

Laws and regulations addressing the acceptability, availability and affordability of alcoholic beverages



**World Health
Organization**

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Foreword

Alcohol is a carcinogenic and psychoactive substance associated with a variety of health and other harms, including noncommunicable and communicable diseases, perinatal conditions and intentional and unintentional harm to self and others.

Like many threats to health and well-being today, the harmful use of alcohol is influenced by a number of factors, including social and cultural norms, marketing strategies and existing regulatory frameworks. Moreover, the health and social harms linked to alcohol consumption are distributed unevenly across populations, as those in vulnerable situations often experience greater relative harms. In this context, upstream, population-wide and cost-effective interventions can be used to lower alcohol consumption, support healthier populations and avoid reliance solely on a health systems response to address harms once they have already occurred.

Laws and regulations are used to operationalize public health interventions on alcohol. They establish the applicable rules and restrictions and the enforcement mechanisms to facilitate implementation and compliance. They often form part of a comprehensive package of health interventions and are used to restrict or compel action that would not otherwise be implemented voluntarily. Laws and regulations can also establish overarching institutional or governance regimes and entrench values, such as protection of human rights and populations in vulnerable situations.

This publication aims to support countries in reducing the acceptability, availability and affordability of alcohol through laws and regulations. It is intended to be a practical guide to support strengthening of legal frameworks, address existing gaps and support enforcement and compliance. It provides examples from all WHO regions and constitutes a timely publication that describes alcohol interventions in a contemporary context, including in light of digital alcohol marketing and online retailing. It is hoped that this publication will make a significant contribution to the efforts of WHO and its Member States to reduce the harmful use of alcohol.



Dr Ailan Li, Assistant Director-General, Healthier Populations Division

Preface

Alcohol use is associated with more than 200 diseases, injuries and disabilities, and about 2.6 million deaths each year are attributable to alcohol use. Alcohol consumption also contributes to other harms, including interpersonal violence and unemployment. In order to prevent and address these and other consequences, WHO Member States have committed to taking action through the *Global strategy to reduce the harmful use of alcohol*. Within the context of the global strategy and its targets, health promotion approaches address the determinants that drive the acceptability, availability and affordability of alcohol.

This publication seeks to support Member States in developing and putting in place laws and regulations. Based on WHO recommended interventions, it provides policy options to Member States and sets out legal considerations that may be relevant to policymaking. This publication can be used to explore a portfolio of alcohol interventions that might be adopted, examine the different options available for each intervention and consider the legal and regulatory issues that may shape possible actions.

It is important to stress that Member States have the power and the duty to protect the right to the highest attainable standard of health and the rights of children, women and vulnerable populations. Regulating the manufacture, sale and marketing of alcoholic beverages contributes to protecting those rights, and it is possible for Member States to do so while respecting other rights, such as freedom of speech and the right to conduct a business, as well as trade obligations. This publication therefore shows that the law can be a powerful and necessary instrument to protect populations from harms due to alcohol consumption and contributes to the World Health Organization's core mission to promote health.



Dr Ruediger Krech, Director, Department of Health Promotion, Healthier Populations Division

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Abbreviations

ABV	alcohol by volume
ASCI	Advertising Standards Council of India
CCFL	Codex Committee on Food Labelling
CJEU	Court of Justice of the European Union
COVID-19	coronavirus disease
CRC	Convention on the Rights of the Child
CSR	corporate social responsibility
EU	European Union
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
ICESCR	International Covenant on Economic, Social and Cultural Rights
NAFDAC	National Agency for Food and Drug Administration and Control
NATA Act	National Authority on Tobacco and Alcohol Act
NCDs	noncommunicable diseases
SDGs	Sustainable Development Goals
TBT	technical barriers to trade
TFEU	Treaty on the Functioning of the European Union
VIVID	virtual violations detector
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control
WTO	World Trade Organization

