beer, provided that 20% of the information carrier is covered by a warning. In France, product information can be shown on billboards and posters of alcoholic drinks with a quality certification and proof of origin, and linked to a region of production or to regional, cultural or gastronomic heritage. Countries without statutory regulation (i.e. the Netherlands, the United Kingdom and Belgium) generally allow outdoor alcohol marketing.

For other marketing communications, like offering **free samples**, comparable rules are applicable in the different countries. The Belgian code on alcohol advertising does not allow offering samples for free or for a symbolic price on the public road (art. 5.1). This provision is comparable with regulation in the other countries, where offering free samples is not allowed. However, in most countries exceptions are made for special fairs or when it occurs for professional purposes.

In contrast to the countries included in this analysis, in the Belgian regulations on alcohol marketing no reference is made to **sponsorship** by alcohol brands. In a few countries (i.e. Norway and France) alcohol sponsorship is not allowed, while in Poland and Finland

alcohol brands are able to sponsor events under strict conditions, stipulated by law. In the Netherlands and the United Kingdom the self-regulatory codes refer to certain criteria under which alcohol sponsorship is allowed. These rules mainly aim to limit exposure to minors.

Additionally, marketing for non-alcoholic products can be part of a marketing strategy for an alcohol brand. Especially when strict rules are applicable, **brand-stretching** may appear as a way to circumvent alcohol marketing regulation. Among the countries included in this study, especially stricter alcohol marketing regulation models covered brand-stretching (i.e. Norway, Poland and France). As such, the promotion of non-alcoholic products is not allowed when they carry the same brand name, trademark, or characteristics as alcoholic beverages.

In general, certain forms of **point-of-sale** alcohol marketing are allowed in all the countries included in this analysis. Strict models, like in Norway, limit alcohol marketing in such a way that it is not highlighted over other products. However, in case it is closely related to the consumption of alcohol at on-site premises (e.g. ordinary serving equipment, or on a menu), or at off-site premises which are strictly open to adults, exceptions can be made.

In several countries, **temporary price promotions**, like 'happy hours' are not allowed (i.e. Norway, Finland, Poland, and France). Sometimes exceptions are made for price promotions related to certain events where a limited audience is allowed to access the premise, and with limited change that the price promotion will lead to heavy consumption.

### **Content restrictions**

In contrast to volume restrictions, restrictions on the content also appear in non-statutory regulations for alcohol marketing. Most restrictions regarding the content of alcohol marketing coincide with the provisions listed in article 22 of the European Audiovisual Media Services Directive (2010). This article points out under which conditions advertisement of alcoholic beverages should not be allowed. All the regulation systems included in this analysis at least reflect this article.



## Case studies: assessment of alternative regulations

While most countries have listed what kind of content is prohibited, the French regulatory act lists what is allowed. Consequently, anything that is not listed is not allowed. In France, this is limited to product-related information. Anything related to lifestyle is not allowed.

With the exception of France and Norway, all countries allow marketers to relate alcohol (consumption) to situations that are generally can be linked to a pleasant lifestyle, such as sporting events, festivals, parties, or other forms of leisure activities with family and friends. The general rule in these countries is usually that alcohol advertising may not be contrary to good morality, and must not proclaim misleading or false information. In concrete terms, this means that alcohol marketing communications should not link alcohol consumption to improved performance (social, sporting or sexual), that alcohol has healing or therapeutic effects, or encourage alcohol with a higher alcohol content. These restrictions are also stipulated in article 22 of the Directive 2010/13/EU of the European Parliament and of the Council.

### **3.10 Summary**

The country analysis shows a variety of regulation models. While in some countries the regulation for alcohol marketing is mainly statutory (i.e. Norway, Finland, Poland and France), in other countries the industry is primarily responsible for the regulation for alcohol marketing (i.e. Belgium, the Netherlands and the United Kingdom). Both statutory and non-statutory types of regulation for alcohol marketing appear. Although statutory regulations are not necessarily stricter than non-statutory regulations in theory, this seems to be the case in practice. This is mainly reflected in the volume restrictions, which are introduced in legal forms of regulation, but hardly in self-regulatory codes. In some regulatory models, there is also a distinction between different types of beverages. For example, in Finland there is a general ban on alcohol marketing for products containing more than 22% alcohol, and in Poland a distinction is made between beer and other alcoholic products.

There are a multitude of distribution channels where restrictions may apply. These volume restrictions may include a total or partial ban, whereby alcohol advertising remains possible at certain times, places or for certain target groups. In some cases, no restrictions are applicable to a specific type of media. In such cases, however, content restrictions still are applicable.

With regard to the content of alcohol marketing practices, most regulation models are in line with article 22 of the Directive 2010/13/EU of the European Parliament and of the Council. Alcohol marketing messages are permitted as long as they do not violate the provisions. Only the French regulatory model uses the reverse reasoning, which lists what is allowed.



## Chapter 4. Qualitative analysis

In the previous chapters a number of the regulatory models for alcohol marketing have been described. This chapter will focus on the qualitative analysis, which is based on the interviews that have been conducted with Belgian stakeholders. These actors have been selected as a stakeholder, based on their current or former professional role.

In general, the participants can be divided in four groups, these being: industry representatives, policy makers, health actors, and researchers. The first group consists of private actors (n=6), who represent the beer industry, the wine and spirit industry, the hotel and catering industry and the advertising industry. The group of policy makers consists of actors (n=5) who are working, or have been working, on matters related to alcohol marketing, either at the federal or on the community-level. Although alcohol marketing is a federal issue, policy makers on the community-level have been included in the sample, since communities are responsible for issues related to alcohol marketing, like prevention and social campaigns. The group of stakeholders mainly consists of policy makers and political advisors at the different levels. Thirdly, also stakeholders with expertise in the field of health and public health were included in the sample (n=5). Two of them are currently active as general practitioners, while the other three work as public health advocates. The last group consists of researchers (n=4). These actors can be described as experts on topics which are related to alcohol marketing, namely: advertising ethics, digital communication, drug policy and public health. Since there are no Belgian scientific researchers who can be perceived as experts on the regulation of alcohol marketing, the group is limited to scientists on related themes.

As mentioned in the methodological chapter, several typologies are used to frame the stakeholders. However, some overlap is possible between the categories. On both sides, some actors are, or have been politically active. However, the distinction is made based on the role in which they were (the most) engaged with the topic alcohol marketing, or research concerning a sub-topic (social costs of alcohol, alcohol marketing exposure on social media, or health risks of alcohol use).

The input of different kind of regulatory systems can be included within the Belgian context, and formulate an answer to the research question 'which marketing regulation system can be considered as a "best fit design" for Belgium, taking into account the

specificities of the Belgian context and the views of all stakeholders involved?’ In order to find an answer to this question, the first focus is on the perception of the stakeholders about the current alcohol policy framework in Belgium and whether they perceive the current alcohol consumption patterns in Belgium as problematic. Secondly, it will be discussed whether alcohol marketing contributes to the perceived alcohol problem, according to the respondents. Subsequently, the question will be discussed whether regulating alcohol marketing can contribute to limiting the effect of alcohol-related harm. Furthermore, stakeholders are asked what they think this model should look like.

The chapter will start by discussing the question of whether it would be desirable in Belgium to implement a ban on alcohol marketing, followed by discussing the question of whether it is feasible to implement such a model in Belgium. The third section describes the most important pros and cons of a general ban versus the contemporary self-regulatory model, and discusses the volume restrictions and content restrictions.

## **4.1 The Belgian context**

Some of the questions during the interview addressed the current context and policy in Belgium. ‘Context’ mainly refers to the social, cultural, economic and political determinants. Policy measures are often related to these contextual elements.

### **4.1.1 Cultural dimension**

Stakeholders from all sectors somehow indicated that alcohol production and consumption are part of the Belgian society.

*It is our culture, it is our culture of alcohol. We are in an alcoholic culture. We are in the part of the world that consumes the most alcohol and in one of the countries in the world where we probably consume the most alcohol.*  
(Health actor 1)

*If you look at Belgian society, Belgian culture, yes it can hardly claim that alcohol is not part of our culture* (Industry representative 3)

They mainly suggested that there is a connection between beer and Belgian society, for example by referring to the recognition of the Belgian beer culture as intangible world heritage, by UNESCO.

*So, beer as the wealth of Belgian culture, and enjoying and sharing. And in*

*this respect also the UNESCO... he, so the UNESCO recognition (Industry representative 2)*

*Belgian beer culture has been recognised by UNESCO, as you probably know, as an intangible heritage. And so everything that lives around beer, around our pub culture, the collectors, the universities, huh. (Industry representative 1)*

The relationship between Belgian beer and Belgian society also has an international and economic dimension. Some stakeholders pointed out that Belgian beer is regarded as an important symbol for the outside world.

*And also the export is doing well, huh. Beer is a bit of a showcase for Belgium. So, more than 66... or no, 68% of the production in Belgium goes abroad. [...] So, that also shows that beer is... the national product of Belgium. (Industry representative 1)*

*The Belgian beer stands ... or, goes along with our king and queen as they go everywhere. Just to say, this is a huge symbol. It is part of our culture. (Industry representative 3)*

A former policy maker further argued that beer is somehow historically linked to Belgium, and that it therefore has something 'noble'.

*I don't know... Beer is a beautiful product eh, (softly laughs). I don't know, I don't work for the sector... but, uhm... I think it's a noble product. There's something in beer which is noble, in the history of the product, in... (policy maker 3)*

Although alcohol may be related to the Belgian culture and identity, one of the participants indicated that this does not mean that measures to protect public cannot be introduced.

*Yes, and then they arg... yes... argue that "it is...", allez "it goes hand in hand with our identity as Belgians" and that kind of bullshit. What I think is bullshit, because that has nothing to do with it. (Policy maker 4)*

#### **4.1.2 Social context**

One of the participants indicated that alcohol is consumed in the first place, because it can

increase pleasure. Nobody starts drinking alcohol to injure him or herself, or somebody else.

*There's nobody who drinks alcohol to hurt themselves, right? As a first motivation. There is no one who behaves to hurt himself, to kill himself, to get sick. No. First step, we want to have fun [...] we want to share this with friends, we want to laugh. (Policy maker 3)*

The same respondent warns against ignoring this positive dimension of alcohol consumption. Solely focusing on the negative effects of alcohol can possibly have a counterproductive effect on the public.

*This search for pleasure through the psychotropic. I think that as long as we do not accept that that is the first search, the first motivation to consume alcohol, then we lie. We lie to young people, we lie to everyone. Because that's what we're looking for.*

[...]

*Most young people are looking for pleasure in this behaviour. And if you don't recognize that, in young people's motivations, you miss..., you miss them... it's a lie. I mean, I think we lie to each other, we lie to everyone. (Policy maker 3)*

One of the private actors referred to scientific studies that show a positive impact of moderate alcohol consumption on some types of psychological and physical ailments.

*I have also found studies by Oxford [...]. He, euh... "Drinking beer together with friends is good for your health". Allez, for the group spirit. That's all good. But of course with moderation, huh. And... that also has a positive impact on depression and other forms of... how would I say...harmful effects. [...] There are also studies that say 'with moderation... on heart conditions it can also have a positive effect'. But of course you must always be careful with this. (industry representative 1)*

#### **4.1.2.1 The harmful impact of alcohol consumption**

Although some positive effects were mentioned, all stakeholders acknowledged the possible harmful impact of alcohol.

*Then in the end... What should we all do here? All stakeholders. That is to say, against that horrible and serious social problem of excessive alcohol consumption. Because we all agree on that, excessive alcohol consumption, no! Binge-drinking among young people, no! And so we have to fight for that and, of course, everything is in moderation. (Industry representative 1)*

Particularly in the group of private actors, excessive and irresponsible alcohol consumption was attributed to a small group of consumers. According to them, a majority of the consumers remain in control of their own use, but a small group has developed a problematic pattern of consumption.

*After all, you actually have an X percentage of the population, and I hope and I think I can say, about 85% to 90%, or perhaps 95%, of the population who deal with alcohol in a more or less judicious way. And there, I recognize that ... allez... there is just one big pitfall for those people ... but the question is, how can you improve that? (industry representative 2)*

*But it is also true that, according to the health survey of 2013, 94% of the Belgian population consumes alcohol in a normal, balanced way. [...] Then, for us, it is necessary, first of all, to look at the 6% that might have a problem. And then, too, it is clearly stated what that problem is. It is not the case that the 6% of Belgians who consume alcohol... have a serious alcohol problem. It is true, however, that there are people among them who actually have a serious alcohol problem. (Industry representative 3)*

However, some other stakeholders argued that the problem of alcohol is not limited to alcohol dependency problems.

*That's a big problem, huh. It's not just a small part of the population that has a problem, is it? More than a million people have a problem in the country. That means one person... almost one in ten. Because the alcohol problem isn't just alcoholism. (health actor 1)*

*... but for a lot of people, it's a real problem and they don't know... they don't know how to set boundaries. I count, for X people in a population, there really is a boundary problem. Or it can... I mean, it can ruin families,*



*it can ruin lives... (Researcher 4)*

## **4.2 Definition of alcohol-related harm**

Some stakeholders, comprising mainly industry representatives and liberal policy makers, stressed that consumers, in the first place, are individually responsible for the amount of alcohol that they consume.

*But in the end it is an individual responsibility. You also have an individual freedom to determine "do I want to drink a glass now and do I want to drink two of them now, 'à la limite' do I want to drink two of them". You have to be able to determine that for yourself. You have to be able to do that with a full knowledge of what alcohol is and what it does to you. And you have to do that in full responsibility. Responsibility to yourself and responsibility to anyone who may be harmed by your behaviour. (Industry representative 3)*

*I'm not against it that they should only drink two, but I do think (laughs softly) that they should be free to drink five as long as they're safe in traffic. (Industry representative 2)*

Nevertheless, since alcohol is interwoven with the Belgian cultural and economic context, some stakeholders believe that the parties involved should also take their share of responsibility in order to combat the possible negative effects of alcohol consumption. This was mainly argued by representatives of the industry.

*I think, It is a balance that you have to find. But, as I said, for us excessive alcohol consumption is non-negotiable not-done. And we are going to take all measures to avoid that. That is one thing. We are also an important cultural and economic actor in Belgium and we must take our social responsibility. (Industry representative 1)*

*So, in order to be able to justify that and also to take into account the disadvantages of alcohol abuse... I am more inclined to think that we should go more in the direction of an environment in which there is room for alcohol consumption, but under the condition that the framework is controlled from the inside (NL: aangestuurd vanuit de buik), rather than*

*top-down imposed. And that this encourages people to take their own responsibility. (Industry representative 3)*

In order to reduce excessive and risky alcohol consumption, these stakeholders argued for interventions that address individuals and groups with increased changes on risky or harmful behaviour as a result of alcohol use. Among other things, one of the participants referred to the self-regulatory code on alcohol advertising and marketing as an example of a group-level intervention.

*But that is an example of how the sector also takes its social responsibility in Belgium, with BOB, with the Code also, with respect16... (Industry representative 1)*

These participants emphasized the relatively low number of people with a serious alcohol problem. For them, population-based measures are undesirable because they affect the entire population, including the majority of unproblematic users.

*I fear that this is a part of the population that is simply susceptible to this. What do you do with it then? Shouldn't you let the rest drink? Now I'm setting it in black and white. (Industry representative 2)*

*It is a social problem. But that does not mean, for that reason, that all Belgians who consume alcohol should be subject to a measure that is actually intended to reduce that six percent. (Industry representative 3)*

#### **4.2.1.1 Population based measures**

In contrast to the stakeholders described above, a group of other actors – mainly health actors and researchers – emphasized that alcohol consumption is in the first place a social problem and therefore also a social responsibility.

*We all know someone in his family who has problems with alcohol or in his circle of friends or... We all know someone around us... people who really have a problem with alcoholism. It's a real social problem (Researcher 4)*

According to some of these actors, alcohol policy is focussing too much on the individual. One participant stated that currently “emphasis is placed on the man and not on the bottle”, indicating that the problem is mainly addressed to the user and not to the substance.

*So, at the same time, I say "emphasis is placed on the man and not on the bottle". It means that, if there is a problem of overconsumption... it is because people are not paying attention to it. (Health actor 1)*

*Respondent: Alcohol consumption is a social responsibility. But we are not there in Belgium. If a student drinks too much, it's because around him other students drink too much, it's because alcohol is widely acceptable, available, is that because there is no norms of limiting the... It's a social responsibility, but the narrative in Belgium is not that one.*

*Interviewer: No. Individual.*

*Respondent: Individual. And that's the thing we should need to change. (Researcher 1)*

Another participant further argued that emphasizing individual responsibility does not work for people who suffer from an alcohol abuse problem, because the disease prevents them from being able to take responsible decisions.

*Alcohol disease is a disease that prevents people from managing themselves. So telling people "you have to handle"... is pretending not to know what it is. (Health actor 1)*

In general, these participants argue that the main problem is based in the fact that alcohol consumption is socially accepted and normalized in our society.

*It starts from the moment a child is born... Baby visits are organised and a glass of champagne is served there. So it is from the beginning that children are exposed to the alcohol consumption of parents.*

[...]

*Yes, I still think that just... that something needs to be done about the social acceptance of alcohol use. (Researcher 3)*

### **4.3 Approaching alcohol marketing**

In the preceding section, a general description of the Belgian context is given, based on the answers of the stakeholders who have participated in this study. In this section, attention will shift to the regulation of alcohol marketing. The first paragraph will discuss

the nature of the different regulatory frameworks (i.e. self-regulation and state-regulation) and their advantages and disadvantages as mentioned by the participants. Secondly, possible volume and content restrictions will be discussed. The guiding principle for discussing these restrictions is the distribution of the marketing mix, as described by Hastings and Angus (2009, p. 5).

#### **4.3.1 Statutory versus non-statutory regulatory models**

The nature of a regulatory framework can either be statutory, non-statutory, or a combination of both. During the empirical study, most stakeholders expressed preferences towards one or other of the directions. It is not surprising that, first of all, the stakeholders who are also signatories to the current code on alcohol advertising and marketing, have expressed themselves in favour of self-regulation. These actors mainly emphasized the benefits of a self-regulatory framework and the effectiveness of the contemporary body.

*It goes fast. The uhm ... you can also quickly file a complaint, it is cheap, it is also transparent. And it can actually, or should, be able to be adjusted in a fast way (Industry representative 1)*

*...it is an agreement, a moral agreement. Allez, a legal and a moral. But there is also a round-the-table debate that takes place every year. And every X years the covenant is adjusted, read: tightened. So, it's a kind of dynamic you're in here. (Industry representative 2)*

*Uh, I think so, it's effective. Because if the courts had to get involved in regulating advertising... We didn't go out. I mean... It would take... The ethics jury's argument is, "It's much faster, we're much faster, we're much more responsive". (Researcher 4)*

However, although these participants expressed their preference for the contemporary model, they did not indicate that there is no place for improvement. According to some of these respondents, one of the advantages of a self-regulatory model is that it is easy to adapt. As a result, it can easily respond to possible gaps in the code or to new challenges that arise.

*Okay and towards young people, a lot of attention is paid to this. Isn't that effective enough? Are there any clear indications (ticks on the table)?*

*Adjust that.* (Industry representative 3)

*We think in any case that on the basis of the covenant as it is now, and once again, supposedly that everything can be done better, that is possible, that is probably also possible for this covenant. But I do think that this covenant has a support base. Can that support be strengthened? Should that be strengthened? Then I am also convinced. I say yes to that.* (Industry representative 6)

A majority of these stakeholders indicated that they are opposed to a radical change in the approach to alcohol marketing. According to these actors, the current model of self-regulation forms a good basis for combatting harmful alcohol consumption.

*How well that should be done, I will leave that in the middle, but at least this is a very good basis for all parties, all actors, whether it is from the midfield or from the sector and also for the benefit of the consumer, that this Code actually reasonably protects them against the, as one calls it, the 'angry advertising boys of alcohol marketing'.* (industry representative 6)

In addition, some of the industry representatives argued that they question whether statutory bodies are more effective in preventing harmful alcohol consumption. In this case, some of them referred to countries with strict regulation, with higher rates of alcohol (mis)use than in Belgium.

*And you can say "we have to go to a Loi Évin, like in France", but... (laughs softly) you also see the figures. I do not see any impact on the figures.* (Industry representative 1)

*But in the Nordic countries alcohol is seen by official agencies as a hard drug. The regulation is therefore in the sense that especially repression or the treatment of alcohol as a drug is reflected in it. You would think that they may want to do so on the basis of a strictly religious belief or a Protestant belief... euhm... in order to encourage people to reduce alcohol or alcohol abuse... And what do you see in reality? That alcohol abuse in those Nordics is the greatest of all. That is a bit of a contradiction.* (Industry representative 3)

In contrast to the above-described group of stakeholders, another group of participants

questioned the effectiveness of self-regulation for alcohol marketing. According to them a statutory model is preferred above self-regulation, because it is a duty of the state to protect public health. One of the participants argued whether self-regulation is ineffective when the aim is to protect public health. The stakeholder indicated that, due to the conflict of interest between the industry and public health, a self-regulatory framework will never include the most effective measures. According to the participant, by choosing self-regulation “you ask the wolf to take care of the chickens”.