Glossary

Bill	In common law systems, a bill is a proposal for a new law or a proposal to change an existing law (amendment) that is introduced to parliament. In civil law systems, the term “draft law” is generally used with an equivalent meaning.
Common law	Common law is the body of law based upon judicial decisions and legal precedents established by courts. Legal systems based on common law are called “common law systems” as opposed to “civil law systems”. The latter are based on written rules of law in which judicial decisions do not generally establish precedents that are a source of law.
Customs union	A customs union is a trade block established between two or more countries generally applying a common external tariff on imports from countries external to the union and eliminating substantially all barriers to trade within the territory of the union.
Harmonization	Harmonization is the process by which two or more countries make changes in their national laws to produce uniform legislation in areas of common interest. This term is mostly used by customs unions such as the European Union, but may also be found in the texts of other international organizations or standardizing bodies.
Industry	In this publication, refers to the alcohol industry, which comprises all actors involved in the alcohol supply chain, including raw material suppliers, manufacturers, wholesalers, distributors, retailers and importers.
Intervention	In this publication, refers to an alcohol intervention, which is a public health measure adopted to address the harms due to alcohol use and includes marketing bans and restrictions, labelling requirements, availability measures, tax and price measures, among others.
Lawmaking process	The lawmaking process comprises the different legislative steps in a legal system, from the identification of a public health problem to the adoption, implementation and enforcement of a law or regulation. These steps are described in section 4 of this publication.
Legal considerations	Legal considerations refer to legal arguments that governments may wish to consider in cases brought to challenge alcohol laws. They generally refer to claims based on human rights and trade obligations brought to contest alcohol interventions. Legal considerations are described and analysed in section 10 of this publication.

Monitoring

In this publication, monitoring comprises both compliance monitoring and implementation monitoring. Compliance monitoring aims at determining whether the subjects of a law are complying with the substantive provisions of that law. Implementation monitoring aims at assessing whether the law is being implemented by public authorities and evaluating the impact of the law in terms of public health outcomes.

Regulations

Regulations are legally binding instruments adopted by the executive branch of government. Regulations are enabled by, or fall under the authority of, laws and are generally the means by which those laws are implemented. These regulations are distinct from the more general concept of regulation, which includes any action by government using legislation, regulations or governance mechanisms to protect health.

1. Introduction

In 2022 – more than a decade after the adoption of the WHO Global strategy to reduce the harmful use of alcohol – there have been calls to accelerate the implementation of high-impact interventions for alcohol control (1).

The WHO Global alcohol action plan 2022–2030 aims to leverage the available evidence and policy know-how and quicken progress in tackling population-level alcohol consumption and its effects (2). To this end, the action plan calls for the implementation of high-impact strategies and interventions and proposes that WHO Member States implement legislative measures addressing:

(a) the affordability of alcoholic beverages, by appropriate taxation and pricing policies; (b) the advertising and marketing of alcoholic beverages, through comprehensive and robust restrictions or bans across multiple types of media, including digital media; (c) the availability of alcohol, by enacting and enforcing restrictions on spatial and temporal availability of alcoholic beverages; (d) driving under the influence of alcohol, by enacting and enforcing drink-driving laws and regulations; and (e) hazardous patterns of drinking and AUDs [alcohol use disorders], by providing brief psychosocial interventions, treatment and care in health and social services (3).

Action area 4 of the Global alcohol action plan concerns technical support and capacity-building, and paragraph 45 recognizes that there is a “need to strengthen the capacity and capability of countries to create, enforce and sustain the necessary policy and legislative frameworks” and that “[t]he implementation of alcohol policy measures at the country level based on national contexts, needs and priorities may require strong technical assistance, particularly in less-resourced countries and in technical areas such as taxation, legislation, regulations for digital marketing and their enforcement, or the consideration of health protection from alcohol-related harm in trade negotiations.”

Within this context, this publication seeks to support countries in designing legislation and regulations to effectively implement policies that reduce population-level alcohol consumption and related harm, support compliance monitoring and enable enforcement.

2. Scope, audience and methodology of the publication

The scope of this publication is limited to interventions focused on the concepts of acceptability, availability and affordability from action area 1 of the Global alcohol action plan.

Laws relating to driving under the influence of alcohol are not addressed in this publication because they are already addressed in separate WHO guidance on road safety (4). Similarly, legislation or regulation addressing treatment, care or social services are outside the scope of this publication. Although there are legal issues specific to treatment in the context of alcohol, these must be addressed under more general laws governing treatment, as they comprise a distinct set of legal issues, and it would be impractical to address them alongside health promotion approaches.

 **The publication describes different options to implement each intervention and illustrates these options with examples (and excerpts from legal texts) from around the world."**

The interventions included in this publication have been chosen based on legal complexity. That is, interventions are included either because they are more complex to legislate and/or because the possibility of litigation challenging an intervention means that governments should consider legal issues throughout the lawmaking process.

Within this scope, the publication describes different options to implement each intervention and illustrates these options with examples (and excerpts from legal texts) from around the world. The

selected examples do not imply endorsement by WHO, nor are they intended as a statement of best practice. Instead, examples have been selected and included in this publication in order to illustrate country approaches to implementing an intervention through law. To maximize their relevance to governments, examples have also been selected on the basis that they represent diverse legal systems from different geographical regions of the world.

It is also important to stress that the examples used in this publication are used as examples of laws "on the books". In many instances, the publication does not discuss whether the intervention was part of a comprehensive approach to the health harms of alcohol or describe all of the interventions complementing the example set out, nor does this publication assess the public health impact of an example or how an example was designed, implemented, monitored or enforced. The publication sets out legislative or regulatory options, but it is implicit that the approaches taken will depend on a range of issues beyond those considered in the technical task of legislative or regulatory drafting.

The guide describes some aspects of the rationale underpinning the use of the interventions before describing approaches to implementation used by governments. It is assumed that these approaches (examples and policy options) may be tailored to the national and subnational contexts based on local circumstances, including the legal duties, powers and rights set out in law.

This publication is not prescriptive, meaning that it does not make policy recommendations for Member States. Rather, its purpose is to illustrate how Member States have legislated and regulated to address the health harms associated with alcoholic beverages. These objectives and the approaches used to pursue them depend on country circumstances, including prevalence of alcohol use, trends in alcohol use, regulatory and enforcement capacity and political will.

The publication is intended for people working in public health, legal officers and policymakers from national, regional and local administrations, and government officials. The publication also provides a tool for a broader public health audience, including researchers, civil society groups, consumer associations, the mass media, and people new to alcohol policy, research or practice. Box 1 describes how each of these actors may use this guide. It is recognized, however, that different audiences will take away different key messages and content from the publication, depending on their functions. The actors involved in the lawmaking process differ from one country to another. In some countries, regulatory agencies may have authority over alcoholic beverages, and lawyers may be involved from the outset of lawmaking processes. In others, lawyers might only be engaged later in the policy process, such as when legislative drafting is undertaken. This publication seeks to cater for this variety of situations within government.

Box 1. How to use this guide

This publication recognizes that different actors may have different needs in the development of alcohol laws and regulations and therefore provides tools and information for a variety of purposes.



Go to [section 4](#) to understand the overall lawmaking process. This section sets out a process that is intended to support governments to ensure that the interventions put in place through legislation or regulation are rational, reasonable and proportionate to their health objectives, such that a government will be in a strong legal position if challenged in court by interested parties, such as industry.



Go to [section 5](#) to identify legal entry points for initiating legislation. [Section 5](#) highlights the need for governments to consider the legal powers or duties that enable legislation or regulation, as well as any limits on government action.



Go to [sections 6 to 9](#) if you want to focus on one specific intervention and seek more specific information on legislative or regulatory approaches implemented in other countries. For example, an alcohol focal point in a health agency may wish to consider the lawmaking process in [section 4](#), the concepts of legal powers, duties and restraints in [section 5](#), and then the possible approaches described in [sections 6 to 9](#). Similarly, a government lawyer may be familiar with the lawmaking process set out in [section 4](#) and aware of the legal powers, duties and restraints described in [section 5](#), but may benefit from reviewing the approaches used in other countries in [sections 6 to 9](#) and learning more about specific legal considerations.



Go to [section 10](#) to identify those legal considerations that may be relevant to specific interventions. That is, having considered the lawmaking process, government powers, duties and any relevant restraints in general, consider any more specific legal considerations set out in [section 10](#).



Use [Annex 1](#) to map existing laws and regulations and identify legislative gaps or inconsistencies. Assessing the legal environment may help you to identify the regulatory or legislative options available.



Use [Annex 2](#) as a checklist of legislative options to ensure the comprehensiveness of your approach.