*“Auto-regulation is crazy. It’s crazy. Who buys that? Who? Who buys that?  
I don’t. I don’t.*

[...]

*... you asking the wolfs, or the foxes, to take care of the chickens. So, it.. I don’t buy that strategy, and I cannot understand how our government is daring to do that. It’s really a shame. It’s really a shame. To think that people... may think that we can trust (laughs softly) the brul... these companies to... to self-regulate. (Researcher 1)*

A policy maker involved in this study argued that self-regulation sets minimum standards, but will never be the most effective way to tackle alcohol-related harm.

*I have my doubts about that. Euhm... Yes. Self-regulation is ... not the strongest way to enforce it. Euhm... This will reach the minimum and not the maximum. (Policy maker 1)*

According to the same respondent, state regulation would also send a stronger signal to the industry, showing that it is taken seriously by the government.

*If something were to be done about it, it would be a good thing to stop self-regulation and turn it into a law. That would send a much stronger signal to the industry. (Policy maker 1)*

The participant further argued that a statutory model would be more neutral and independent than it currently is.

*Yes. I think that this would allow for a much more independent and neutral view of the marketing practices that exist today. So I think that’s something that... [...] I think that, from a public health perspective, that could be an added value. (Policy maker 1)*

A last group of stakeholders indicated that self-regulation could have its value within a well-defined framework. One researcher stated that there can be a place for self-regulation, under the condition that there are clear rules and proper enforcement. The respondent further argues that the industry itself is better able to monitor compliance with existing rules than the government, since they want to prevent unfair competition.

*So, I have no problem with saying, the industry fills in certain things. I think that, let us say, peer control in itself is not bad. After all, if there are certain clear rules, then I think that the one who can monitor it best is the industry itself. Suppose you say, for example, for a certain advertisement that we are going to restrict. The competitors will keep an eye on each other better than the government will keep an eye on the industry. Otherwise, there will be a distortion of competition. So in itself I don't see it... I have no problem with that. That that is self-regulation.*

[...]

*I think that in itself ... there would be a good thing ... Euh, that in itself it would not be a bad thing ... it would not be a bad thing, provided that it is properly monitored and that perhaps there are some clear rules. Let's ... then I don't see why people shouldn't do that themselves. That you say 'look, this is the playing field and you can enter it... you can play yourself'.*  
(Researcher 2)

Another stakeholder argued that self-regulation usually adds something to already existing regulation, and therefore could have an added value.

*In principle, the law is... there are laws that apply to everyone, and self-regulation actually always does something more than that. And... As a legislator, it is possible to set minimum standards, but this does not detract from the fact that self-regulation remains alongside them. I think, if we have that at all... I think that's certainly not bad, certainly as long as we ... if we believe that alcohol should be allowed to remain in place, huh.*  
(Health actor 1)

#### **4.3.2 Regulatory models**

In theory, strict regulation can occur both in a statutory and non-statutory model.

However, the participants mainly associated state-regulation with stricter regulation and non-statutory bodies with more flexible rules.

One of the participants argued that an alcohol marketing ban is unnecessary and disproportionate, since the product that it is promoting (i.e. alcohol) is perceived as harmless as long as it is used moderately. Furthermore, the stakeholder referred to other products. In addition, the respondents referred to other products that are also harmful, but where banning marketing is not being considered.

*I think it is fundamentally wrong to install a total alcohol ban because, firstly, it is not necessary. That is a disproportionate measure. Secondly, this is also a discriminatory measure. There are so many products of which misuse can lead to adverse effects, but which can be perfectly advertised. So, that is also possible for alcohol. Because in itself the product is not harmful. We can argue about this for hours, but we think it is very harmless. It is just when this is used inappropriately. (Industry representative 3)*

*It's too complicated otherwise, you shouldn't take alcohol distributors or people who are very smart, and they have millions that they have put behind them. So, making a law saying "we can do a little like this, but not too much..." It will never, ever be applied. (Policy maker 2)*

In general, the participants who argued in favour of an alcohol marketing ban, indicated that the main problem is that with alcohol marketing the use of a toxic product is promoted. For them, alcohol consumption should remain possible, but in a sober context in which consumers are not encouraged to use.

*Well, I think we should be very clear, we should simply prohibit. But I'm not against consumption at all. I'm just against that kind of incitement. (Policy maker 2)*

For some participants, an alcohol marketing ban should not contain any exceptions.

*No, I'm very, very, very strict about that. I don't think there can be alcohol marketing. (Health actor 1)*

#### **4.3.2.1 Objectives of a regulatory model**



In order to determine which model of regulation best suits Belgium, the question must also be answered what the objective of the model is. Some stakeholders referred in particular to the acceptability of alcohol consumption in our society. As such, they made the comparison with the regulation on tobacco, where it was decided to completely ban marketing. However, in the case of tobacco, there was a consensus that there is no acceptable limit of tobacco use in society.

*For me, the question is: do we agree that we need to reduce the quantity? I mean, if we want to regulate marketing, is that because in the end what we want is to rain into the quantity, no? (Researcher 1)*

*We know from alcohol that that is definitely an addiction problem.... It is extremely harmful, but we know that the social use of alcohol may well have its place in society. And I find that much more difficult to draw sharp lines there. For me, smoking is clear. Be very strict and try to guess. That has no meaningful place in people's lives. (Health actor 1)*

However, some participants who argued are in favour of a ban on alcohol marketing, indicated that they have concerns regarding its feasibility. In this context, reference was made mainly to the ban on tobacco advertising.

*The problem with bans is that... they are credible if they are implemented. So, a ban is interesting if you can monitor its implementation and enforce its implementation. So, I guess there may be... they may be domains and media which enforcing a ban is feasible. You can track that it is indeed implemented. But that.. it could be that there are media which are less amendable to control. (Health actor 1)*

#### **4.3.2.2 Vulnerable groups**

During the qualitative study, the participants primarily indicated that restrictions, in the first instance, need to protect vulnerable people. In line with the Belgian advertising code (article 4.1, Alcohol marketing convention), a majority of the stakeholders primarily referred to minors as a group that needs to be protected and prevented from exposure to alcohol marketing. The Belgian advertising code states that alcohol marketing may not target minors by content, or by means of communication.

*That certainly has to be the focus and... young people certainly. If you have*

*children, and you say 'yes, bon...', that is euh... that is something where euh... we have to be relentless. (Industry representative 1)*

*I think that the [primary] focus on young people is good, because it is shown in literature that, the more advertising that is seen, the faster people start drinking alcohol. So ... to postpone this starting age in such a way that less uhm... future consumption patterns become less harmful. (Policy maker 1)*

Furthermore, some participants indicated that also other sub-groups, like people with an alcohol dependency problem, can be particularly vulnerable to alcohol marketing.

*Because I think of people who are addicted, they try to stop, they want to make their own... and who have this temptation when they buy, it promotes compulsive buying and therefore we maintain addiction. It is each adult that consumes what he wants, but that we do not promote that, that the adult must take a step." (Policy maker 2)*

Although all stakeholders agree that minors need to be protected from any exposure to alcohol marketing, not all respondents agree on a partial ban that solely focuses on alcohol marketing targeted to people under eighteen years of age. According to one of the respondents, solely banning alcohol marketing that is addressed to minors will be insufficient, because they will still be exposed to such messages.

*The problem is ... It says, "The problem is alcohol among young people. " It is a problem. But we will never ban alcohol among young people if we allow advertising for adults. Young people see it too, so it does not make sense.*

[...]

*It's too complicated, it does not make sense. We all live together in the same society, so ... No, it does not make sense. (Policy maker 2)*

#### **4.4 Volume restrictions**

Marketing communications appear through various channels. Volume restrictions aim to limit the total exposure to alcohol marketing, by imposing restrictions on the place or time where a marketing communication is exposed. Alcohol advertising can be banned partially or in total. A full ban prohibits every type of marketing. A partial ban prohibits

marketing in certain places, at certain times, or when it is targeted to certain vulnerable groups. This section focuses on the way in which alcohol marketing is distributed through various channels. Below, the main results of the empirical research will be discussed per category of the marketing mix, as have been described in Chapter 3. According to Anderson et al. (2009, p. 5) marketing communications can be divided into different groups: mass media; other marketing communications; consumer marketing; and stakeholder marketing. In discussing the desirable forms of restrictions, this classification is used to discuss possible forms of regulation.

#### **4.4.1 Mass media**

Marketing communications in mass media can be distributed through printed media, on-screen, on the radio, or in public places. During the interviews, the focus was mainly on television advertising and, to a lesser extent, printed press and public places. Radio and movie theatres were scarcely discussed.

##### **4.4.1.1 Television**

Advertising broadcast on television is a well-known form of marketing. Since the scope of television is still wide, many people are exposed to communications that are broadcast on television, including children. In order to protect minors, the contemporary regulation on alcohol marketing in Belgium provides a partial ban that prohibits alcohol advertising from five minutes before until five minutes after a children's program (article 11.2 of the self-regulatory code). This provision was challenged by some stakeholders in the group of researchers and policy makers. First, some suggested that the rule does not prevent minors from exposure to alcohol marketing, since children are not only watching children's programs.

*Respondent: The only thing is the link with children's programs, huh. That, yes? Before children's programs?*

*Interview: Yes indeed, five minutes before until five minutes after.*

*Respondent: Yes. Ridiculous [...] As if that... yeah, children only watch child programs. (cynical) Of course, yes. (Researcher 2)*

According to another stakeholder, the current partial ban needs to be extended in order to be sufficient.

*But indeed, we must propose to have a time slot where there is no advertising for alcohol, which seems more relevant than from five minutes before, until five minutes after (laughs). That's for sure. (policy maker 3)*

Especially in the group of industry representatives, some participants defended the current watershed. Although they did not deny that an extension of the current ban might be necessary, they stressed that there should first be sufficient evidence that the current provision is not effective.

*The principle is that they should not have to take that message, as that they should not consume it. If we can retain that as a basic principle. Then we have to look at what already exists today. Is that okay? Does that work? Or is that not working? Where it does not work, it needs to be adapted. To be expanded. But to say now from a lab situation in a totally intellectual analysis of "yes, da will not be good for sure. Come, we're going to just exclude or limit that or whatever. That does not seem to me to be a good approach anyway. (Industry representative 3)*

Another industry representative further argued that the partial ban on television advertising should be seen in combination with articles 2.1 and 4.1 of the Code, which prohibit any form of advertising when it is aimed at minors. As such, it also covers non-youth programmes when the message is addressed to minors.

*Of course, [article] 11.2 cannot be read separately from [article] 2.1 and 4.1, what it would not be entirely correct to formulate it as a mere content restriction because in a way it is also a volume restriction, by involving the means of communication (Industry representative 6)*

One of the participants indicated that the extension of the current ban does not necessarily have to lead to a decrease in alcohol marketing on television. In that sense, the stakeholder referred to other countries where a ban applies until 9 PM, but where an overload of alcohol advertising is exposed directly after 9 PM.

*However, I also know that some countries have introduced volume restrictions, but they are not very happy with the result. Because, yes, the volume... So for example if you say no advertising on TV until 9 pm, then five minutes past 9 there are a lot more advertisements. So the... the impact*

*is not always so positive. (Policy maker 5)*

Although research shows us that media exposure affects young peoples' behaviour, some participants warned against a narrow focus on just television. After all, the feelings and behaviour of minors are influenced by a plethora of elements.

*All research... on media effects makes it clear that exposure to certain news items, even on television, in films, in advertising, yes ... can have an effect on the risk behaviour of young people, including alcohol consumption. Which does not mean that every young person who is exposed to a certain message immediately becomes an alcoholic. But it is just one of the factors that plays a role in a whole package of factors (Researcher 3)*

The warning to not only focus on television is supported by data on marketing expenditure, which show that alcohol brands are spending less and less on television advertising.

*Now, television almost doesn't worry us anymore. Now, the advertisers... because the budgets are almost no longer put... Enfin, in any case, everything suggests that the budgets for marketing on television will become less and less (Researcher 4)*

#### **4.4.1.2 Public places**

In addition to alcohol marketing on television, some of the stakeholders emphasized the importance of paying attention to alcohol marketing near places where predominantly minors pass. As an example, one of the participants referred to alcohol advertising close to schools.

*And as far as the alcohol advertising part is concerned, you have to make sure that they do not come into contact with it, or come into contact with it much less. The limits of those limits seem justified to me. There should also be no advertising around the schools. Because yes, they take the bus and they see that bus shelter, and if it is obvious that the bus shelter at that school will be used by those students or those pupils, then you should not place alcohol advertisements in it. That seems to me to be the logic itself. (Industry representative 3)*

## 4.4.2 Other marketing communications

Marketing is not only limited to traditional mass media. Promotional activities also occur in other forms, like: advertisement at points-of-sale, sponsorship, product placement, merchandising, free samples, extension of a brand portfolio, or marketing communications on digital media.

### 4.4.2.1 Point-of-sale

Activities to promote alcoholic beverages inside retail and catering enterprises are referred to as point-of-sale marketing. It includes brand-related promotion, like posters, coasters, drinking glasses, uniforms, or light signs. Alongside that, price-promotions or promotion of (drinking) events can also be seen as point-of-sale marketing.

The main concerns with regard to point-of-sale marketing are related to youth exposure and consumption. One of the points of contention is that, generally, minors have access to on-site premises, where they can be exposed to alcohol marketing. Some participants questioned whether in such situations minors can be prevented from seeing any type of alcohol marketing.

*But how do you ban advertising to young people, for example, that is made in a café where, indeed, sometimes a young person might occasionally come in? (Policy maker 4)*

*Another file from last year, it must have been, was from a party room operator, where several posters were hung on the wall of a party room and a number of those posters were related to alcohol, more specifically of drinks that could not be sold to people younger than 18. Now at a certain point in that particular party room a party took place, a party, where minors were also present. Nothing was wrong with it. But those posters were still hanging there. And strictly speaking, according to the text of the code, this is indeed forbidden advertising because the event that took place there... That minors were also present. This is already very much more difficult for us, to make clear to the party room manager "yes, but you have to think carefully... are there coming only 18-year-olds or maybe even 16-year-olds? Who knows who are present at that event. Because, if that is the case or if it could be so, I have to think about taking my posters off the wall".*

*That's a lot harder than a happy hour (Industry representative 4)*

A number of stakeholders indicated that marketing practices related to points-of-sale are often central in the discussion about alcohol marketing between stakeholders.

*As I say, that's sometimes very emotional, huh, for many people. That was a very emotional discussion, as being "that advertising is bad and... [so on].*

*(Policy maker 4)*

Some of these themes in the discussion are related to the advertising content and will be discussed in one of the following paragraphs. However, stakeholders also referred to price promotion events, like 'happy hours' as a sensitive subject in the discussion.

*One of the things that are sensitive, that will not surprise you, is that in one of the previous alcohol plans there was a ban on 'happy hours'. Of course, this is a sensitive issue in our sector (Industry representative 4)*

Despite the sensitivity of a ban on happy hours, all participants agreed that such price promotions may never address minors. In order to determine whether a happy hour targets children, respondents referred to criteria, like: near to a secondary school, at a place where many minors pass by, or at times shortly after closing time of schools.

*there was one, and I don't know for sure anymore... was that last year or the year before... It was from a catering business, near a school, which had organized a happy hour at the end of the exams at 4 p.m. in the afternoon, really focused on the students of the secondary school. Of course that's not acceptable. (Industry representative 4)*

Some of the participants argued that their main concern regarding price promotions in on-site premises, like pubs, is that consumers are encouraged to drink large amounts of alcoholic beverages.

*As you say, 'Half a litre parties'. Yes (drop silence as if the respondent wants to say "... that's clear after all"). Because you were just talking about big... and uhm... and uhm.... and, I know the other problems of cola from half a litre and litre cups. Anyway, that is disgusting. In the old days we only had bottles of 0.2, or twenty centilitres, in my youth. Coke bottles, and that was only in certain places. And now you see that this mega-consumption... But you can see that also in the alcohol, like the half a litre... Allez, I call that*

*half a litre parties... or happy hours, that they say 'Okay, we're going to price that extra low'.*

[...]

*So... Yes, that kind of marketing of drinking behaviour. Put that kind of behaviour on the market anyway.... which is considered normal. I say it, happy hours and.... and half litres, I don't like that. I always find that very annoying (Health actor 1)*

Also with regard to off-site premises, a number of stakeholders indicated that the excessive advertising is inappropriate

*For me, therefore, alcohol should not be made easily accessible in stores. That means that adults should be able to consume alcohol, but we should be against misappropriated advertising, which means that in a checkout, you see it at the crossroads, behind checkouts, at the moment you buy and even in front of the checkout there are small bottles of alcohol. 5 euros for a small whiskey or I don't know. It should be absolutely forbidden. (Policy maker 2)*

*Advertising is not a big deal, but it's at the Carrefour where you see the ad... [...]* literally a bottle when you're at the cash register (Policy maker 2)

The above-cited participant further argued that alcohol advertising in off-site premises may be allowed in places which are not openly accessible for people under the legal drinking age, and where the public solely consist of people who have explicitly chosen to buy alcoholic beverages.

*Simply, going to a place like an abbey and there, inside, there would be ads for 'that' and 'that' beer. Or we are in a place where we consume, it is not like a food and general food store, it is a place where we know we will consume alcohol, and that there are ads. (Policy maker 2)*

*We're not going to encourage them to use, since he has chosen to use. There is a difference. So, advertising in a setting where the person has decided to consume, I would not be against. (Policy maker 2)*

According to one of the stakeholders, local authorities may also play a role in



counteracting marketing practices at points-of-sale and raising awareness among catering enterprises.

*But euh.... I think that.... yes.... the local authorities there, to this kind.... low-threshold advertising, or marketing, that there... too... a kind of.... yes.... that there must also be an eye on from the organisations, from their boards, from the municipalities, that people there anyway ... Because municipalities are also going to have more of a role in the whole... basic health care, prevention, etc. And then.... yes, then I think that as a local authority you should actually dare to discuss these kinds of things with the youth organisations, of "what do you actually do? What is the purpose of this? Do you know what impact that has on drink consumption" and so on?*  
(Health actor 2)

Besides the concern that banning temporary price cuts, like 'happy hours', directly affects the sales of catering premises, some participants further indicate that especially younger consumers will try to find other points of purchase to buy alcoholic drinks for lower prices, before going to a pub. As a result, the problem of excessive consumption will shift to another place. These stakeholders further indicate that the consumption may happen then in places where less control is present.

Another participant emphasized that catering premises are often bound by contractual arrangements with alcohol producers. As a result, these contractual arrangements will also be influenced.

*Then I never feel that that's about those big things, personally. [...] the Federal Public Service of Public Health is rather making a big problem of the lower levels and of the uhm ... yes, of the... yes, of it.... of the café, of the youth uhm...., of festivals. They make an issue of that, saying "this is something we see far too little. This is something we notice far too little as problematic, because that..."* (Policy maker 4)

#### **4.4.2.2 Brand-stretching**

In order to maximise product sales, efforts are made to ensure that the products fit in as closely as possible with the wishes and needs of the target group. However, when the market becomes saturated, corporations need to find new opportunities. In that case,

stretching their brand can be helpful. Targeting new consumer groups or launching new brand products allows new markets to be opened up. In recent years, especially Belgian beer brands have followed this trend, by placing 0.0% beer on the market.

In general, stakeholders expressed a positive attitude towards the introduction of more non-alcoholic alternatives. They indicate that, from a public health perspective, the addition of non-alcoholic drinks to a brand portfolio is a good and healthy evolution.

*I would almost say, the more alcohol-free beer that can be served, so to speak, the better for the consumer. (Industry representative 1)*

*I'm more of a person who doesn't perceive them badly. Uh, why? Because we live in a society like that. it makes patients' lives easier. Many patients who use it give me positive feedback, that's why I defend the idea. It's because patients are defending the idea. [...] And they are quite happy to be able to go to a party and drinking a beer too, without containing any alcohol. To go to a meal, drinking champagne without containing alcohol. And so on and so forth. So, for me, very often, it helps patients rather than the other way around. (Health actor 2)*

Since it is a healthier alternative than alcoholic beverages, some participants indicated that marketing could be helpful to make it more attractive to alcohol consumers.

*If you can make that of course fancy, make the 0.0 fancy, then you could say "yes, maybe that's okay". (Health actor 1)*

However, a few stakeholders indicated that 0.0% drinks could also serve as a step up for young people to alcohol-containing alternatives.

*Anything that is beer or alcohol, including 0%, yes. Because it's clearly a call from the foot, a way to attract people to a beer drink. (Policy maker 2)*

Since 0.0% drinks do not contain alcohol, marketing messages for these products are not covered by the advertising code. As a result, alcohol producers are able to promote their brands more freely than for alcoholic beverages. Some of the participants indicated that it therefore should be part of a regulation on alcohol marketing.

*And indeed I think you should just say "yes, it's about the sale for you..." and*

*of course advertising is a very important element to sell that, but euh.... it is... "you are still allowed to advertise for it. It is only that it has to comply with the same rules". (Policy maker 4)*

Some respondents were reluctant to make statements about whether or not to include marketing for non-alcoholic beverages in the Code on alcohol advertising and marketing. One of the stakeholders argued that first more research should be done into the relation between the consumption of non-alcoholic drinks and alcohol consumption.

*And then there is indeed the question, if you look at research, and that is now... They are researching it now, but there is still very little scientific literature on it, what is the effect on the consumer? Will they eventually switch to 0.0 beer? So, are beer drinkers switching to 0.0 beer, or are other people switching to it? (Health actor 1)*

#### **4.4.2.3 Sponsorship**

In a sponsorship agreement the sponsor and 'sponsee' agree that the sponsor will have the right to associate the corporate or brand name with the event or activity of the sponsee, in exchange for a certain investment (Dean, 2002). The donation of the sponsor can be financial or non-financial, by offering provisions of the product or services (World Health Organization, 2012). Amongst others, corporate sponsorship can consist of agreements with charity organizations, sports events, or cultural events. In general, sponsorship of cultural or sporting events is allowed in Belgium. Sponsorship agreements are not permitted between a television producer and a company whose principal source of income is the production or sale of alcoholic beverages, when it concerns a television program of which the main part of the viewers consists of children.

Stakeholders expressed different views on the desirability of sponsorship by alcohol producers. Although all stakeholders agreed that sponsoring events or activities that appeal to minors is not acceptable, some acknowledged that it is sometime difficult to determine whether a sponsored event addresses minors.

*Yes... Enfin, here it is just that... allez, it is the application of the Code. So you have to see 'okay, is it really aimed at young people?'. So, [I mean] advertising sponsorship he... Euh... Now, when there are events where*

*young people are present, yes... It is also difficult... (Industry representative 1)*

*Anyway, you have mixed things, such as those festivals, which certainly also attract people aged sixteen, seventeen and where you do... alcohol consumption is problematic. (Health actor 1)*

A range of participants indicated that, in general, they do not perceive the sponsorship of cultural or sports events by alcohol producers as problematic. Nevertheless, some argued that they have concerns about certain contemporary forms of sponsorship. As such, the stakeholders referred to the current relation between alcohol brands and sports. One of the participants argued that sports sponsorships is acceptable as long as it does not concern individual athletes.

*No. I think at the moment as of course one, when that is going to create an association between, how should I say it... the athlete and a product as such, that is of course... that is something else. I think that's something else, but when an organization, a club or a sports association is sponsored by a brand, by an alcoholic brand, I don't have an immediate... no immediate problem with that. (Industry representative 6)*

Some other actors also suggested that they are not necessarily against sponsorship by alcohol producers, but that nowadays the association between alcohol brands and sporting activities has become problematic.

*If you look at the... to the Tour of Flanders, so the periphery, that's ... even embarrassing actually he.*

[...]

*Well, to be honest, I think ... The Jupiler Pro League, I had not thought about it, when I saw that, Jupiler Pro League. I always have that very unnatural and ... actually, those are things that should not happen. I would almost say as legislator ... this strict form of connecting product name with sports activities, I find that absurd. No, absolutely. And actually I think that the ethical self-regulation falls short. (Health actor 1)*

Due to sponsorship agreements, alcohol brands have become an important source of financial investment for cultural and sports events. One of the stakeholders indicated that

the money payed by the industry exceeds possible state subsidies.

*But, sponsorship, uh, it's the same thing. If there were not ... We would not have culture and sporting events, because ... because they actually bring in money that the state cannot ... say that it would not be able to put that in.*

(Researcher 4)

Several participants indicated that banning sports sponsorship for alcohol brands will be a sensitive subject, due to its economic value. In this case, they frequently referred to the ban on sponsorship by tobacco companies.

*The Formula 1 that took place there, was strongly related to tobacco advertising. And euhm... how that then the French speaking community... so then a commu... almost became a community problem, because the French speaking community had the feeling that we as Flemings payed no attention to their problems. Because that had an economic value of course.*

(Health actor 1)

Some of the representatives of the alcohol industry indicated that criteria are needed for determining the line between acceptable and non-acceptable sponsorship by alcohol brands. However, the question remains where the line needs to be placed between acceptable and non-acceptable sponsorship.

*but that is so striking for me, that I think there has to be some kind of indicator to allow certain forms of sponsorship... But yes, and then the question is "what criterion? Sorry, I don't have the answer. [...] That... that from a certain moment on, given the size, given the number of advertisements, which then have to do with it, that you have to... Yes, that they are limited. And so you allow the social event around a cultural or sporting event to take place without this having any detrimental consequences, especially for minors. But by extension to everyone.*

(Industry representative 3)

A sponsorship agreement can give an alcohol brand different rights. According to one of the participants, criteria should be established on the basis of the exploitation of the acquired rights.

*Where possible, problems could arise, however, that is when one looks at*

*the exploitation of that sponsorship. What is the purpose of this sponsorship? What, what, in what way, what rights has that sponsor acquired when, for example, he is going to support a sporting event? That, of course, must be looked at, the exploitation, and all of these are still permissible in one way or another (Industry representative 6)*

#### **4.4.2.4 Product placement**

According to the European action plan to reduce the harmful use of alcohol 2012-2020 (World Health Organization, 2012), product placement refers to an agreement between a corporation and broadcaster to display the corporation's products during broadcasting in exchange for an investment. Product placement is not part of the contemporary alcohol advertising code of 2013. However, the Flemish and Walloon decrees provide some rules with regard to product placement.

Product placement was slightly discussed during the interviews. However, one of the participants mentioned that it is currently discussed with stakeholders whether product placement, in general, needs to be part of regulation. However, it will remain difficult to determine whether something is product placement or whether it is the freedom of an artist to use certain products. In cases of product placement, a contract is required.

*Product placement, it's a bit ... That's advertising too, hey, for me ... But that's a discussion we should have with the people of the JEP and certainly ... It sure will be discussed within the framework of the ... of the ... improvement of the Covenant.*

[...]

*And then the problem is also to ... to show that there is product placement. You should definitely see the contracts, or yes or no. Allez. There is only a product placement if there is a contract. If it is only the freedom of the artist who wants to use a product for his ... for his film, or something like that, then it is not a product placement, hey. So euh ... Yes. Allez, how you can show that, it is sometimes a bit difficult. (Policy maker 5)*

#### **4.4.2.5 Free samples**

The current code on alcohol advertising and marketing prohibits the distribution of free

alcoholic beverages in public places. With regard to private places, like bars and events, some participants expressed their concern about giving away alcoholic drinks for free, especially to young people.

*there is a real concern because they offer free drinks to young people, and spirits, spirits, to young people. They offer shots. "Come on, go for a little shot," we offer a small shot and they are all minors eh. That I find ... So, how to work that? It would be almost ... How ... The accountability of the tenants of cafes, ... It's really that huh. Frequented by young people. There I think there is a real job to do. There are attitudes that are completely irresponsible. (Policy maker 3)*

In order to prevent situations in which especially young people receive free drinks, the above-cited stakeholder argued that it would be helpful to also include some private places.

*"That's it, that's it. Now, in an establishment ... Why do not we put in an establishment, or places that are frequented by young people eh. Bars that are next to the schools eh. It's a situation that I think. Next to the schools, who distribute shots to 16-year-olds" (Policy maker 3)*

#### **4.4.3 Digital media services**

Over the last decades, digital media have become increasingly popular among marketers. The rise of Web 2.0 has provided marketers with new opportunities to promote corporations, brands and products. Marketing communications can be displayed, for example, on corporation or brand websites, mobile applications, social network sites, video games, blogs, vlogs, or podcasts (Van den Wildenberg, 2010). Alcohol producers have also switched their attention to digital media. In order to reach existing and potential new customers, alcohol brands are widespread in the virtual world.

As online devices are used for marketing purposes, a number of stakeholders indicated that the same rules that apply to the 'physical world' also need to apply to digital media. However, some participants indicated that digital marketing differs from traditional forms of marketing and therefore carries some specific threats.

First, some of the respondents argued that digital media are mainly popular among younger people. As a result, they are likely to be more vulnerable to be targeted. Because

of that, one of the stakeholders indicated the threat is that alcohol brands focus on minors.

*Allez, these social networking sites are very important for young people. They are connected to their peers 24 hours a day. These peers also play such an important role in the lives of adolescents...*

[...]

*... what seems important to me is that they (alcohol marketers) don't directly address young target groups. Because, of course, that is what I think they are trying to do. Through these social media, they are really going to focus on young people. (Researcher 3)*

Second, it was indicated that alcohol marketing in digital media is a cross-border issue. One of the participants argued that people are increasingly exposed to advertising produced in other countries. Since European trade agreements do not allow foreign marketing communications to be banned if they are not specifically aimed at Belgian citizens, people may still be exposed to advertising that is produced outside Belgium.

*The Internet is an international tool, so yes. Allez, the advertising in the street is certainly still there, but... Yes. That is already ... allez, a small part. A larger proportion of advertising now comes from outside Belgium. (Policy maker 5)*

In order to prevent cross-border issues, some participants indicated that a European approach is required. Nevertheless, they questioned whether a solution at European level is feasible in the short term.

*We cannot for the whole world, not for all internet sites, but certainly we can .... allez, find a solution for at least other EU Member States. So... Allez. A purely pragmatic view, a single European solution for cross-border issues linked to alcohol, can... may be needed. Purely pragmatic. [...] It is clear that a small country like Belgium cannot solve everything on its own. (Policy maker 5)*

*Yes, that's where the... allez, the WHO's recommendations also come into view. Like, some things might perhaps be better regulated at a European level. The internet is ... a daily practice. [...] I don't think it will happen soon (translation NL: het zal niet voor morgen zijn), something like that... But of*



*course there is something in it. (Policy maker 1)*

A third characteristic of digital media is that communications are often interactive in nature. In contrast to traditional media, users are able to create their own content and share it with others. As a result, lines become blurred between branded content and user-generated content. Some of the participants questioned whether it is possible to differentiate and restrict such kind of communications.

*Young people also post a lot of such messages, without marketing having anything to do with it. But actually... yes, these are all advertisements for alcohol consumption. But how can you curb that? That seems to me to be very difficult. No idea. (Researcher 3)*

The same stakeholder further indicated that expressions on social media do not always stand on their own, since they are often in interaction with user experiences in the physical world.

*What happens on social networking sites is also partly ... it has an effect, but it is also a reflection of what happens offline. So... Allez yes. You cannot look at it one-sidedly, but you really have to look at it in interaction with all aspects of the environment. I think. (Researcher 4)*

One of the participants raised some questions regarding the presence of alcohol marketing. The stakeholder did not deny that alcohol marketing occurs on digital devices, but in comparison to advertisement for other products, it seems to be less present.

*Interviewer: From your position now, do you see an influence of social media and Internet on the drinking behaviour of young people?*

*Respondent: So euhm, I must admit that I do not know how young people are affected by advertising alcoholic through social networks, through online games, through... [...] I do not know how...*

[...]

*I once asked my children, I asked them "do you feel..." "what role has alcohol advertising in your activities?" They didn't feel concerned at all. "Nothing, I don't know". It didn't affect them at all. So, I said to myself: where is this advertisement? Where is it? (Policy maker 3)*

If the general population does not experience problems with online alcohol marketing, politicians will be less inclined to take action. One of the participants noted that politicians do not have a problem with alcohol marketing on digital media, since users have not reported it as such.

*Allez, I also think that the ... the advertising that we see online for alcohol is acceptable to politicians, because it is also acceptable for the general population. (Policy maker 5)*

One of the respondents indicated that advertising is still prevalent on digital media, but sometimes less visible. The low visibility of advertising on digital media can be explained in part by the use of ad blockers.

*Well, advertising is now online much, much more than elsewhere and at least there are ad blockers. So people can still choose a little more on the Internet than on... in the mass media, or the classical media, to be exposed or not. (Researcher 4)*

The stakeholder further added that marketing communications in digital media are becoming less and less recognizable as marketing. As a result, young users will be less aware of marketing and the way it affects their attitude towards the promoted products and, in relation to that, their future consumption behaviour.

*The problem is, it's all non-advertising. It's... I saw, I had students showing me videos of kids unpacking gifts where they film themselves. They are bloggers who are 8 years old, filming themselves unpacking the gift they received from Lego and stuff like that. And it's horrible. I say to myself 'Yes, it's naive, but it's pure advertising, but it doesn't look like advertising anymore'.*

[...]

*Most of the time, people do not understand yet that the native is advertising and that bloggers, vloggers, Instagram ... it's advertising. It is all advertising. And so, that's very complicated, it's disturbing because ... Well, if it's just advertising images that we see at this point... It's... (sighs)*  
(Researcher 4)

#### 4.4.3.1 Opportunities of digital media

Some stakeholders also referred to opportunities of digital media in comparison to traditional media. First, users on the Internet can be protected from advertising due to the use of ad blockers. Secondly, one of the participants indicated that, when used in a proper and responsible way, platforms like social network sites have the technical ability to limit advertising exposure to young people.

*And so, sometimes the change comes from the company itself, which... There was also a parental control and said, "Well, after X years, this application can cut the child off from spending enough time on Facebook or on his game and he has to do something else with his life (Researcher 4)*

A third advantage is that online platforms can include an age-check to view content on a website. As such, minors can be prevented from seeing inappropriate or harmful content. However, bypassing these age-confirmation systems is often still quite easy for users.

*There are a lot of children under the age of 13, with a Facebook profile. Also very often with the knowledge of the parents, so... It is just a matter of adjusting the age and euh... that problem has been solved. Allé, or the date of birth (laughs softly). So that's ... That's not really incredibly closing (Researcher 3)*

Although the participants mainly agreed that the characteristics of digital media, and specifically social network sites, need to get particular attention, the focus of regulation should not be limited to that. One stakeholder argued that children and adolescents are still also exposed to other, traditional marketing communications, which are also likely to have an impact on minors' feelings and behaviour.

*And with regard to channels, yes I think, it makes sense to focus on social media and the Internet somewhere, but that should not be limited to those media alone. Young people also go to the cinema, young people also watch TV, allez. It should not focus too specifically on this. I think that all channels should be subject to a ... regulation. And that is also the case today, I thought, with this self-regulating code. (Policy maker 1)*

Alcohol marketing may also occur on mobile applications or games. One of the

participants referred to a mobile application that was shared amongst students in high school. The mobile application was promoted by flyers that were distributed amongst students first. According to the participant, the application announced parties where alcoholic beverages are offered for free or at a reduced price.

*For example: there was a scandal with high schools, there were people who had distributed flyers, saying "go on this mobile application, to party," for the mobile application, it still exists, I can show it, it is still there, it could say "if you go to such a café, you will have a reduction on such alcohol consumption, you will have a free beer at such time, at such time. Is it possible to do that. Normally, it's forbidden. Here, the ..., the ground tries to make complaint, that always exists. It's ineffective and that's scandalous as an attitude. This is an application for young people. We see it right away.*

(Policy maker 2)

#### **4.4.4 Consumer marketing**

Besides using marketing communications to promote beverages, alcohol brands can also focus on the distribution, pricing and packaging of the product in order to increase sales.

##### **4.4.4.1 Pricing**

Alcohol producers and retailers can use pricing strategies to increase sales. A difference can be made between the standard price of a particular product and temporary price promotions, like 'happy hours', sales discount, or fixed prices for unlimited drinking. Products can be promoted by lowering the price of one or more units. Alcoholic beverages may be offered at a reduced price in drinking establishments as well as in supermarkets or alcohol retailers.

The stakeholders generally agreed that price promotions, like happy hours, are not acceptable when they are planned just after school time and close to a school.

*And I'm absolutely not sure anymore, was it last year or the year before... It was from a hospitality business that, located near a school, at the end of the exams did a happy hour at 4 o'clock in the afternoon, really aimed at the students of the secondary school. That, of course, is not acceptable.*

(Industry representative 3)

Some stakeholders indicated that they have objections to promoting large units of alcoholic beverages, because it encourages people to consume excessive amounts of alcohol.

*Yeah, I'll just say the... The beer industry isn't going to be against that (laughs softly) they are going to.... But that... I think that work is... perhaps almost stronger than all the advertising that the corporations themselves make. So... Yes. That kind of putting alcohol behaviour on the market anyway.... what is considered normal. I say it, happy hours and... and half litres, I don't like to see that. I always find that very annoying. (Health actor 2)*

A representative of the catering-industry argued that offering more units for a reduced price incites consumers to buy more of the same product than they had initially intended to buy. The person argued that this is why he is fundamentally opposed to this form of marketing.

Attempts to take action against price promotions may also lead to negative reactions from others (not necessarily alcohol producers or hospitality entrepreneurs), implying that the actor tries to break down a social practice (namely, drinking during a night out).

*But I once brought this up at the town council, but then I was a bit... I'm not saying they are insensitive to that, but uhm... a bit dismissed as a pleasure spoiler. And that is very easy of course. But uhm... I think still that... the local authorities there, related to this kind of low-threshold advertising, or marketing, that they need to pay attention to it. (Health actor 2)*

#### **4.4.4.2 Product design**

Besides the contextual elements of alcoholic beverages, also the product itself is developed in a way that is attractive to people. The participants most commonly referred to sweet mixed drinks and alcopops, as an example of an alcoholic beverage that is criticized mainly because of its appealing design to children. Some stakeholders argued that the same criticism can be formulated about alcopops as against 0.0% drinks. According to these stakeholders, the idea behind the criticism is that young people are initiated to the taste of alcoholic beverages at an early stage and therefore become more

quickly accustomed to a consumption pattern in which alcohol is normalised.

*So, obviously, the danger is especially when you have mixtures. So you put alcohol at 40° or 35°, it doesn't matter... And when you mix it with a sweet substance... Automatically, there is a refreshment and you have the impression of drinking something other than alcohol. But we drink alcohol. (Industry representative 5)*

*I think, with many children... is.. yes... I don't know if that's still the case today, but there's something like... Allé, or that it's still so popular, but there used to be some criticism of those alcopop drinks and... that that's a kind of lemonade where that alcohol is in... huh. That kind of Breezer-style drink. I think that the same criticisms can be made about this. (Researcher 3)*

*The strategy behind it is very clear of course, it is about ... it... let us say, keeping people in the habit of drinking alcohol, or something resembling alcohol consumption. Something with the same taste, and so on and so forth. That is also, I remember, the discussion with the alcopops and ... and ... why there is so much criticism of alcopops. Because this is a ... a stepping stone, so to speak, huh, even though that theory is... it is not correct. (Researcher 2)*

Another respondent also expressed concern about drinks produced from flavours that are particularly popular with younger target groups. However, this respondent argued that there is a difference with 0.0% beer. According to this stakeholder, most children naturally do not like the bitter taste of beer.

*You had the Breezer phenomenon there ten years ago. Yes that was also just five degrees, but that was really an euh...a...how would I put it...a plague, he... A worse plague than five degree pints he, I mean. Because there is ... there is no difference. [...] I will say it to you like this, I think that the step from alcohol free beer to beer is a little more difficult or complex, than the step from lemonade to Breezer. (Industry representative 2)*

#### **4.4.5 Stakeholder marketing**

Corporations that produce alcoholic beverages also invest in measures to reduce harmful effects of alcohol consumption. Almost all stakeholders argued that they perceive some

types of stakeholder marketing as a strong way to counterattack harmful patterns of alcohol consumption. However, whether the alcohol industry can play a role in this was contested by a number of participants. Some positively perceived initiatives of alcohol producers to combat the harmful effects of alcohol consumption. For them, it illustrates that alcohol producers are aware that their product can be harmful when it is used irresponsibly and that they are willing to take responsibility for reducing immoderate consumption.

*But that is an example of how the sector also assumes its social responsibility. In Belgium with 'BOB', with the Covenant, also with 'Respect16', the age is 16... (Industry representative 1)*

*We are also an important cultural and economic actor in Belgium and we must take our social responsibility. And the fact that we started these actions as early as 1992: BOB, marketing, the convention... allez, it shows that we were aware at that time that we had to do something. (Industry representative 2)*

According to the same participant, statistics show the effectiveness of these initiatives from the industry.

*"We are talking about the BOB campaigns. The results of the BOB campaigns are clear, he. Very good. 25 years ago we had 3000 dead on the Belgian roads. We are now at about 700." (Industry representative 1)*

The statement of the above-quoted stakeholder was challenged by another participant.

*Respondent: And then I would say, if it is about a strategic approach, start with alcohol (in traffic). Nobody dares to say that this is not a problem, that people drink and drive.*

*Interviewer: And don't say "yes, but we're already doing so much. We focus on prevention campaigns...".*

*Respondent: That is not true. Because, what... This is what. It's not effective. That's the big frustration now. (Researcher 2)*

One of the stakeholders indicated that if the industry would like to take part in campaigns, the industry should stay in line with their field of expertise. As such, the industry could

take responsibility regarding informing, sensitizing and training staff members and employees within the hospitality industry. On the other hand, the state is responsible for campaigns that address citizens.

*I know that to date, that industry would like to engage in campaigns. Euhm... they probably do so on the basis of their... of course, certain motives I think it's good if they are dealing with issues that are close to their own field of expertise. And that it is better that, when it comes to citizens - activities directly addressed to citizens - that this is done by a government. And with those activities that lie within the field of expertise of the alcohol sector, I am thinking of training bar staff, shopkeepers, to point out that they are not allowed to sell alcohol under the age of 16, under the age of 18. (Policy maker 1)*

Another stakeholder further argued that the industry can have a role in contributing to social marketing campaigns, under the condition that they cannot be involved in the creation of the communications.

*Respondent: Can we let the alcohol industry play a role in [...] And I have no problem with that. And the reason why I have no problem with that is on one condition. That is that the alcohol industry says "we give every year one hundred million to the VAD, and the VAD does what they want with that".*

*Interviewer: So they finance, but they're not the ones who create?*

*Respondent: Surely not. No, of course not. And the criteria, and doing the assessment, no. They are allowed to pay it and they are allowed to be present...well...if a prize, and so on and so forth, is awarded. No problem at all. (Researcher 2)*

However, some respondents continued to point out the risk of industry involvement in social marketing campaigns. One of them referred to the tobacco industry, where parties tried to intervene by subsidizing some campaigns.

*And ... Yes, also, when you look to the smoking industry again, you also see that people there... sometimes give subsidies to... to certain campaigns, and you z ... and yet ... that is risky, because people will always try - even in so-*



*called prevention campaigns that they sponsor - to take advantage of it. And so, I think indeed that you have to be careful with that, with uhm ... BOB-campaign ... Yes. Now, I ... So, I think you'd better keep it separate. Prevention is not really a task of the industry. (Health actor 1)*

Some stakeholders argued that there is currently an imbalance between the amount of alcohol advertising and sensitizing communications. As a possible solution, it was suggested that alcohol producers should donate half of the expenditure on marketing campaigns to finance counter-ads.

*If we continue to do marketing, I think we have to be able to tax marketing measures for... Because today, there is a huge gap between the level of marketing that is done and the money that is spent on prevention. Why can't we move from one to the other? Do you want to do marketing? Okay. (Health actor 2)*

A last group of stakeholders indicated that corporate influences in social marketing campaigns to combat alcohol related harm, is not desirable. A few of them first argued that the alcohol industry mainly aims to maximize profits. According to them, using strategies and techniques to reduce harmful alcohol consumption leads to a decrease in the total consumption of alcoholic drinks. As this will have a negative impact on the profit of alcohol producers it is unlikely that they will invest in the most effective measures.

*Interviewer: Do you think that... Let me ask it in another way. Now, they are doing that kind of social responsibility campaigns. Do you think that also in the future there must be a possibility for companies, alcohol industry companies, to do that? Or must it be a responsibility, totally, for the government? For the state.*

*Respondent: It must be the public authorities.*

*Interviewer: Public authorities.*

*Respondent: Yeah, they (the industry) have nothing to do with that. Yes, again, you asking the wolfs, or the foxes, to take care of the chicken. So, it. I don't buy that strategy, and I cannot understand how our government is daring to do that. It's really a shame. It's really a shame (Researcher 1)*

*I think you can't be a seller of alcohol and do it at the same time.... I*

*systematically refused then to participate in activities like that, because I say "it's not possible. "this is... this is prevention marketing, it doesn't work. [...] someone who sells alcohol, his goal is to sell more and more. It is not about prevention. I don't believe that. It's purely financial stuff and in finance, there's no ethics. It doesn't exist. (Health actor 2)*

In order to achieve the best results, one of the stakeholders pleads for an evidence-based approach with measures that already have proven to be effective.

*I think that is something that has to be done, but only when such a project is clearly tested in advance and that its effectiveness is clearly proven. Because I think that at this very moment, new projects are being rolled out with a lot of good intentions. But such projects must be rigorously tested, I think, before they are implemented on a large scale. (Researcher 3)*

## **4.5 Content restrictions**

The contemporary Code on alcohol advertising and marketing aims to prevent marketing messages that incite or support alcohol misuse, or the irresponsible use of marketing tools by the advertising sector. In order to do so, the Advertising Code provides rules concerning the association between alcohol consumption and minors, health, sports, work, traffic safety and alcohol level.

The impact of alcohol marketing on alcohol consumption is associated with both the exposure to alcohol marketing and the content. One of the participants argued that especially content restrictions have been part of discussion between the stakeholders.

*Yes, the volume is actually something less discussed than the content. But that also has to do with the fact that it is so emotional, hey. So the ... the element of 'they've seen something' as euh ... as euh ... as a certain member of the government, or 'they've heard things' as targeted targeting, to young people or to certain groups, I know a lot, or to targeting that is not even perceived as 'to young people'. (Policy maker 4)*

### **4.5.1 Addressing minors**

During the interviews with other stakeholders, the interpretation of the content was also

regularly referred to as problematic. As such, stakeholders with different backgrounds argued that it is difficult to assess whether a marketing message addresses adolescents or adults.

*It is so difficult to define the discretionary power of 'targeting young people' and 'not targeting young people'. It's really... I have seen examples of which I think 'yes, that's aimed at young people and that will be...'. Then.... Then I think longer and think 'yes, but on the other hand...'. that... that's just how you look at it, of course'. (policymaker 4)*

*And also... Yes.. When is something targeted to young people? Allez... I mean, that will always be open to discussion. How will you decide whether an advertisement is aimed at 18 year olds or at 14 year olds? If they say "no, that's not our target group", how is that going to be monitored? No idea. Euhm... there will always be discussion about that. (researcher 3)*

Some other respondents indicated that the main problem is that marketing messages do not necessarily have to be targeted at minors in order to be attractive to them.

*Well ... This is ... This is ridiculous, of course. Well, I mean. What does that matter? A campaign cannot address ... Can you see whether someone is 19 or 17? Not me. Well, sometimes ... yes, I mean ... So that does not matter. As if young people ... young people do not feel attracted by a campaign, where there is a whole group ... I mean... (Researcher 2)*

*Interviewer: When does an advertisement specifically target minors? It may be attractive to minors, but is it also targeted to...? What is your opinion on that?*

*Respondent: Well... that's difficult, because... The problem is that that is really literal casuistry. So there euhm... yes... I don't know if you'll ever find a watertight definition about that. (Industry representative 2)*

*Of course, yes, if you hang a banner of a particular brand of spirits, or beer, or wine, doesn't matter actually, and that banner is enticing, has beautiful colours, has... I don't know what's hanging on it. And they say "yes, but that's not to minors". That's so difficult, to make that... to do that... to validate, or to estimate. (Policy maker 4)*

*Because, well, that's the whole question what is a children's program? Because it's very clear when it's a cartoon, but then there is this whole range of programs that may not be made for young people, but that young people look at or envy to watch because that's is not ... (Policy maker 3)*

One of the participants indicated that the self-regulatory Code is intentionally formulated in a way that it can be bypassed easily.

*But if you look at how... how clever that code is formulated... the advertising should not be aimed specifically at young people. Well, once an advertisement for adults is also appreciated by young people, then you're already done with your complaint. Then they say "yes, it is not specifically aimed at young people". What is specifically aimed at young people? Yes ... then it has to be very obvious, right. That it really is completely... really specifically aimed at eighteen-year-olds. (Health actor 3)*

Since it is difficult to decide whether something addresses minors, some industry representatives argued that alcohol marketers should be cautious about pushing the boundaries.

*I think that you have to be careful there and have clear rules. And ... And the covenant is clear. If... if that really is the target group and it is aimed at minors, yes.... (Industry representative 1)*

*Well, let it be clear, I would argue for a certain restraint on that point on the part of the alcohol marketers, to not pushing the limits. (Industry representative 2)*

Another stakeholder argued that regulation should not only focus on minors, just because it is hard to make a distinction.

*But how are you going to determine that on Facebook it is directed to that group of teenagers, rather than to eighteen plus? No idea. Euhm... So yes, I think they should not focus specifically on young people (Researcher 3)*

#### **4.5.2 Interpretation of the code**

The self-regulatory Code on alcohol advertising and marketing provides rules with regard to the depiction of the relation between alcohol consumption and improved performance,

or (physical or psychological) health conditions. The interpretation of the rules can be based on the interpretation of certain terms or the context, or a possible underlying message. However, some stakeholders indicated that, currently, there exists a problem of perception with regard to the provisions of the code.

*Allez, when we speak of social success. Yes, what is social success? That is for each... for each person perhaps a little different. So euh.... Is a big car a social success? Anyway, we can position ourselves over many different... ways to position these... That's one of the examples, but there are many other examples we can find in the Code, which... can be interpreted. (Policy maker 5)*

*Suppose we would say "yes no, it is self-regulation and we determine what it says. And if that is not clear, yes, sorry he". [...] That is why I say 'no, this must be transparent, this must be applicable'. The question will be: why is something not clear? (Industry representative 3)*

Some participants argued that the interpretation of the JEP is sometimes not strict enough.

*media, advertising and advertisers, because it's... They're too many for me and it's obvious in their decisions that very often there are really decisions that are... for me a little lax, what, that are really too much... "yes, but it's humour", "yes, but well, it was a saga" or "yes, it's in the air" or... (Researcher 4)*

To solve the problem of perception, a majority of the participants propose improving the current code. According to some of them, mutual consultation with stakeholders should form the basis for a reform of the contemporary self-regulatory Code.

*However, this possibility must be provided for. In order to amend the covenant within the framework of the covenant. Once again: this is not possible every 5 minutes. This is not possible with a law either. So there must be some reflection about that. And that presupposes that the partners want to sit together at the table. Also to come to that reflection. Suppose that this is not present. Yes, then that is actually a basis for building that up. (Industry representative 3)*

A number of stakeholder indicated that it could be a solution to no longer stipulate what is not allowed, but to provide rules that determine what is allowed.

*I think, if you determine 'there should be no advertising' - and then perhaps an exception for that I know a lot where exactly that could be, but you make something like that - then you can comply with that measure much more easily. (Policy maker 5)*

## **4.6 Regulatory framework**

### **4.6.1 Control**

Currently, the JEP is the main actor in monitoring compliance with the rules on alcohol marketing. Since the JEP is a self-regulatory body, they mainly rely on voluntary compliance of the signatories to the Code and their members. In case of refusal, the jury has the possibility to ask most traditional media to stop distributing a marketing communication when an advertiser refuses or fails to modify or delete the advertising message.

*Suppose the JEP pronounces a decision to change or stop an advertisement. If this is not voluntarily complied with, it can be enforced via the media that are members of the Advertising Council. (Industry representative 6)*

Some of the participants argued that the current self-regulatory body can easily adapt to changes and new marketing trends. For example, the area for which the JEP is responsible was extended to digital channels and native advertising a few years ago. Although the JEP is authorized to investigate online marketing messages, one of the stakeholders indicated that the JEP cannot enforce compliance when it comes to marketing messages distributed among social networking sites, such as Facebook, YouTube, or Instagram, because they are not members.

*And the problem is that the rest is the..., it's Google, it's Facebook... It's Instagram, it's Pinterest. And now the ethics jury can't do anything. (Researcher 4)*

Some argued that the benefit of a self-regulatory body, like the JEP, is that the formation

remains flexible, and members of the jury have a broad knowledge. In addition, some actors argue that the Belgian self-regulation system is more independent than forms of self-regulation in other countries.

*We have this self-regulation, and certainly if you look... My vision is, if you look at the Belgian self-regulation system, it is better than other self-regulation systems. So for example, there is a joint composition of the JEP.*  
(Policy maker 5)

However, opponents argue that the JEP is not independent, because a majority of the jury consists of advertisers. As a main part of the advertising industry benefits from assignments given by the alcohol industry, they are perceived as not fully independent.

*In that case, enforcement could be carried out by Public Health... Federal Public Health, for example... [...] I think that this would allow for a much more independent and neutral view of the marketing practices that exist today. So I think that's something that...* (Policy maker 1)

#### **4.6.1.1 Challenges**

An effective regulatory system, among other things, requires an adequate and effective control body. A number of participants indicated that they worry whether it is feasible to monitor all types of media. Especially digital media were associated with a number of threats.

*Especially since our inspection services are not yet fully familiar with this, I think... have not completely evolved yet. Not their fault, that's not their fault. But just, yes, it's a given that that's something we're not very good at following. Euhm... or because the market is much faster than a government in it.* (Policy maker 4)

Some participants indicated that they have concerns about the implementation and enforcement of a general alcohol marketing ban. Some of them argued that there are some media which are harder to monitor than others.

*The problem with bans is that... they are credible if they are implemented. So, a ban is interesting if you can monitor its implementation and enforce its implementation. So, I guess there may be... they may be domains and*

*media which enforcing a ban is feasible. You can track that it is indeed implemented. But that.. it could be that there are media which are less amendable to control. (Health actor 1)*

Nevertheless, some of the participants indicate that the current jury lacks members with expertise on public health. Adding a member of the federal public health service is proposed as one of the options to solve this problem.

*Well, put someone from the Federal public health service, who also has some expertise in the field of advertising and business management, in the jury... That is possible. We support that. (Industry representative 3)*

The current jury is criticized by some stakeholders because of the lack of public health actors.

However, some participants indicated that the independence of the jury can be threatened by including somebody from the public health authority, since they are also responsible for a majority of the complaints submitted to the jury.

*With regard to the total independence position of the JEP as well, to make that very clear, to underline this very clearly. Because, once again, as I came to point out, if we look at 80%, I have already said, 80% of the complaints currently come from a governmental authority. It is very difficult to let the complainant decide the complaint. (Industry representative 6)*

Another stakeholder argued that, when a conflict of interest is the fear, then it may be an option to include somebody from the FPS on the jury as an observer. As such, views can be exchanged and the mutual understanding between both parties may improve.

*They can still be present as... as observer, without an advisory voice, or without... Or just as advisor, without decision-making power. [...] Surely, it doesn't have to be necessarily the case that they are judge and party at the same time. If they just observe....*

[...]

*But it can be a way to be present as an observer in this way... if... let's say, so you're not infected by it of course, because you don't have to choose a*



*side. But you can, for example, give certain views on a case, or say “look, these are elements that play a role from the federal public service Public Health perspective”, without being a judge at the same time. (Researcher 2)*

However, for a group of participants, mainly consisting of health actors and a number of policy makers, the control needs to be exercised by a state authority. According to some of them, it will never be the objective of a self-regulatory body like the JEP to protect public health. In contrast, a statutory body would have more possibilities to enforce regulation. In order to finance the monitoring body, one of the stakeholders suggests that the industry can be obliged to cede a certain percentage of their expenditure. The participants argued that the same mode of financing already exists for the pharmaceutical industry.

*We need a federal agency that controls this kind of stuff and that is completely unrelated to the industry, but that can be paid for by the industry. Same thing with the drugs. Okay, we'll take two percent of your expenses and it's for us, so we can control you. Why not? Why not? (Health actor 2)*

One of the participants argued that the investments for implementing a statutory body in order to supervise regulation cannot be underestimated.

*I think that if there is anything that can be done to tackle alcohol marketing [...] If something had to be done about it, it would be good to stop self-regulation and make it a law. That would send a much stronger signal to industry. [...] Then enforcement could be carried out by Public Health... [...] There could be sanctions that are not possible until now. Euhm... Yes. I think that a much more independent and neutral view of the marketing practices that exist today would then become possible. (Policy maker 1)*

#### **4.6.2 Support**

According to a number of participants, support is required for an appropriate and feasible model to combat alcohol-related harm. The stakeholders reported different types of support, these being: stakeholder, societal and political support. Nevertheless, the

different forms of support are closely related to each other. As the participants are at the same time also stakeholders, their support for a certain model emerged during the interviews.

Proponents of self-regulation generally argued that they are in favour of a model which is based on consensus and support of a wide range of stakeholders. According to these participants, regulation will be most effective when all actors involved agree with the rules in force. In addition, they indicated that they all endorse the commitment to combat harmful alcohol consumption.

*From the final... allez, what should we all strive for here? All stakeholders. That we are against the horrible and heavy social problems of excessive alcohol consumption. Because we are all (laughs softly) ... Excessive alcohol consumption, no! Binge drinking among young people, no! (Industry representative 1)*

*and that is the most important thing, in my opinion, that there is support with all the actors. If there is no support, then I think that something is missing in Belgium, politically speaking. (Industry representative 6)*

*I am in favour of, if you believe that alcohol consumption is acceptable as a social phenomenon, then I think you need to achieve synergy with the sector... involving people in a general plan. And if they only use those things as a trick to only improve their own business, then we are doing the wrong thing. (Health actor 1)*

Additionally, societal support was referred to as an important element for the working of a regulatory body. Societal support is related to a better understanding of the current Code on alcohol advertising and involvement in the decision-making process. As such, one of the participants argued that this is one of the reasons why the JEP is composed of different parties.

*.... then I think that the decision that was taken at the time to compose the jury 50% civil society, 50% the sector, was a very positive evolution. And you will understand why, of course. To create a support base whether it is with, I would almost say, a whole bible of regulations here in connection with the control of advertising or very specifically about the alcohol code,*

*that support base is actually important. And you only have that support at the moment if you also bring people from civil society to the table.*

(Industry representative 6)

Some of the participants indicated that it is important to have a regulatory framework that is supported by the stakeholders. One of the stakeholders indicated that, when it is decided that alcohol consumption is acceptable, we need to include all stakeholders to come to a workable model. For another participant:

*But, oh well, I think what is all important in alcohol policy, in marketing, is, one, clear rules for which you have a broad support base. You shouldn't do that in one, two, three. You have to have broad support.* (Industry representative 1)

Societal support also serves as an indicator for politicians to make certain decisions. One of the respondents suggested that politicians often start from concerns that emerge within society.

*Allez, I also think that the ... the advertising that we see online for alcohol is acceptable to politicians, because it is also acceptable for the general population.* (Policy maker 5)

One of the participants, who argued in favour of a ban on alcohol marketing, argued that also when a general ban is implemented, support is required. Therefore, according to this participant, people should be made aware of the dangers of alcohol advertising, which will create support.

*This is all very complicated. Which is normal. We must not think too easy, huh. Simplicity is dictatorship too.*

*But I think if it's too badly perceived by too many people, it won't pass. So it has to be relatively accepted.* (Policy maker 2)

### **4.6.3 Sanctions**

The JEP is currently able to impose sanctions when the regulations on alcohol marketing are breached. However, as the regulation of alcohol marketing happens within a self-regulatory framework, voluntary compliance without sanctions is the principle. Nevertheless, in case of flagrant breaches or recidivism, the jury may oblige the advertiser

to submit subsequent marketing messages to them first. Several participants indicated that extension of the current sanctions is a topic of discussion between the stakeholders. Since self-regulation is mainly based on the principle of voluntary compliance, one of the participants argued that this point of departure needs to remain the same.

At the moment, the most imposed sanction is the decision of the jury to change or withdraw the advertisement. Some of the stakeholders, in the group of signatories to the Code, argued that forcing marketers to replace their advertisement already is a deterrent moral sanction for professionals working in the marketing sector. In addition, they also lose income because the campaign has to be halted.

*You have to understand, an advertiser who sees his campaign sanctioned, that's no fun at all. That's no fun for the advertiser. That is no fun for the advertising agency. That is, of course, in one way or another, or that may also be detrimental to the media in this case, because that campaign will then no longer be broadcast and that is therefore less, I would say, media sales in this case. (Industry representative 6)*

*Allez. You must always have sanctions he. So, higher sanction. Yes. But in my opinion, the most important thing is actually the moral sanction. You can imagine, if a big brewer or alcoholier has to stop his campaign, that is painful. (Industry representative 1)*

*Of course, this is somehow also... or, that may also be disadvantageous, in this case for the media. Because then, that campaign will no longer be broadcast and that is also less, I would say, media sales in this case. So that, in terms of sanctions, there is, I would almost say, already a serious economic sanction attached to it. (Industry representative 6)*

A self-regulating system relies primarily on voluntary compliance with the rules by the parties that are affiliated with the code. Nevertheless, a majority of the stakeholders indicated that it should be possible to impose a financial sanction.

*Yes, I do... I can understand this to some extent, that... the sanctioning should be somewhat euh... more robust.*

[...]

*But effectively now there is sanctioning ... it is very light. I do think that ... once again, that has to do with my belief in enforceability. I think that when you agree on rules, and sanctions are attached to them, those sanctions, first, should be imposed, or should be allowed to be tightened. I believe that needs to be the case. Now it seems ... yes... someone is briefly named on the website of JEP and that's it...*

*Interviewer: That would then take the form of a monetary sanction, do you mean?*

*Respondent: Yes. I think that would work. I am not against that. Because, if you don't want to hear, you still have to feel it. (Industry representative 2)*

*Look, at that... at that point, I can understand critics who say "yeah, if there is a sanction, then it is... almost a moral, principle one, but no real...". So, yes, that could... that could... that could have an impact. Yes. (Industry representative 2)*

Some suggested that a financial sanction could serve as a big stick for actors who already breached the code once. Generally, these actors indicated that there is no reason to give financial sanctions more priority, since most marketers follow the decision of the JEP in the first instance and recidivism is uncommon.

*Concerning those fines, the basic principle is: you can hardly agree on a number of things but do not provide anything as a big stick when people ignore it. That must be foreseen. (Industry representative 3)*

*The kind of... of elements that can make that the decisions of the JEP are better followed. So, uhm... at the moment, there is a possibility to impose a fine per day that the decision of the JEP is not followed, but if you decide to comply to the decision of the JEP, then there is no risk of... And for us, that's sometimes a little bit weird, according to us. (Policy maker 5)*

However, other stakeholders indicate that following the rules is part of the job of the industry and that a fine therefore needs to be possible in the first instance. One of the participants for example mentioned that it is a form of unprofessionalism that marketers still regularly forget to include the educational slogan in marketing communications.

*There are always bad pupils who do not even include the slogan of "Beer brewed with love, drink with reason". Allez, that's not possible. What kind of professionals are you? And so I think it is also a form of professionalism to take these things into account. And if you don't do that, then I think that a fine is allowed, yes. (Industry representative 2)*

It was also cited that non-monetary sanctions are much less effective in dealing with violations in online marketing, especially on social media. First, in general, online marketing is cheaper than marketing communications spread via traditional media. As a result, the financial consequences of stopping a marketing campaign will weigh much less. Secondly, marketing messages on social media are often not developed by professional marketers. As a result, they will also feel less (morally) punished by a negative decision of the JEP.

*The only sanction of the ethics jury is to stop broadcasting the media or on the media. And now, it costs money when you've paid and... But on social networks, it costs nothing, huh, finally.*

[...]

*A brand that knows that it can make a bad buzz on the Internet, that... Yes, the JEP will say "you stop right now and you stop broadcasting". Okay, they stop. They don't care if they don't know us at all or if they don't know us at all, because we made a bad buzz and knowing that we didn't pay anything anyway, we'll just have to withdraw the ad again. (Researcher 4)*

According to the stakeholders, the level of the fine could gradually vary, based on the capital strength of the parties involved. For example, a distinction could be made between large alcohol producers and entrepreneurs in the hotel and catering industry.

*Someone who now really, so to speak, by oblivion - and that all the indicators are also clear that this is a forgetfulness - uhm, that can be a smaller fine. But is there already a factor of recidivism in it? Are there any entanglements or aggravating elements? Yes, then it can go in the direction of 10.000 euros. And since sufficient elements of gradation can be built in there, I do not see why that should not be the case for retailers, for*

*the on-trade business, and the hotel and catering industry. (Industry representative 3)*

#### **4.7 Approaching the demand side**

A large number of stakeholders indicated that measures should also be taken on the consumer side to make people more aware of how marketing works and how to deal with it. In this case, participants mainly referred to forms of media literacy and prevention campaigns.

Some actors indicated that especially young people often do not see marketing communications as advertising. According to these stakeholders, it is important to better inform and train children and adolescents to recognize and deal with marketing communications in general, and more specifically with alcohol marketing. A number of them referred to media literacy as a means of helping children and young adults to better deal with advertising messages.

*So we really should first explain to people "Forget what you saw in the past as advertising. Now is that, that, that advertising, because the...". Most of the time, people still don't understand that the native is advertising and that bloggers, vloggers, Instagram... it's advertising, everything is advertising. And so, this is very complicated, it's worrying because... I mean, if it's just advertising images that you see at this point... (Researcher 4)*

*So, it is to strengthen young people's skills and to ensure that they are not affected by advertising. And so, it's counteracting. To have a critical look at..., to be able to decode a message. is all that is education, but to be able to decode an advertising message. We have to say Here, that's it. Work on that. Reinforce that in young people. Work on that in schools. Voila. Saying we're not that impressionable. We shouldn't be influenced by advertising. Understand it's a manipulation. Understand it's... Decode it, decode it. With the young, with the more vulnerable, with the less equipped. There, mission done... (Policy maker 2)*

*Some positive effects of media literacy initiatives are also found in the literature. So if you make young people more aware of how certain things can affect them...but...allez, it depends on how you do it. So it's not...allez,*

*yes...just start a conversation or so. Allez, it's... Literature shows that you can't do that in any way, but there are media literacy initiatives that show that they have a positive effect. So that they can reduce the relationship between ... or negative effects of the media. (Researcher 3)*

*I...then I think we... that we can also widen the discussion to media literacy in general. It is about messages that are given all kinds of things. And that is what the Flemish government is also making an effort to do. There is an entire institute for media literacy... Euhm.. This can certainly be an opportunity to continue working on this in the future. (Policy maker 1)*





## Chapter 5. Discussion

Among stakeholders (i.e. public health experts, policy makers, and industry actors) there is consensus about the harmful effect of heavy alcohol consumption. As a result, initiatives are being taken from different sectors to reduce the harmful effects of alcohol (ab)use. In the field of alcohol marketing, public and private actors sometimes join forces to develop a form of regulation to tackle the harmful effects of alcohol. Nevertheless, the multitude of regulatory alternatives suggests that there is no full consensus among private and public actors on how best to address the problem. The interviews conducted in the context of this study support this assumption.

In this chapter the different views on suitable policy alternatives for Belgium will be discussed. The first part will discuss the mobilization of the notion of “alcohol-related harm”. Although almost everyone agrees that alcohol can be harmful, there are different views on the interpretation of the notion of acceptable alcohol consumption.

The association between the mobilization of the notion of acceptable alcohol use and individual accountability will be discussed in the first section. The mobilization of the notion of alcohol-related problems correlates with the perceived importance of the position of alcohol production and consumption within the Belgian context. The relationship between, in particular, beer and Belgium is expressed, among other things, in the existence of a multitude of small and large beer breweries and the UNESCO recognition of Belgian beers as immaterial world heritage.

The second section will briefly describe the importance of taking into account the cultural context for alcohol marketing policy. From section three, the focus will shift to the interpretation of a suitable model that fits the view of the stakeholders. Therefore, in the third section attention is paid to the possible forms of regulation (i.e. comprehensive bans, partial bans, and no regulation), and the main pros and cons of the different models are given. The fourth section focuses on the possible content restrictions for alcohol marketing messages. In section five, volume restrictions per marketing strategy are discussed, based on the categorization of the marketing mix, as illustrated by Hastings and Angus (2009, p. 5). The various framework alternatives within which volume and content restrictions can be implemented are discussed in the sixth section. The chapter ends with some recommendations.

## 5.1 The notion of harmful alcohol use and individual accountability

Among all stakeholders there is consensus that heavy alcohol consumption is harmful. However, the way the notion of alcohol-related harm is framed and mobilized by the actors differs. The main distinction in vision consists between representatives of the alcohol, advertising and catering industry on the one hand and on the other public health advocates and experts. Since both groups of actors mobilize their own notion of alcohol-related harm to support their view on a favourable model for regulating alcohol marketing, it is important to critically assess how they define the harmful use of alcohol. The notion of alcohol-related harm by actors of the industry is mainly reflected in industry documents, and voluntary and self-regulatory codes. The opinion of health actors often corresponds with the results of public health studies and guidelines of health organizations (e.g. WHO).

Public health actors place emphasis on the harmfulness of the substance, alcohol, and the consequences related to alcohol consumption. When looking at public health studies, a majority of these dissertations primarily refers to alcohol as a harmful substance that contributes to the global burden of preventable diseases, injuries and mortality (Anderson et al., 2009; De Bruijn et al., 2010; Jernigan, 2012; Rossen et al., 2017). Furthermore, often attention is also paid to indirect effects. For example, Babor, Jernigan, et al. (2017, p. 125) stipulate that “early initiation of alcohol use endangers the development of human capital, and is likely to affect social and economic development as well”.

Public health actors initially see alcohol-related harm as a widespread social problem. Consequently, they argue in the first place for evidence-based macro level measures. Much reference is made to the three “best buys” of the World Health Organization (i.e. taxation and pricing policy, regulating physical availability, and restricting alcohol marketing), which have proven to be the most cost-effective interventions to reduce alcohol-related harm.

In contrast to public health actors, private actors active in the alcohol, advertising or catering industry mainly highlight harmful consumption patterns instead of the harmfulness of alcohol as a substance. While it is recognised by industry actors that alcohol consumption can have a harmful effect on health and the environment, industry actors and corporate documents mainly dedicate alcohol-related problems to a small

group of alcohol abusers, which contrasts with a majority of moderate users who consume without problems (Jernigan, 2012). In general, moderate alcohol consumption is perceived as unproblematic. Since a majority of the signatories of the current Belgian code on alcohol advertising and marketing are representatives of the industry, it is no coincidence that the stance of these actors forms the starting point for the self-regulatory code. As such, the preamble to the code states that “the majority of users deal with this [alcohol] in a responsible way. An unwise alcohol consumption can be harmful to the individual, but can also have negative external consequences for society as a whole”. By highlighting that just a minority of the consumers misuse alcohol, the related harmful effects are reframed as a problem of a small group of alcohol (mis)users (Jernigan, 2012). As such, the emphasis is placed on the individual responsibility of the consumer and micro-level interventions are proposed as best fit solutions.

The difference in definition by the two groups is understandable as both groups pursue a different interest. Private actors in the industry strive for economic profit. Although taking a responsible role can have a sustainable and positive effect in the long term, primarily emphasising the negative effects of consumption will have mainly adverse consequences for their sales.

However, from a public health perspective, the notion of alcohol-related harm as mobilized by industry actors can be criticized because of several reasons. First, the definition of harmful alcohol use often remains vague. Although it is mentioned that alcohol consumption can lead to a range of harmful consequences, not all alcohol-related risks are clearly described (Savell, Fooks, & Gilmore, 2016). Second, the categorization of users as either a moderate consumer or alcohol misuser, is very static. In practice, consumers often seem to switch between moderate alcohol consumption patterns and periodic excessive consumption (e.g. during weekends) (Measham, 2006). The division of consumers into a large group of sensible users and a small group of alcohol abusers also implies that harmful alcohol consumption is attributable to a small group of people. Nevertheless, harmful alcohol consumption, like heavy episodic drinking, occurs among a much larger group mainly consisting of more vulnerable populations. As such, the categorisation of controlled users on the one hand and alcohol abusers on the other leads to the stigmatisation of the most vulnerable groups in particular.

Based on which notion of harm attributed to alcohol is used, actors either argue that

alcohol-related problems are primarily a responsibility of the individual or a responsibility of the state. Some studies indicate that approaching alcohol-related harm as an individual responsibility is characteristic for actors of the industry (Freudenberg, 2014; Jernigan, 2012; Moodie et al., 2013). Instead of supporting evidence-based state interventions, they develop and promote alternative measures for which there is no scientific support (Moodie et al., 2013). Furthermore Moodie et al. (2013) suggests that most interventions of the industry (e.g. educational and awareness campaigns) even are counter-productive and are in essence covert marketing for the brand.

Although public health actors generally use a broad and detailed notion of alcohol-related harm, the definition often pays insufficient attention to the user's motivations to consume in a harmful way. Measham (2006) argues that often little to no attention is paid to the perception of consumers on alcohol-related harm and their motivations for harmful consumption.

## **5.2 Alcohol in the Belgian context**

Elements like the recognition of Belgian beer as immaterial heritage by UNESCO and the fact that Belgium is the place of origin of one of the biggest alcohol producers in the world, Anheuser-Busch InBev, indicate that alcohol is strongly related to Belgian culture. Among the stakeholders, some actors argued that Belgian export benefits from the cultural and symbolic meaning of beer. The cultural position of alcohol may, however, have implications for the implementation of effective measures to protect public health (World Health Organization, 2018a).

The cultural context of a society or certain groups (e.g. images of attractive lifestyles and leisure) can be used by alcohol marketers to influence the consumer's perception towards a certain product (De Bruijn et al., 2012). This is, among other things, achieved by sponsorship deals with sports and cultural events, or by distributing brand-related merchandising. In addition, alcohol brands also try to connect to certain cultural practices and use the interrelationship for marketing purposes (Hastings & Angus, 2009). Illustrative for instance is the involvement of representatives of the beer industry in submitting the proposal to have Belgian beers recognised as an intangible world heritage by UNESCO. The relationship between alcohol and culture can be used by alcohol producers to justify the promotion of 'responsible' consumption (World Health

Organization, 2018a) and to highlight the symbolic and economic importance of alcohol for Belgium (Savell et al., 2016). For example, in the 2017 annual report of the Belgian Brewers, reference is made to Belgian beer culture to remind people that there are suitable beers for every occasion (Belgian Brewers, 2018). Such a suggestion supports the notion of alcohol as an ordinary commodity. Public health experts criticize such a definition of alcohol, because it is contradictory to the image of alcohol as a harmful product (Babor, 2010; House of Commons Health Committee, 2010). Portraying alcohol as a normal substance increases the risk of early onset use and increased alcohol consumption (Hastings & Angus, 2009).

As stated earlier, industry actors often argue that most people consume alcohol moderately, while just a minority persistently drinks too much. Such a point of view mainly coincides with highlighting the individual responsibility of the user (World Health Organization, 2018b). Public health experts do not deny the possible relation between culture and alcohol production and consumption. However, they argue that such a notion cannot be mobilized as an argument to prevent effective public health measures from being implemented (World Health Organization, 2018b). Assuming that alcohol companies at least want to maintain their current profits, it can be questioned whether they really aim to effectively reduce abusive alcohol consumption (House of Commons Health Committee, 2010; VAD, 2016). Both Belgian stakeholders and literature indicate that it is important to take into account the national context when implementing regulatory measures. Nevertheless, it must not obstruct the implementation of effective measures to protect public health. Given these associations, it seems difficult to separate alcohol production and consumption from the Belgian context. However, it can be questioned in which way and to what extent alcohol marketers may use the cultural context to promote their products. Lessons can be learnt from the French model, where promotional content is not allowed, but where reference can be made to the nature of the product and the history of the product. This would still provide local alcohol producers the possibility to inform (potential) customers about their products, but at the same time restrict companies from further reinforcing the link between product and culture.

### **5.3 Bans on alcohol marketing**

In general, alcohol marketing is allowed in Belgium, in contrast to countries like Norway where alcohol marketing generally is banned. However, as in most other countries, partial

bans are applicable in Belgium. Partial bans can be based on the type of product (i.e. beer, wine, spirits and mixed drinks), the population group, the time, or the media. Such bans are mainly used to protect certain vulnerable groups by seriously reducing or avoiding exposure to alcohol marketing among these populations. In contrast to a comprehensive ban, alcohol advertising remains allowed.

### **5.3.1 Type of product**

In some countries bans are applicable depending on the type of drink (e.g. Poland) or on the alcohol content (e.g. Finland). Regarding Belgium, alcohol marketing regulation applies to all marketing communications concerning beverages that contain more than 0.5% abv. A few stakeholders argued in favour of different regulation based on type of product, because of the perceived higher risk of drinking beverages with a high alcohol degree. However, there seems to be little support from other actors. Although alcohol marketing bans on certain products could serve as a first step towards stricter regulations of other products (Giesbrecht et al., 2004), at the same time, there is also a possibility that marketers will focus on beverages with a lower alcohol content (De Bruijn et al., 2010).

### **5.3.2 Vulnerable groups**

From a public health perspective, the term ‘vulnerable’ refers to the susceptibility to bad health or illness, which can be expressed in physical, psychological and social health results. Although the definition of vulnerability can differ, Babor, Robaina, et al. (2017) point out that people can be labelled as vulnerable either when they are susceptible to alcohol-related harm or when they are susceptible to the effects of alcohol marketing. According to Babor and others, children, adolescents, and heavy drinkers meet both criteria.

In the first place, people with a stable heavy consumption pattern can be perceived as a vulnerable group. The impact of excessive alcohol consumption for a longer period of time has been associated with a range of diseases and other physical and mental health problems (World Health Organization, 2018a). Besides that, studies have suggested that people with an alcohol dependency problem react in a different way to alcohol-related cues than people who generally consume in a moderate way (Cox, Pothos, & Hosier, 2007; Cox, Yeates, & Regan, 1999; Field & Cox, 2008). Among heavy alcohol users, a positive loop emerges, where exposure to alcohol-related cues increases the risk of experiencing

feelings of craving, these feelings make users more aware of alcohol-related cues (Field & Cox, 2008; Witteman et al., 2015). As such, exposure to alcohol-cues is expected to have an impact on the alcohol consumption of heavy alcohol drinkers and people who are or have been in treatment for alcohol-dependency problems (Rohsenow et al., 1994; Witteman et al., 2015).

Minors too are at a higher risk of alcohol-related harm. Since their brains are still not biologically mature, heavy alcohol consumption negatively influences the development of the brain. Furthermore, early onset of drinking high levels of alcohol is associated with developing alcohol disorders later on in life and alcohol disproportionately affects mortality among young people in comparison to older persons (World Health Organization, 2018a). With regard to the susceptibility to the effects of alcohol marketing, children are less able to correctly evaluate communications as advertising. In addition, young people have difficulties in assessing the long-term health consequences of alcohol consumption (Babor, Robaina, et al., 2017).

Besides young people and heavy drinkers, one can be perceived as more susceptible to alcohol-related harm when close family relatives drink alcohol excessively, or when they are confronted with a personality disorder (e.g. conduct disorder or hyperactivity disorder), or one's personality is characterized by elements like impulsiveness and sensation-seeking (Babor, Robaina, et al., 2017). Women are also at particular risk when there is a risk of pregnancy. Although these groups are at increased risk of suffering alcohol-related harm, there is no scientific evidence that they are also more susceptible to the effects of alcohol marketing (Babor, Robaina, et al., 2017).

The vulnerable position of minors in relation to alcohol marketing is further strengthened by the fact that they consume media where alcohol marketing communications commonly appear (e.g. television, social network sites, and mobile phone applications) (Bastien et al., 2018). In addition, young people form an interesting group for marketers since they are future potential consumers.

People under the legal drinking age are not valuable for alcohol producers, since they are not allowed to buy and consume alcoholic beverages. However, at the same time young people are an interesting target group, because they belong to the future generation of potential consumers. Alcohol marketing increases minor's awareness of alcohol brands, hastens the initiation to consumption, and increases the likelihood of higher consumption



at a later age (Alcohol Concern, 2011; Gallopel-Morvan & Moodie, 2017; Rossen et al., 2017). The attention to minors in public health studies contrasts with the lack of research into the harmful effects of alcohol marketing on other vulnerable populations (McCambridge, McAlaney, & Rowe, 2011).

### **The primary focus on minors**

The stakeholders who took part in the study indicated that mainly minors need to be prevented from exposure to alcohol marketing. In line with the opinion of the stakeholders, the current regulation on alcohol marketing in Belgium mainly aims to protect young people. Although the Belgian code on alcohol advertising and marketing includes provisions that are related to a range of groups with an increased risk of becoming harmed by alcohol (i.e. people with an abusive alcohol consumption pattern, pregnant women, people suffering from health problems and minors), restrictions with regard to these groups mainly apply to the content. Only for minors does the code explicitly stipulate that alcohol marketing communications can never target them, either by the content or by the means of communication (see sections 2 and 4). In contrast to minors, no volume restrictions are applicable to other 'at risk' groups.

The focus on minors is not only visible in the current Belgian code and other voluntary codes (Babor, Robaina, et al., 2017), but also in the literature on the effects of alcohol and alcohol marketing (Alcohol Concern, 2011; Anderson, 2007; Hastings et al., 2005; Hastings & Angus, 2009; Noel, Babor, et al., 2017; Office of Communications, 2007; Rossen et al., 2017).

Nevertheless, as the code only provides partial bans, other people and vulnerable groups are not specifically prevented from high rates of alcohol marketing exposure. In addition, a range of studies suggest that partial bans are insufficient for achieving the objective to prevent marketing communications from being appealing to minors (De Bruijn et al., 2012). This topic will be further discussed in the next paragraph.

### **5.3.3 Time restrictions**

Partial time restrictions, watersheds and time bans, can restrict alcohol marketing communications between certain times (Ross et al., 2013). This can be the case, for example, at times when the audience is expected to consist mainly of minors (De Bruijn et al., 2010; Hawkes, 2005). In Belgium, time-period restrictions are only applicable for

television when the broadcast program is perceived as intended for minors. In that case, no alcohol marketing may appear from five minutes before until five minutes after the program. Although time restrictions aim to limit exposure to alcohol marketing, research has indicated that these partial bans often do not succeed in preventing adolescents' exposure to alcohol marketing, because they also consult media after the partial time ban has ended. Some studies even indicate that adolescents are over-exposed to a multitude of alcohol advertising right after the partial ban has ended (De Bruijn et al., 2012; Ross et al., 2013).

In contrast to Belgian regulation on alcohol marketing, regulatory systems in other countries (e.g. the Netherlands, Poland, and UK) have implemented a fixed watershed after a particular point in time. However, several studies have suggested that the effectiveness of a watershed is limited (De Bruijn et al., 2010; Ross et al., 2013). Although a watershed during certain times of the day can prevent young children from exposure to alcohol marketing, older teenagers are unlikely to be affected by the ban (Carr et al., 2016; De Bruijn et al., 2010; Hawkes, 2005). Several studies suggest that a time ban may even have a counterproductive effect, because it can be expected that an overload of alcohol marketing communications will appear after the watershed ends (Carr et al., 2016; De Bruijn et al., 2010). Ross et al. (2013) argues that fixed time bans remain an ineffective measure, due to the fact that marketers will search for other ways to promote their brand products. Therefore, they suggest implementation of a partial ban that aims to prevent exposure to the high-risk adolescent population. In order to do so, the ban needs to be based on the predicted percentage of minors within the group of spectators who are watching that program. The percentage of underage watchers must be proportional to the whole population. Such a time ban does not work when it concerns young adults and adolescents, since they mainly watch television at the same moments as adults do. Time restrictions may then even have a counterproductive effect, as an overload of alcohol advertisements is broadcast immediately after the time ban (Carr et al., 2016; De Bruijn et al., 2012; Ross et al., 2013).

Ross et al. (2013) therefore recommend a ban that is proportionally based on the degree of minors in the society. For example, when 20% of Belgian society is under 18, no more than 20% of the spectators may be younger than 18-years-old. Some regulatory models have a fixed percentage included in the ban. However, when the threshold is higher than

the percentage of the audience that consists of minors, the ban will be less effective. For example, when the threshold is set at 30%, but only 20% of the audience consists of minors, it is likely that a larger number of youths will be exposed to alcohol marketing (Hastings & Sheron, 2013).

#### **5.4 Restricting the content**

Appealing promotional content is associated with a more positive attitude towards the promoted brand or product (Austin, Chen, & Grube, 2006; Casswell & Zhang, 1998; Van Der Vorst et al., 2013). Moreover, it increases the probability that (young) people will purchase and consume more alcohol (Casswell & Zhang, 1998). Furthermore, recollection of alcohol brands by young people is associated with positive beliefs towards alcohol use, which is considered as a predictor for future higher alcohol use. Both state-regulated and industry-regulated advertising codes can provide restrictions or guidelines on the content of advertising (Noel, Babor, et al., 2017), but especially self-regulatory codes are characterized by content-related provisions that apply to the content of marketing communications (De Bruijn et al., 2012). In contrast to volume restrictions, content restrictions are more open to interpretation.

The current Belgian code mainly provides regulation on the content of alcohol advertising. In general, self-regulatory codes focus on five content-related categories: protecting vulnerable groups and especially minors, consuming alcohol responsibly, responsible marketing communications, the effect of alcohol, and elements concerning users' health and safety (Noel, Babor, et al., 2017). In practice, this means that alcohol advertising should not be attractive to minors; it should not suggest that there is a link between alcohol consumption and improved performance; it should not claim that alcohol consumption is beneficial for health, or has a healing or curative effect; it should not encourage excessive alcohol consumption; and it should not suggest a high alcohol content is better. Especially the protection of minors seems to be a major concern of Belgian stakeholders, which is also reflected in the current Belgian regulatory code.

The Belgian code on alcohol marketing contains a particular section on minors. Among other things, the code prohibits alcohol marketing communications that target (art. 4.1) or depict minors (art. 4.2). However, the code does not specify which themes could be specifically attractive to minors. A number of stakeholders have indicated that, as a result,

there is a lack of clarity about the themes that may or may not be covered by the code. Based on studies that have researched which elements particularly appeal to youth (Chen et al., 2005; STAP, 2007a; Van Dalen, 2011), a range of themes can be distilled. Some of these topics, such as sporting, social and sexual success (STAP, 2007a) are already restricted by the current Belgian code. However, elements like partying and humour have also been highlighted as particularly attractive content to youth populations (Chen et al., 2005; Noel, Babor, et al., 2017; STAP, 2007a). Especially humourful content seems to be an important element for minors to perceive the content of marketing communications as appealing (Chen et al., 2005; Noel, Babor, et al., 2017) and should therefore need particular attention of juries responsible for assessing marketing practices. With regard to appealing characters, research has indicated that mainly animals, celebrities and cartoons positively influence the attitude of a young audience towards a brand or product (Chen et al., 2005; STAP, 2007a), especially when they are closely related to their lifestyles (Chen et al., 2005; Kelly & Edwards, 1998). In contrast to marketing communications related to consumers' lifestyle, product-related content tends to be less appealing to youth populations (Chen et al., 2005; Kelly & Edwards, 1998). Furthermore, also concepts such as 'cheap', 'clever', 'funny' and 'attractive' can be indicative for the perceived attractiveness of a marketing message (Noel, Babor, et al., 2017).

In different states in Europe, Australia and the United States studies have been conducted on the judgement of content restrictions in self-regulatory codes (Noel, Babor, et al., 2017). These studies suggest that there often are different interpretations of the provisions by the jury, public health experts and youth panels. Some Belgian stakeholders also argued that the notions and interpretation of concepts like 'content appealing to youth', and 'social and sporting success' are often ambiguous.

Although there is not a lot of research on the effectiveness of alcohol marketing regulation, international evaluation studies indicate that there is a difference in assessment between youth and current assessment committees in self-regulatory systems (De Bruijn et al., 2012; Van Dalen, 2011). As part of the AMMIE project, the effectiveness of a number of self-regulating alcohol marketing systems has been analysed (De Bruijn et al., 2012; Van Dalen, 2011). By using youth panels, the researchers analysed to what extent certain alcohol marketing practices were perceived as attractive. This analysis showed that young people rated alcohol marketing practices as appealing – and identified characteristics of

youth culture (i.e. music, colours, and animations) - much more often than the competent assessment committee. The committees often stated that, although the marketing communication could be appealing to youth, it does not necessarily mean that it also addresses minors (Noel, Babor, et al., 2017; Van Dalen, 2011). When looking at the judgements of the JEP, a comparable reasoning can be found in assessing whether a marketing communication appeals to minors. Such claims create an opportunity for alcohol marketers to construct marketing communications which are at the same time appealing to adults *and* to minors (De Bruijn et al., 2012).

A similar loophole is visible in the judgement of advertising in which alcohol is associated with sporting or social success. In most cases the competent assessment committees ruled that the marketing message was not in conflict with the regulations, because a causal relationship between alcohol consumption and improved performances could not be proven. This strict reading of mainly narrow definitions of concepts like social and sporting success (De Bruijn et al., 2010) provides opportunities for alcohol marketers to creatively circumvent the regulations by including subtle adjustments (De Bruijn et al., 2012; Noel, Babor, et al., 2017; Van Dalen, 2011).

Given the results of various studies that have pointed out the ineffectiveness of self-regulatory models (Hastings et al., 2010; Noel, Babor, et al., 2017; Van Dalen, 2011), and the comparable assessments of the JEP and juries in other European countries responsible for assessing compliance with existing regulations, it can be assumed that in Belgium too, minors are still exposed to alcohol marketing communications which appeal to them.

The critique of some Belgian stakeholders about the vagueness and strict interpretation of the concepts used (e.g. 'social success', and 'sporting success'), the existence of comparable critiques in international research, and the relatively easy way to circumvent these restrictions, highlight the importance of a thorough evaluation of the current assessment of the content of marketing communications. Furthermore, to reduce youth exposure to appealing content, marketing practices should not make associations with youth lifestyle. Since references to the product tend to be less attractive to young populations, product information may be seen as acceptable content (De Bruijn et al., 2012). The French model, which only indicates which forms of alcohol marketing are permitted, can serve as an example.

## **5.5 Restricting the volume**

As discussed above, most alcohol advertising codes mainly focus on the content. Nevertheless, longitudinal research studies have also pointed out the cumulative effect of alcohol marketing exposure (De Bruijn, Tanghe, et al., 2016; Esser & Jernigan, 2018; Jernigan, Noel, Landon, Thornton, & Lobstein, 2017) and the urgency of introducing volume restrictions (Anderson et al., 2009; De Bruijn, Tanghe, et al., 2016; Gordon et al., 2009; L. A. Smith & Foxcroft, 2009). Moreover, young people's alcohol marketing exposure risks changing alcohol consumption behaviour in the short term and in the long term (Anderson et al., 2009; De Bruijn et al., 2010; De Bruijn et al., 2012; Jernigan et al., 2017; L. A. Smith & Foxcroft, 2009).

Although international exposure studies have indicated that alcohol marketing exposure is related to increased alcohol consumption, no Belgian studies have been conducted on the effect of alcohol marketing. Nevertheless, international studies are still be relevant for Belgian policy, since evidence-based measures to reduce alcohol-related harm have shown to achieve comparable results in different countries where they have been implemented (World Health Organization, 2010).

Some participants argue that it will be difficult to restrict all types of marketing, since a large number of alcohol marketing communications are created in foreign countries. Since national and international trade agreements problematize banning foreign communications, national regulation is limited in its effectiveness. Nevertheless, bans can also be implemented per type of marketing. In this section the effectiveness and feasibility of different forms of restrictions will be discussed, based on the possible impact of alcohol marketing on consumer populations (especially the vulnerable ones) in that type of media.

### **5.5.1 Mass media**

Alcohol is frequently promoted through mass media (Rossen et al., 2017), and large audiences are exposed to it. As mass media are still popular among alcohol marketers, marketing expenditures remain relatively high (De Bruijn, Tanghe, et al., 2016). In general, comprehensive bans on mass media are perceived as disproportionate by industry actors. However, since a lot of people are still exposed to mass media, prohibiting alcohol marketing would significantly reduce the total alcohol marketing exposure.

**On-screen media** like television are still popular among young populations (Bastien et al., 2018) and marketers. Rates of the union of Belgian advertisers (UBA) illustrate that, in comparison to other means of communication, most of the industry's marketing budget is invested in television (UBA, 2018). Taking into account that television reaches a large audience, it increases the likelihood that also vulnerable populations are exposed to alcohol marketing. Alcohol marketing exposure through televised media tends to influence the beliefs of younger viewers towards alcohol consumption and alcohol brands, and affects people's alcohol consumption behaviour (Collins et al., 2007; De Bruijn, Tanghe, et al., 2016; Engels et al., 2009; Koordeman, Anschutz, van Baaren, et al., 2011; Snyder et al., 2006; Stacy et al., 2004). The popularity of television is reflected in the regulations. According to the World Health Organization (2018a), globally, bans on alcohol marketing most frequently apply to television and radio.

Since the public may also consist of minors, the current regulations prohibit alcohol marketing practices from targeting minors. The provision is included in both the 2009 Flemish media decree (art. 68 1°) and the 2013 self-regulatory code on alcohol advertising and marketing (art. 2 & 4). Furthermore, the Flemish decree prescribes that commercial communications on alcoholic beverages may not appear just before, during, or just after a children's program (art. 83). The self-regulatory code further specifies the ban, by stipulating that alcohol marketing communications cannot be shown from five minutes prior to a program that addresses minors until five minutes after the program.

Studies on the prevalence of youth exposure to alcohol marketing in **printed media**, found that young people are exposed to alcohol marketing in magazines and newspapers, and that it tends to affect their intention to start consuming alcohol and drink more alcohol during one occasion (Booth et al., 2008; Ellickson et al., 2005; Jones, 2011). The current Belgian code on alcohol advertising and marketing prohibits alcohol advertising when it is published in magazines and newspapers which are primarily aimed at an audience that consists of minors (art. 12).

Limited research has evaluated exposure to **outdoor marketing and public advertisements** (i.e. billboards, posters inside points-of-sale, on walls, bus shelters, or other public places). However, a systematic review (Noel, Babor, et al., 2017) shows that studies in Australia, America, Africa and Europa have identified alcohol marketing exposure among minors. Systematic reviews by Bryden et al. (2012) and Booth et al.

(2008) have indicated that exposure to alcohol marketing through outdoor marketing and public advertisements tends to be associated with increased consumption among adolescents. In contrast to printed media and television, no particular partial ban on outdoor marketing is included in the alcohol marketing code. However, articles 2.1 and 4.1 of the Belgian code on alcohol advertising and alcohol marketing more generally stipulate that alcohol marketing may not address minors.

To prevent too high a percentage of minors from being exposed to outdoor alcohol marketing, a partial ban could be introduced. This ban should use a threshold percentage, based on an estimate of the proportion of minors who may pass through the location in question.

As stated earlier, all Belgian stakeholders indicated that they are particularly concerned about minors. Therefore, effective measures need to be taken to prevent harmful underage drinking. There are no Belgian studies on the exposure to alcohol marketing among minors, but research elsewhere shows that, despite restrictions to avoid youth exposure, alcohol marketing communications are still frequently observed via mass media by young populations (De Bruijn et al., 2012; Noel, Babor, et al., 2017). This raises the question to what extent the current regulation is sufficient to adequately protect minors from exposure to alcohol marketing communications.

In the interviews, a number of Belgian stakeholders indicated that they are not in favour of changing the current partial ban on alcohol marketing in mass media. According to this group of especially industry representatives, the current regulations offer enough possibilities to limit youth exposure to alcohol marketing communications. However, some other stakeholders argue that the ban assumes that minors only watch programs which are specifically targeted to them. Second, the provision does not specify when a certain program can be labelled as 'aimed at minors'. Moreover, it is likely that the beliefs and interests of children will differ from those of adolescents.

Furthermore, a number of studies as well as some stakeholders indicated that peoples' drinking behaviour is not only affected by broadcast alcohol advertisements, but also by other communications, which are less recognizable as alcohol marketing, like sponsored television programs or product placement. In addition, alcohol consumption can also occur in movies. However, restricting alcohol promotion is faced with some challenges. First, visual material can be produced in another country, and can therefore be not subject



to domestic regulation. Second, when there is no product placement, restricting the content would at the same time mean a limitation of the freedom of expression. However, De Bruijn et al. (2010) argue that, also when promotional material in visual material (e.g. movies) is not included, an alcohol marketing ban in on-screen media will still have a significant impact in reducing the alcohol exposure towards a wide audience. Goldfarb and Tucker (2011) indicate that the effectiveness of a ban on traditional media can possibly be undermined if there are no restrictions on alcohol marketing in new media. This underlines the importance of comprehensive regulation.

### 5.5.2 Other marketing communications

In general marketing communications are distributed via mass media to a broad audience. However, alcohol marketing can also only be aimed at a certain group and therefore tied to a certain location or context. Some of these other forms of marketing (i.e. sponsorship, point-of-sale marketing, merchandising, and brand-stretching) will be discussed in this section.

As stated in the annual report 2017 of the Union of Belgian Advertisers (UBA, 2018), marketing is not only about communicating a message, but also about creating an experience. In addition to increasing direct sales, marketing is also used to create a positive atmosphere around alcohol consumption in order to normalize alcohol consumption (De Bruijn et al., 2012; Wallack, 1983). As discussed in section 4, appealing content increases the likelihood that people will develop positive attitudes towards alcohol consumption, makes people more inclined to start drinking alcoholic beverages and to consume increased amounts of alcohol (Casswell & Zhang, 1998; Chen et al., 2005).

In some countries (e.g. France and Norway) a comprehensive ban on **sponsoring** cultural or sports events by the alcohol industry applies, while in Poland beer brand sponsors may not use the event to promote the brand or products (for producers of other alcoholic beverages sponsorship is prohibited). Contemporary Belgian regulation does not provide rules that particularly address sponsorship by alcohol producers. Many cultural and sporting events in Belgium have arranged sponsorship agreements with alcohol brands. Particular examples are the sponsorship of sporting competitions or teams, as in the case of football (soccer), or the sponsorship of sporting events, as in the case of cycling. Cultural events, such as music festivals and student parties, are also regularly sponsored by

alcohol producers. Through a corporative sponsorship agreement the sponsor and sponsee agree that the name of the corporation or brand can be associated with the event, activity, or program of the sponsee (Dean, 2002).

Exposure to sponsored sports events by alcohol brands is associated with a more positive attitude towards a particular alcohol brand (K. Brown, 2016; De Bruijn et al., 2012), and increased future alcohol consumption (K. Brown, 2016; Ellickson et al., 2005; O'Brien et al., 2014; O'Brien et al., 2011). As a result of sports sponsorship, the name of the alcohol brand may be visible on and around the event, on billboards, announcements and clothing, or even in the name of the event. In addition, the producer may have the exclusive right to deliver and sell its alcoholic beverages. Next to these more visible and direct forms of promotion, sponsorship can be used to win loyalty of a certain audience (i.e. certain sports fans) and as such to create a positive image of the brand among the population (De Bruijn et al., 2012).

Lessons can be learned from marketing regulation on tobacco sponsorship. It was indicated that in many countries a total ban on sponsorship of tobacco was related to a decrease of tobacco smoking among the general public (Rossen et al., 2017). However, when adapting tobacco control approaches, the specificities of alcohol sponsorship need to be taken into account.

However, a majority of the Belgian stakeholders expressed concerns about the association between alcohol and sports. In the first place, the sponsoring of sporting events by alcohol brands is questioned because of the debatable relationship between alcohol consumption and sports. Although the current Belgian code on alcohol marketing stipulates that no direct link may be made between alcohol consumption and sports, associations are still possible as long as there is no direct relationship suggested between alcohol consumption and improved sports performances. In addition, sports sponsorship can also have an indirect effect, because it positively influences the attitude of the public towards the brand (De Bruijn et al., 2012). Secondly, there are no restrictions applicable to alcohol sponsorship. As a result, minors are still exposed to alcohol advertising. This criticism also applies to the sponsorship of cultural events.

Although the link between sport and alcohol was questioned, a number of stakeholders argued that they do not think that a comprehensive ban on alcohol sponsorship is possible, since the sports-industry relies significantly on investments of the alcohol

companies (De Bruijn, 2014). According to De Bruijn (2014) and Anderson (2007), this fear for a loss of income is unjustified. Although in the short term a financial gap can emerge due to the loss of alcohol brands as sponsors, comparable examples from the tobacco industry show that these positions are quickly taken up by companies from other sectors. Furthermore, the fear exists that by banning alcohol sponsorship, it will be no longer possible for the country to host international sporting events. However, in France there has been a ban on sports sponsorship by alcohol producers since 1991, but despite this, the country has been able to organise several major events in recent decades (e.g. FIFA World Cup Football 1998, the Rugby World Cup 2007 and the UEFA European Championship Football 2016) (De Bruijn, 2014). De Bruijn (2014, p. 109) concludes that policy makers 'should consider whether the harms caused by alcohol sponsorship outweigh the financial benefit'.

**Point-of-sale** promotion activities occur in licensed venues where alcoholic beverages are directly consumed (e.g. bars and pubs) (on-premises) and or places where the beverages are taken away in retail outlets or liquor stores (off-premises) (Jones, Barrie, Gregory, Allsop, & Chikritzhs, 2015). Examples of POS promotions are price and quantity discounts, additional gifts with purchases, and competitions linked to the purchase of a product (Jones et al., 2015).

Several studies show contradicting results of POS-marketing on alcohol consumption and binge drinking. Some research suggests that POS-marketing affects alcohol consumption behaviour (Booth et al., 2008; Jones, 2011; Nakamura et al., 2014).

Although the number of studies on point-of-sale promotions is limited, the research that has been done suggests that there is a relationship between POS and an increased likelihood to purchase alcohol in off-site premises (Jones et al., 2015) and increased alcohol consumption (Booth et al., 2008; Jones, 2011; Nakamura et al., 2014). However, some other studies found little to no effect on underage drinking behaviour (Collins et al., 2007; Ellickson et al., 2005; Hurtz et al., 2007).

The most well-known form of **brand-stretching** within the alcohol industry is probably using non-alcoholic beverages in order to promote alcoholic beverages of the same brand (Cooke et al., 2004). Current alcohol marketing regulation in Belgium only focus on marketing communications regarding products containing at least 0.5% abv.

Alcohol producers generally focus on producing alcoholic beverages. However, in some cases alcohol brands also offer non-alcoholic alternatives. For example, in 2016 Anheuser-Busch InBev launched Jupiler 0.0, a non-alcoholic beer, next to the already available alcoholic variants. Adding non-alcoholic beverages to their brand portfolio is frequently described as an evolution in line with the increased awareness of consumers to live a healthier life. Therefore they offer an alcohol free alternative, sometimes emphasizing the low amount of calories in the beverage. In this way, non-alcoholic drinks can be perceived as a more healthy, non-alcoholic substitute for comparable products that contain alcohol.

However, producing, selling and promoting non-alcoholic beverages also provides some extra opportunities for the industry. First, because of the absence of alcohol, the product can be offered and promoted as a substitute for soft drinks. As a result, it can also be portrayed as an alternative beverage that can be consumed on every moment of the day, during day times that drinking alcohol is usually perceived as less appropriate (e.g. before or during work, before driving, etc.), or as a drink that can be consumed without moderation. For example, the slogan of Maes particularly refers to the fact that by drinking Maes 0.0, it is no longer necessary to consume in moderation. “Maes 0.0% With mates, without moderation” (translated from Dutch “Maes 0.0% met maten, zonder mate”).

Second, because most regulatory codes only apply to beverages that contain a certain volume of alcohol, promoting non-alcoholic drinks can be done in order to avoid regulation. By using the same brand name, logo and/or style of alcoholic beverages it will possibly also have a brand marketing effect (Yoon & Lam, 2013).

Although the Belgian code on alcohol marketing does not include non-alcoholic beverages, some corporate codes include the promotion of non-alcoholic beverages. For example, the Commercial Communications code of Anheuser-Busch InBev claims that, in general, advertisement for alcoholic and non-alcoholic drinks comply to the same rules.

To our knowledge, there are no studies on the effects of alcohol brand-stretching. However, according to Cooke et al. (2004) the Polish State Agency for Prevention of Alcohol-Related Problems (PARPA) found that, after the introduction of a total ban on alcohol advertising in Poland in 2001, alcohol producers (i.e. beer brewers) invested disproportionately in non-alcoholic beverages with the same brand name as their alcoholic counterparts. The investments exceeded the revenues generated by the sale of

non-alcoholic beverages. This suggests that the advertising of non-alcoholic beverages was mainly used to stimulate the sale of alcoholic beverages (De Bruijn et al., 2010). In order to prevent circumvention of the regulations, the Polish authorities have introduced a provision in the regulations stating that marketing communications for non-alcoholic products are also subject to the regulations if the same brand name or logo is used. Other countries such as France and Norway have incorporated similar provisions. The Norwegian Alcohol law for example stipulates that the ban is applicable to advertising for products that carry the same brand name or characteristics as alcoholic beverages (§9-2). Generally, Belgian stakeholders expressed dual feelings about regulating marketing for non-alcoholic beverages. Most of them argued that it is a positive thing that an alcohol producer promotes a 'healthier' alternative without alcohol. Therefore, enough freedom for advertising should be given in order to increase the popularity among consumer populations. However, at the same time they acknowledge that it could be used by the alcohol industry to circumvent existing regulation on alcohol marketing. A specific concern is that alcohol brands will focus on young populations.

Since advertising often happens at the brand-level (Roberts et al., 2016), it is important to take into account the possibility for marketers to use non-alcoholic drinks to bypass regulation. Certainly in the case of tightening up the regulation of alcohol marketing, there must be taken into account the possibility that brand stretching strategies will be used to evade regulation.

Besides the vision of the stakeholders on this topic, it can be useful to have a look at brand codes on advertisement of their own products. For example, Anheuser-Busch InBev has stated that in 2025 at least 25% of its total sale needs to consist of non-alcoholic drinks (Anheuser-Busch InBev, 2018). Alcohol producers, like Anheuser-Busch InBev seem to be aware of the effect of advertising of non-alcoholic beverages, as they state in their own Communications Code that all provisions of their code of conduct regarding alcohol marketing apply to both their non-alcoholic and alcoholic products (Anheuser-Busch InBev, 2017). Nevertheless, the Code stipulates that commercial communications for alcohol-free beer are allowed when (Anheuser-Busch InBev, 2017, p. 15): (1) the beverage is promoted as a substitution for alcoholic beverages in order to avoid excessive alcohol consumption during one drinking occasion; (2) the beverage is depicted in relation to a situation in which drinking alcoholic beverages is unethical, for example,

before driving a vehicle; (3) the communication message claims a health or functional benefit, which is reasonably substantiated, and under the condition that it is clear that the beverage involved does not consist of alcohol.

Due to the rise of the Internet, a series of “**new media**” have emerged. Especially the creation of Web 2.0 has given rise to a new form of communication, in which both users and corporations are able to contribute to the content of communications. The fact that digital media are relatively new compared to traditional media, such as television and radio, is reflected in the lack of regulation in the field of online alcohol marketing (World Health Organization, 2018a). As a result, there are not a lot of studies which have evaluated the effectiveness of restrictions on new media. Nevertheless, an increasing number of studies have been focussing on the relation between online alcohol marketing exposure and increased alcohol consumption (Geusens & Beullens, 2017; Jernigan & Rushman, 2014; Noel, Babor, et al., 2017).

Digital media offer the possibility to actively involve users. Through social network sites (e.g. Facebook and Google Plus) and online platforms, intended for sharing messages and images (e.g. Twitter, Instagram, and YouTube), marketing messages can be quickly uploaded by users and shared with their social network. The open endorsement of users (for example by liking or sharing brand messages) may increase the likelihood that marketing communications will attract the attention of others (Lobstein, Landon, Thornton, & Jernigan, 2017). A Belgian study by Beullens and Schepers (2013) has shown that young people frequently share alcohol-related content with each other on Facebook. Consumption, pleasure and lifestyle are important aspects of identity in a society where individualism, commodification, and self-expression are paramount (Atkinson & Sumnall, 2016). Marketers cleverly exploit the possibilities of newly emerging sophisticated techniques, in order to embed their message within consumer culture (Montgomery & Chester, 2009). Social network sites like Facebook, Instagram and YouTube provide alcohol marketers with the opportunity to directly target potential users, based on personal interests and the social networks of the users (Montgomery & Chester, 2009). In contrast to alcohol marketing in traditional media, marketing practices are not necessarily identifiable as such as brands aim to embed themselves in the cultural context and environment of the consumer (Lobstein et al., 2017). The position of alcohol marketers shifts from a role in which they only create alcohol marketing communications

towards rather a facilitating role, for example by providing platforms where brand-related content can be uploaded, shared and liked by users. As such, users become valuable and important marketers (EUCAM, 2009). An Australian study by Carah, Brodmerkel, and Shaul (2015) illustrates that social networking platforms can be a valuable instrument for alcohol marketers to create subtle links between alcohol brands and leisure time. Alcohol consumption is depicted as part of some cultural practices by sharing pictures or offering a platform to share images taken during certain occasions (e.g. nightlife, festivals, and sporting events). By immersing themselves in the culture of consumers, alcohol brands are also gathering more and more information about the user group, allowing them to trace, segment and address potential consumers even better (Brodmerkel & Carah, 2013).

Exposure to alcohol marketing in digital media is associated with increased intentions to purchase alcoholic beverages and consuming higher levels of alcohol (Lobstein et al., 2017; Noel, Babor, et al., 2017). Alcohol marketing seems to appear frequently and even more and more on social networking sites (Jernigan & Rushman, 2014; Nhean et al., 2014; Winpenny et al., 2014). The systematic review by Noel, Babor, et al. (2017) that has evaluated youth exposure to alcohol marketing concluded that youth populations are highly aware of online alcohol advertising. As mentioned earlier, individuals are not only exposed to alcohol marketing practices developed by alcohol marketers. Social networking sites also offer consumers the opportunity to share promotional alcohol content with others. Studies have indicated that there exists a reciprocal relationship between references to alcohol-related self-presentation of alcohol consumption on social media and binge-drinking (Geusens & Beullens, 2017; Moreno et al., 2012; Ridout et al., 2012).

Belgian stakeholders mainly expressed their concerns towards the popularity of digital media among youth. They point out that the use of digital media makes them particularly vulnerable because there is less control over the content to which young users are exposed in comparison to traditional media, and because marketing communications can specifically target youth by using data about their beliefs and interests. Furthermore, reference was made to the global dimension of online alcohol marketing, creating important challenges for national regulation, and the fact that alcohol brands and consumption are also promoted by users themselves. Since the communications are not

created by marketers and alcohol companies, there is no alcohol marketing. However, this does not mean that the alcohol industry cannot play a role in the creation and depiction of the content. Therefore Brodmerkel and Carah (2013, p. 39) state that “brands bear the responsibility for the communicative processes they initiate, manage and profit from”.

The particular characteristics related to Web 2.0 techniques significantly differentiate new media from traditional counterparts (e.g. television, radio, and outdoor advertising). Especially the contribution of users in the creation of content has given rise to a different form of alcohol marketing. As a result this has also specific repercussions for the way in which alcohol marketing may possibly be restricted.

Since several studies have indicated that young people are exposed to online alcohol marketing and that it affects the levels of alcohol consumed by them (De Bruijn et al., 2012; Geusens & Beullens, 2017; Noel, Babor, et al., 2017), volume restrictions to reduce alcohol marketing exposure could be helpful (De Bruijn, Tanghe, et al., 2016). However, some specific challenges occur. First, alcohol marketing in digital media becomes increasingly entangled in the online culture of customers and the communications created by users. The blurred line between alcohol marketing practices initiated by alcohol marketers and user-generated content makes it hard to make a distinction. Carah et al. (2015) therefore argue that alcohol marketing should rather be seen as a social process in which alcohol marketers facilitate the creation and distribution of promotional content. Second, due to international trading agreements, national regulation is limited in its effectiveness in preventing exposure to unwanted alcohol marketing communications. After all, digital media are not restricted by physical borders. International consensus on the importance of public health and cooperation with all actors is needed to create a basis on which effective measures can be implemented (Mitchell & Casben, 2017).

Although there are digital techniques to limit exposure to alcohol marketing (e.g. age checks and blockers), there are few or no volume restrictions with a statutory basis (De Bruijn, Tanghe, et al., 2016).

Existing techniques, such as age checks, could help reduce alcohol marketing exposure to minors. However, the effectiveness of these age checks has been challenged, since they are easy to circumvent by entering incorrect data (House of Commons Health Committee, 2010; Noel, Babor, et al., 2017).



Some stakeholders indicated that techniques on digital media may also be useful to prevent overexposure to alcohol marketing advertisement. Tools like ad blockers can for example be used to block advertisements. However, amongst young people ad blockers are not well-known (Bastien et al., 2018), which makes it unlikely that they will be used.

### 5.5.3 Consumer marketing

A range of consumer marketing strategies are used by corporations to increase the sales of products. The marketing mix of Hastings and Angus (2009) refers to pricing, distribution and product design.

Pricing, distribution and product packaging remains a part of a more comprehensive approach amongst alcohol producers and retailers to increase sales. However, this study mainly focuses on the promotional component of alcohol marketing, and measures on pricing, distribution and product packaging are just described in general. Nevertheless, it is important to take into account consumer marketing strategies, because they are related to other marketing activities. In addition, as described above, consumer marketing strategies have a direct and indirect effect on alcohol consumption in general, and for young people.

The place where products are promoted is often related to the place where the target group of a certain brand is present (Davis et al., 2008). In Belgium, there are no rules applicable to the relationship between the place of promotion and the target group, except when the group consists mainly of minors.

Some of the participants indicated that they are concerned about **product design**, particularly appeals to young people. These stakeholders mainly referred to FAB's (flavoured alcoholic beverages), which are mainly popular among minors. An international study on the popularity of different types of alcoholic beverages among young people, supports the concern of the stakeholders (STAP, 2007a). The research shows that in Belgium, especially flavoured and colourful drinks are attractive to students. Alcopops were mentioned most as their favourite alcoholic drink. The respondents indicated that they felt attracted to the beverage, because of its flavours and colours. However, surveys among students in Belgium mainly indicate that adolescents favour beer, wine, and spirits above alcopops (Rosiers, 2018).

**Pricing** strategies can consist of price promotions, sales promotions, sales below cost, or

fixed prices for unlimited drinking (Booth et al., 2008). Some stakeholders indicated that pricing is a valuable strategy for catering enterprises to attract consumers. Because of that, restricting price-promotions has been a sensitive topic for the catering industry. Furthermore, it was argued that banning price promotions for on-site premises will possibly have an effect on consumers' choice of drinking locations. They indicated that prohibiting price promotions can lead to increased consumption in less controlled places (e.g. on the street). Specific reference was made to situations in which young people will try to find other, less controlled, environments where they can purchase and consume alcoholic beverages. However, at the same time some actors are aware that offering products at a reduced price may induce consumers to buy more units than they initially intended. Minors are of particular concern, since they are more vulnerable to the harmful effects of alcohol consumption. Some of the stakeholders suggested that price promotions could encourage heavy consumption patterns. As article 3.1 of the current alcohol marketing code prohibits encouraging heavy alcohol consumption, according to these stakeholders this type of promotion is not in line with the code.

The effect of price promotion is supported by public health studies, which suggest that it can lead to drinking greater amounts of alcohol (Anderson, 2007; Hastings & Angus, 2009; Kuo, Wechsler, Greenberg, & Lee, 2003) and an increased risk of binge-drinking among young consumers (Measham, 2006). As the risk of harmful alcohol consumption patterns increases when units become more affordable, price promotions are likely to have a significant impact on especially vulnerable people, who have less money to spend (World Health Organization, 2012). A range of studies has shown that especially young people are more sensitive for lower prices of alcoholic beverages (Anderson et al., 2009; Bonnie & O'Connell, 2004; Booth et al., 2008). As a result, adolescents in particular may be harmed by the pricing strategies of alcohol producers or retailers.

Several public health studies have examined the (inverse) relationship between price and amount of alcohol consumed. According to these studies, alcohol use is price sensitive (Booth et al., 2008; Kaplan & Reed, 2018). In other words, alcohol consumption tends to increase when the price decreases, especially among adolescent population groups (Chaloupka & Wechsler, 1996; Hingson, Heeren, Winter, & Wechsler, 2003). Price promotions are often applicable for a certain period of time, for example quantity promotion discounts, or 'happy hours'. Moreover, temporarily reduced prices may

contribute to pro-alcohol social norms and the normalization of alcohol consumption (Hastings & Angus, 2009).

Public authorities can respond in different ways in order to decrease the harmful impact generated by price promotions. First, the price of the product may be raised by increasing taxes, or by introducing minimum unit prices. By increasing the taxes on alcohol, the costs for producing and selling alcoholic beverages increase. In order to prevent prices of alcoholic beverages from becoming affected, a legal minimum price for alcohol can be introduced (Meier et al., 2016). Second, a ban can be implemented on temporary price promotions. However, when only a ban on temporary price promotions within on-premises is implemented, price promotions in off-site premises like supermarkets may possibly increase, which could influence the purchasing and consumption behaviour of consumers (Measham, 2006). As some brands are more focused on the on-site market, while other brands mainly benefit from the off-site market, stricter regulation on one of both markets will possibly lead to a shift of brands to the other market.

#### **5.5.4 Stakeholder marketing**

Alcohol companies are aware of the harmful effects related to excessive alcohol consumption and, consequently, also of possible government interventions. In order to avoid government regulation, alcohol marketers aim to change threats into opportunities (Hastings & Angus, 2009). Self-regulatory codes and awareness campaigns are examples of initiatives launched by the industry, as a response to these challenges (Yoon & Lam, 2013).

Corporate social responsibility (CSR) initiatives include (more) responsible practices adopted by corporations under market, political and public pressure (moral). The idea behind CSR is that companies are more aware of how they influence the economic, social and environmental context (i.e. the triple bottom line) and act accordingly (Freudenberg, 2014). In the end CSR practices should aim to change consumption behaviour (Andreasen, 2002), these interventions often lack evidence-informed bases (Robaina, Brown, Babor, & Noel, 2018).

The alcohol industry invests in responsible drinking campaigns in order to raise awareness among consumers. These campaigns are often related to drinking while the consumer still needs to drive (Barry & Goodson, 2010). Industry stakeholders indicated

that responsible drinking initiatives by alcohol companies reflect the willingness of the industry to reduce harmful use. Moreover, a few stakeholders argued that responsible drinking campaigns, like the Belgian ‘do not drink and drive’ BOB campaign, proved to be an effective tool. In contrast, health actors and researchers expressed some reservations about the actual motives of the alcohol industry for participating in responsible drinking campaigns. According to them, it is not the primary objective of alcohol producers to protect public health. Public health studies share the concern that private companies do not primarily aim to limit the harmful effects as much as possible as a result of an underlying conflict of interest (Babor, 2010; Barry & Goodson, 2010; Freudenberg, 2014; Hastings & Angus, 2009; Moodie et al., 2013).

Belgian alcohol companies are frequently involved in social marketing campaigns. By participating in social marketing campaigns, alcohol companies can portray themselves as responsible corporations. However, when social marketing campaigns are (co-) constructed by alcohol companies, an opposite effect may occur. Instead of warning the public, the practice can positively influence the user's attitude towards the brand and consequently lead to an increased market value of the products (Maignan, 2001; Robaina et al., 2018). In that way CSR practices are primarily beneficial to the company's reputation (Hastings & Angus, 2011).

Research on the effectiveness of responsible marketing campaigns in relation to alcohol consumption are less abundant than comparable studies in the field of tobacco. However, given the lack of a scientific basis for the effectiveness of measures to protect public health, and the possible counter effect, CSR campaigns remain controversial (Hastings & Angus, 2011).

Counter-marketing messages should also be attractive to the defined target group. As such, lessons can be learned from the marketing industry itself and from studies that have researched which themes appeal to especially vulnerable groups (Chen et al., 2005). For example, the annual report of Anheuser-Busch InBev (2018) stipulates that one of the companies wants to become an ‘essential part of consumer's life’.

## **5.6 Framework**

As explained in the preceding paragraphs, different forms of marketing exist, which can have an impact on the individual drinking behaviour of consumers. In order to reduce the

impact of alcohol marketing, restrictions can be implemented. In this paragraph, several aspects of a regulatory framework on alcohol marketing will be discussed.

### **5.6.1 Comprehensive**

The importance of a *comprehensive* regulatory form is pointed to in various studies and by several stakeholders (De Bruijn et al., 2010; Noel, Lazzarini, Robaina, & Vendrame, 2017; Van Dalen, 2011). According to these actors, a comprehensive ban is required in order to prevent displacement effects, whereby marketing practices shift to other media, times or places. Moreover, since marketing exposure also has a cumulative impact, taking into account every aspect of alcohol marketing (from traditional advertising to industry involvement in social marketing) is needed to effectively reduce its effect (De Bruijn et al., 2010; Noel, Babor, et al., 2017).

### **5.6.2 Regulation: Self-regulation versus state-regulation**

Models of alcohol marketing regulation can either be statutory or non-statutory. The former type of regulation primarily places responsibility the side of the state, while the latter one is based on industry's responsibility. Models in which both types of regulation occur are also possible (i.e. co-regulation). During the interviews, most industry stakeholders argued in favour of self-regulation. The observation that several actors argue in favour of a self-regulatory code can possibly partly be explained by the focus of the code on the content of explicit single marketing messages. Complying with the ethical rules, does not mean that marketing practices will not cause any harm. In addition, as mentioned before, the code does not prevent societies from the harm caused by the total exposure to alcohol marketing. Not only digital media are used for less explicit marketing practices.

An important critique of the actors who argued against self-regulation is that marketing communications mainly focus on particular marketing practices, without paying attention to the effect of the total exposure to all different types of alcohol marketing on the consumption of individuals. In other words, a self-regulation code, as in Belgium, is monitored by an ethical jury (JEP). The primary objective of the committee is to protect the sector against advertisers who unethically benefit from the use of certain marketing practices. As such, the focus is on the content of the marketing message and not on the potential public health harm caused by the cumulative exposure to marketing.

Another question is whether there is room for interaction with the industry, when it comes to protecting public health and promoting less harmful behaviour. Although there is consensus about the exclusion of the tobacco industry when formulating measures related to public health, there is still a lot of discussion regarding alcohol. According to Moodie et al. (2013) the discussion about the role of the alcohol industry relies on three elements. First, there is no clear and coherent framework for industry interaction that can count on broad support of all stakeholders. Secondly, Moodie et al. refer to the normalization of unhealthy products in a lot of countries. Furthermore, researchers, non-governmental organizations, and national and international health authorities can be financially or institutionally associated with alcohol companies. Lastly, there is also a lack of recognition for the primary objective of alcohol companies, namely to maximise profits. Moodie et al. (2013) argue that these conflicts remain largely unstudied.

Public-private partnerships are favoured by most national governments. Since the evidence does not support such approaches, independent and objective monitoring is required (Moodie et al., 2013). State regulation models are characterized by the recognition of a conflict of interest between promoting and protecting public health and corporations that benefit from the sales of unhealthy products (Moodie et al., 2013).

### **5.6.3 Monitoring**

Currently, there is no body in Belgium responsible for monitoring alcohol marketing communications. Although the JEP is responsible for the assessment of complaints, the Commission does not carry out a systematic check of alcohol marketing in Belgium. The relatively low number of complaints about violations of the current alcohol marketing regulations, which some see as an indication that the current system is working well, may therefore be due to a lack of systematic monitoring.

Although some actors acknowledged that the former minister of Public Health had ordered the Federal Public Health Agency to actively monitor infringements of the code, they are not specialized in detecting and assessing marketing communications. In addition, inspectors of the Federal Public Health Agency are mainly active in places where alcohol is sold, but they have less insight into marketing communications that are distributed through other channels (e.g. traditional media, Internet, and social media). As a result, the number of complaints mainly depends on the public. In addition, the question

is to what extent citizens are familiar with the self-regulatory code and if they can assess whether certain marketing messages violate the rules. As marketing strategies become increasingly sophisticated and marketing communications are sometimes hard to recognize as advertising (e.g. native advertising), it is difficult for untrained people to assess whether provisions of the regulatory framework are breached.

Several authors argue that monitoring alcohol marketing practices and investigating complaints should be performed by independent and external services (Chen et al., 2005; De Bruijn et al., 2010).

Second, by focusing on the functioning of the current forms of regulation with regard to alcohol marketing, attention is drawn away from the extent to which the current regulation maximally protects public health. It has been suggested by a range of studies that the impact of alcohol marketing is mainly created by accumulation of marketing communications (De Bruijn et al., 2010; Noel, Babor, et al., 2017). Nevertheless, the current self-regulatory code mainly provides restrictions on the content. With the exception of some partial alcohol marketing bans that apply at certain locations (i.e. distributing samples on public roads), target groups (i.e. minors) and media (i.e. when the audience consists of minors), there are no restrictions in place that limit the exposure to alcohol marketing.

The current self-regulatory body bans free sampling of alcoholic drinks in public places (see article 5.1). Additionally, the code stipulates that alcohol marketing is prohibited when it addresses minors by means of communication (see article 2.1 and article 4.2). Article 11 of the code specifies that advertising of alcoholic beverages is not allowed within five minutes before or after broadcasting that appeals to a public consisting of minors, and that it is not allowed to show alcohol marketing in newspapers, tabloids, movies in cinemas, and on digital media when the public mainly consists of people under the age of eighteen. As a result, exposure to alcohol marketing remains possible as long as it does not directly addresses minors.

When the main aim is to protect public health, it is important to take into account the main objectives of the supervising committee. Although protecting public health can be one of the concerns, the contemporary committee primarily aims to protect the advertising market from unethical practices. Even if this is done in the interest of the consumer, it does not necessarily mean that it will also protect public health in the best possible way.

In order to know whether an alcohol marketing regulation system is effective, information is needed about the restrictions and degree of compliance. Therefore, monitoring should happen regularly and systematically (Jackson et al., 2000; Monteiro, 2007). The gathered information for monitoring needs to be based on reliable data from an independent and adequate source (De Bruijn et al., 2012).

The low number of complaints and the high degree of marketing communications which are in line with the code are used by some of the stakeholders to prove the effectiveness of the current system. However, the number of complaints and the degree of compliance cannot be used to assess the effectiveness of the regulatory system as long as compliance to the regulatory provisions does not protect the target groups, as meant by the establishers of the code (De Bruijn et al., 2012).

#### **5.6.4 Complaints system**

In the current regulatory system, complaints can be made by any natural or legal person not pursuing a commercial interest, including members of the jury. The complaints will be judged by the JEP. For now, the Jury consists half of marketers and half of members from civil society. Although every member of the jury acts under a personal title, they are selected on the basis of the sector in which they are working (Institute for Gender Equality, Family Association, Youth Council of the French community, consumers, and members of the academic world). Although the JEP consists of people with different backgrounds, including organizations that ensure rights of citizens, the jury lacks public health representatives. As it became clear during the interviews, this topic has been discussed between the stakeholders. As a result, some criticize that not enough attention is paid towards the possible harmful consequences for public health.

#### **5.6.5 Support**

Although there have been some indications that there is growing public support for stricter regulation (Anderson, 2009), stakeholders indicated that they are not in favour of a total ban on alcohol marketing. As some participants indicated, a ban or strict regulation is likely to encounter resistance from companies that benefit from alcohol marketing (e.g. alcohol producers, marketers, and the catering industry). Additionally, some of the respondents argued that they question whether there is enough support among Belgian citizens for strict regulation on alcohol marketing. In order to gain the support of society,



Gallopel-Morvan et al. (2017) proposes to first implement measures that increase public awareness about the effects of exposure to alcohol on young people (Gallopel-Morvan & Moodie, 2017).

### **5.6.6 Sanctions**

The JEP is able to impose sanctions on offenders. However, as the regulation of alcohol marketing happens within a self-regulatory framework, voluntary compliance without sanctions is the principle. Nevertheless, in case of flagrant breaches or recidivism, the committee may oblige the advertiser to subject the next marketing practice to a pre-screening. In case of an infringement, the jury will ask the advertiser to change or stop the marketing communication. A flat-rate fine may be imposed, increased in accordance with the number of days of non-compliance with the decision of the jury.

The disadvantage of user-centred marketing communications is that it is less visible for others and therefore difficult to monitor. As only the user is exposed to the message, it depends on the user whether a complaint will be filed or not.

In general, public health studies argue that deterrent sanctions are needed in order to avoid violations of existing regulations (De Bruijn et al., 2012; Noel, Babor, et al., 2017).

## Chapter 6. Conclusion

Alcohol use can result in a plethora of avoidable medical, psychological and social issues, and early deaths. Early initiation of alcohol use, before fourteen years of age, is associated with increased risk of alcohol dependence and abusive alcohol consumption patterns later in life, unintentional injuries and alcohol-related accidents in traffic.

Taking into account that alcohol marketing influences patterns of alcohol use, regulation of alcohol marketing is an important policy measure to limit alcohol-related harm by reducing exposure to alcohol marketing and subsequent alcohol use. Several studies have indicated that implementing bans on alcohol marketing, besides other measures, is one of the most cost-effective policy options to reduce the harmful use of alcohol. In regulating alcohol marketing all policy options need to be taken into account, as well as the supporting regulatory framework (legal context, complaint system, monitoring, advisory committee, pre-screening, sanctions).

Alcohol marketing includes a wide range of marketing activities. Besides traditional advertising in broadcasted or printed media, other integrated marketing techniques and strategies are used as well including pricing, distribution and product design which also promote consumption. Both longitudinal studies, on the long term effects of alcohol marketing, and experimental studies, on the short term effect of alcohol marketing indicate that there is a positive relation between alcohol marketing communications and early onset alcohol use, the amount of alcohol consumed and the continuance of the alcohol consumption of young people, and on feelings of craving of recovering alcohol addicts.

This study built on current scientific knowledge of the effects of alcohol marketing and regulation on alcohol marketing. The general objective of this study was to contribute to a better understanding of strengths, weaknesses and conditions of the Belgian alcohol regulating system against the existing knowledge in this domain and an analysis of alternative models in six other European countries. Furthermore a range Belgian stakeholders was interviewed, in order to better understand the specific social and cultural context of alcohol policy in Belgium.

### Methodology

In the context of this study, (inter)national literature and internal documents on

marketing strategies for alcohol and regulating alcohol marketing were analysed. The literature study was conducted in order to gain a better understanding of the state of the art on the topic of alcohol marketing regulation and to establish how alcohol marketing is regulated in other European countries. In the second part of the study, semi-structured interviews were conducted with twenty stakeholders from the catering, marketing and alcohol industry, health actors, academics and policy makers. They have been interviewed about the Belgian social, cultural and political context and what type of regulatory model they perceive as a best fit for Belgium. Based on the analysis, an advice was formulated for a 'best fit' model of regulation of alcohol marketing for Belgium.

### **Main findings**

In order to answer the question of which model can be perceived as a 'best fit', the current working and effectiveness needs to be taken into account. As a number of studies are sceptical about self-regulation for alcohol marketing in order to protect public health, some critical points have been examined.

The most important code concerning the regulation of alcohol marketing is the self-regulation code on the advertising and marketing of alcoholic beverages, which is in force since the 12<sup>th</sup> of May 2005. On the 25<sup>th</sup> of January 2013 the code was changed and signed by stakeholders of the alcohol industry (represented by the Belgian Federation for Wine and Spirits and the Belgian Brewers Federation), catering representatives (Fed.Ho.Re.Ca Brussels/Wallonia/Flanders), the Council of Advertising (Raad voor de Reclame vzw), a trade organisation (Comeos), a consumer organisation (Test Aankoop), the research and information centre of the consumer organisations (OIVO) and the minister of Public health. The code is monitored by the Jury of Ethical Practices (JEP), the self-disciplinary body of the advertising sector in Belgium. In addition to the self-regulating code, provisions on alcohol marketing are also included in the media decrees of the French, Flemish and German-speaking communities, which are monitored by regional media authorities. In practice, however, it is mainly the JEP that takes decisions on disputes concerning alcohol marketing communications. The code consists of content and volume restrictions. Regulations on the content and volume are formulated as restrictions. This means that, in principle, alcohol marketing is allowed, but that communications cannot address certain target groups, advertise at certain locations, or refer to or imply a range of predefined topics.

One of the topics that appeared to be sensitive for some stakeholders, had to do with the treatment of complaints. Two elements were seen as most problematic. First, the current assessing committee does not include public health professionals. As a result, some argue that not enough attention is paid to the possible harmful impact of alcohol marketing practices. Second, the provisions of the alcohol marketing code are perceived differently by some stakeholders. During the interview, all stakeholders indicated that they are open to making changes in order to improve the composition of the jury and give a voice to professionals with a public health background. However, conflicts between the main actors have prevented a change of the composition of the JEP until now.

Restrictions on the volume primarily aim to limit alcohol advertising on certain locations, to certain target groups (i.e. minors and pregnant women) and at certain times. Furthermore, alcohol marketing communications need to include an educational slogan.

Marketing is a complex phenomenon and therefore difficult to study in relation to the effect it generates on alcohol consumption patterns. Nevertheless, especially focused consumer and longitudinal studies frequently indicate that there is a clear relation between alcohol marketing exposure and increased alcohol consumption.

The marketing mix shows a wide variety of marketing techniques that can be used in order to stimulate the sales of a product in the short or long term. Marketers and alcohol producers state that marketing is used to inform people about new products and to stimulate competition. However, by emphasizing the positive elements of the product and the consumption of it, and overexposure to marketing communications for alcoholic beverages, consumers' perception on the harmful effects of use can be false.

To decrease the harmful impact of alcohol requires a coherent and comprehensive approach, within a broader framework.

Although the main focus of a majority of the stakeholders went to provisions on the content of alcohol marketing communications, it is important to take into account the cumulative effect of exposure to alcohol marketing communications, independent from the content. As studies suggest that the main impact of alcohol marketing is generated by the total exposure to alcohol marketing utterances, limitations on the total volume of alcohol marketing will be most effective.

The French regulatory framework is often referred to as good practice. However, the

French model is mainly strict on the content, while bans on means of communication are absent (e.g. digital media, radio outside the watershed, and public spaces). In addition, the law has been weakened in the last decades, which has negatively influenced the effectiveness of the regulation.

As alcohol marketing is related to early initiation into alcohol consumption, it is recommended to limit the exposure to alcohol marketing, especially for young people. Although the current self-regulatory code aims to prevent exposure of minors to alcohol marketing, Belgian regulation still leaves space for children and adolescents to be exposed to alcohol marketing. For example, it is still possible to advertise for alcoholic beverages through traditional media, or in public places, as long as the place is not particularly meant for minors. Nevertheless, this does imply that young people are not part of the audience.

In order to prevent minors from being susceptible to alcohol marketing communications to which they are exposed, the current self-regulatory alcohol marketing code foresees provisions that prohibit advertising that addresses or appeals to minors. However, the question can be raised about which criteria apply to marketing communication in order to determine whether it 'addresses minors'. Minors do not consist of a homogeneous group which, moreover, cannot be strictly separated from adults. It is likely that very young children are attracted to different things than older children, or adolescents. In addition, it does not necessarily have to be the case that the interests of minors differ from the interests of adults.

In order to limit the exposure to alcohol marketing as much as possible, a total and comprehensive alcohol marketing ban is recommended. However, the international and digital dimensions of alcohol marketing seem to make it unfeasible to limit all forms of alcohol marketing. In addition, the empirical study in this research project has shown that a total ban lacks support of most stakeholders. Examples in other countries, like France and Poland, show that restrictive models are likely to ease over time when they lack enough political and societal support. Therefore it is recommended to invest in increased support for a restrictive alcohol marketing model.

Assessing the scope of the impact of any single restriction will illustrate the limits of using regulatory models as a unit of analysis. No restriction is likely to be able to overcome by itself the harmful health effects of alcohol consumption. Rather, there is a cumulative impact of many elements that can cause damaging health effects due to alcohol

consumption. In order to minimize these risks to public health, policy needs to pay attention to all these elements and implement a range of evidence-based measures.

Nevertheless, this does not mean that restricting alcohol marketing in itself will not have any effect. Alcohol producers spend a lot of money on marketing and it is reasonable to assume that they expect to earn their investment back (either in the short term or long term). A range of studies show that alcohol marketing does influence the early initiation into alcohol consumption and stimulates drinking more for people who already consume. Self-regulatory models primarily aim to restrict the content of alcohol advertising, but are less valuable in restricting the total volume. The effect of advertising (just like political interference with regulation) is significant because of its ubiquitous presence.

In addition, a self-regulatory code is often not applicable to every type of marketing. In Belgium this is the case when it comes to alcohol marketing practices in which alcohol producers are not directly involved, or when it concerns sponsorships. As a result, alcohol advertisement can still be disseminated in a way that is not allowed according to the ethical code. Therefore, it is recommended to pay attention to the full marketing mix when evaluating the contemporary regulatory model and constructing a future regulatory model.

In addition, it needs to be taken into account that the alcohol industry, as well as the advertising and media industry, are involved in creating alcohol marketing and also benefit from it. As studies show, it is to be expected that a voluntary code and self-regulatory framework, orchestrated and controlled by these actors, will not be most effective in protecting public health.

A general question is what the attributable risk of alcohol marketing is on public health. Attributable risk elements give an indication of the contribution to a causal factor. The fact that alcohol marketing is widespread means that the influence is significant. Although interventions on an individual level can be more effective, the question is whether they also will be more cost-effective. In other words, what are the costs of a micro-level intervention like early-detection and health care, in comparison to restricting alcohol marketing? In addition, taking into account studies that show a significant effect of alcohol advertising on heavy alcohol drinkers, the question is whether the effect of an individual intervention is optimal as long as alcohol marketing is poorly restricted. The other way around, alcohol advertising can also cause more cases of problematic alcohol use, because

it does influence the starting age of drinking and the number of units consumed.

## Chapter 7. Recommendations

Starting from a public health perspective, recommendations are made below based on the research study carried out. The first set of recommendations are aimed at regulating the content of alcohol marketing practices and exposure to alcohol marketing (A). The second set deals with the supported framework (B). Finally, a number of recommendations are formulated on future research and other measures (C).

### A. The content and volume

- Taking into account the (short term and long term) effects of alcohol marketing exposure on people's alcohol consumption behaviour by its content and volume, especially on vulnerable populations, **a general ban on alcohol marketing** is recommended. In case this is politically not feasible, the principle should be that alcohol marketing is regulated as restrictively as possible.
- If a general ban is unfeasible, minors should at least need to be prevented from alcohol marketing exposure as much as possible. This means that sufficient volume and content restrictions should be in force in order to **minimize alcohol marketing exposure and to better protect minors** and to avoid underage people being attracted by alcohol marketing communications.
  - **Volume restrictions**
    - **A general ban on alcohol marketing should be applicable on traditional media** (i.e. television, radio, newspapers, magazines, and billboards) when a significant part of the audience is expected to be underage. Exposure rates of a particular medium can be used to determine whether alcohol marketing is allowed or not. Since adolescents tend to be most vulnerable to alcohol marketing exposure, it is recommended to use the exposure rates among the adolescence population as the guideline.
    - With regard to **sponsoring sporting and cultural events strict regulation is required**. In order to protect public health, a total ban is recommended. If a complete ban is not feasible, restrictions should be introduced to prevent sponsored events, associations or teams from being used to promote alcoholic beverages, especially when the events also appeal to minors.



- **Product placement of alcohol brands should be part of alcohol marketing regulation.** It needs to be avoided, especially if a significant part of the public consists of minors.
- Since temporary price promotions, like happy hours, encourage people to consume more than initially intended, it is **recommended to generally prohibit temporary price promotions.** Exceptions could be made in certain circumstances, for instance for aperitifs offered in on-site premises.
- **Include all forms of alcohol marketing practices in digital media in alcohol marketing regulations.** Given the interactive nature of new media, alcohol brands must not only be seen as creators of alcohol marketing, but also as mediators, providing tools to users to generate their own alcohol-related content.
- **Marketing for non-alcoholic goods of the same brand or with the same characteristics (i.e. name, logo, style and design) as an alcoholic beverage should be part of alcohol marketing regulations.** Exceptions can be made for marketing communications that can clearly be distanced from the alcoholic counterparts.
- It is recommended that **industry involvement in prevention campaigns be avoided**, as there is insufficient evidence that such campaigns effectively protect public health. In case of public-private partnership, the assessment of the measure needs to be done by a fully independent actor.
- **Content restrictions**
  - It is recommended to **limit the permitted content of alcohol marketing messages to product-related information** (e.g. product, brand and/or producer name, ingredients, place of production, and production process). Given the specific appeal to minors, especially humorous messages, and associations with the lifestyle of the user should be avoided.
  - In order to increase consensus on the interpretation of rules, articles should be clear and unambiguous. Therefore, it is recommended to

**address all content elements that are allowed to appear in alcohol marketing communications**, rather than listing what is not allowed.

B. The supported framework

- In order to protect people from the harmful health effects of alcohol marketing exposure, **a clear and comprehensive regulatory framework is required**, including all the elements as described in the discussion (i.e. a complaints system, a monitoring body, an independent advisory committee, support and deterrent sanctions).
  - **The approach to alcohol marketing should be comprehensive.** Alcohol marketing is not limited to the promotion of alcoholic beverages only. Therefore, restrictions need to apply to all forms of marketing (see also the marketing mix) in order to avoid displacement effects.
  - From a public health perspective it is recommended to **implement statutory regulation of alcohol marketing**.
  - It is recommended to **establish an independent monitoring body** that carries out monitoring of compliance with existing regulations and that does not have any commercial interest in the sale or promotion of alcoholic beverages. The monitoring should happen routinely and systematically.
  - **Implement an open and transparent complaints system.** It should be possible for anyone without the goal of financial gain, to file a complaint. Sufficient publicity is required to raise awareness about the complaints system among the general public.
  - **Establish an independent review committee responsible for the assessment of complaints.** The committee should have no commercial interest and should primarily aim to protect public health. In order to determine whether an alcohol marketing message is regarded as attractive by minors, the possibility of adding a youth panel to the jury can be considered.
  - It is recommended that, where permitted, **alcohol marketing practices should be subject to mandatory pre-screening** by an independent committee that prioritises the protection of public health.

- In order to avoid violation of the regulations **deterrent sanctions are required**, including sufficient financial penalties.
- Restrictive models are likely to ease over time when they lack enough political and societal support. Therefore, it is recommended to **invest in increased support for restrictive alcohol marketing measures**, for example by awareness campaigns about the harmful effects of alcohol.
- **The effectiveness of the regulations should be systematically analysed and evaluated.** The results of these studies should be decisive for future relaxation or tightening of the regulation of alcohol marketing.

C. The future research and other measures

- It is recommended to **continue conducting research about the effects of alcohol marketing on Belgian citizens**. Longitudinal studies can be especially helpful to better understand the complex and reciprocal relationship between alcohol marketing, people's beliefs about alcohol (brands) and alcohol consumption (in the short-term and in the long-term).
- The statutory regulation of **alcohol marketing should be part of a comprehensive and integral national alcohol policy, including other measures that aim to reduce harmful alcohol use**. Therefore, recommendations of other (inter)national studies and expert organizations, such as the World Health Organization and the Belgian Health council. Also, recommendations made in other recent studies, such as the law of 2009 concerning the selling and serving of alcohol to youths: From state of the art to assessment.

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