3. Existing WHO and other international guidance on alcohol

Several instruments on alcohol have been adopted under the auspices of WHO and the United Nations. Although this guidance is not legally binding under international law and frequently does not provide detailed prescription on how to implement the interventions in question, it may nonetheless be relevant to national or subnational lawmaking.


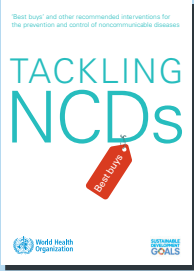
For example, this guidance frequently outlines the health risks associated with alcohol use and the rationale underpinning the use of different interventions. These and other materials may be cited by governments in their laws and regulations or associated documents, both to explain the action taken by government and to make the case for it. Figure 1 and Table 1 provide more details on this guidance.


Fig 1. International instruments addressing alcohol use



Table 1. International instruments addressing alcohol

Instrument	Guidance
<p>WHO Global strategy to reduce the harmful use of alcohol (2010)</p> 	<p>The WHO Global strategy defines harmful use of alcohol as “drinking that causes detrimental health and social consequences for the drinker, the people around the drinker and society at large, as well as patterns of drinking that are associated with increased risk of adverse health consequences”.</p> <p>Based on scientific knowledge, evidence of effectiveness and cost-effectiveness, as well as practical experience and good practices, it recommends a portfolio of ten policy options and measures to be implemented at national level. Additionally, it highlights four key areas for global action and puts forward a set of principles that should guide the development and implementation of policies:</p> <ul style="list-style-type: none"> • Alcohol policies and interventions should be guided and formulated by public health interests and based on public health goals and the best available evidence. • Policies should be equitable and sensitive to national, religious and cultural contexts. • Involved parties should not undermine the implementation of alcohol policies and interventions. • Public health should be given proper deference in relation to competing interests. • Alcohol policies should protect populations at high-risk of alcohol harm and those exposed to the effects of alcohol use by others. • Alcohol policies should provide access to affordable and effective prevention and care services. • Populations that choose not to drink should be supported in their behaviour. • Alcohol policies should encompass all alcoholic beverages and surrogate alcohol.¹
<p>Global action plan for the prevention and control of noncommunicable diseases (NCDs) (2013)</p> 	<p>The Global action plan on NCDs establishes a comprehensive monitoring framework, including a set of 25 indicators, and nine voluntary targets for a 25% relative reduction in overall mortality from NCDs at the global level.</p> <p>It sets a target of at least a 10% relative reduction in the harmful use of alcohol at the global level. The three indicators for the measurement of the reduction are:</p> <ol style="list-style-type: none"> 1. total per capita alcohol consumption within a calendar year in litres of pure alcohol; 2. age-standardized prevalence of heavy episodic drinking among adolescents and adults; and 3. alcohol-related morbidity and mortality. <p>In addition, the Global action plan on NCDs contains an appendix with a menu of policy options and cost-effective interventions to assist Member States in implementing actions to achieve the nine voluntary global targets for the prevention and control of NCDs. The list was not meant to be exhaustive; rather, it was intended to provide information and guidance on the effectiveness and cost-effectiveness of interventions based on current evidence and to provide a basis for future work to develop and expand the evidence base on policy measures and individual interventions. This package of policy options was then updated in 2017 and 2022 (see below).</p>

Instrument	Guidance
<p>Sustainable Development Goals (SDGs) (2015)</p> 	<p>SDG 3, “Good health and well-being”, includes a specific target on alcohol:</p> <p>3.5 Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol.</p> <p>There are two indicators for this target:</p> <p>3.5.1 Coverage of treatment interventions (pharmacological, psychosocial, and rehabilitation and aftercare services) for substance use disorders.</p> <p>3.5.2 Alcohol per capita consumption (aged 15 years and older) within a calendar year in litres of pure alcohol.</p> <p>Additionally, alcohol interventions contribute to other SDG 3 targets (maternal and child health, infectious diseases, noncommunicable diseases and mental health, road traffic injuries and unintentional poisonings) and to other SDGs, including SDG 1 (no poverty), SDG 2 (zero hunger), SDG 5 (gender equality), SDG 6 (clean water and sanitation), SDG 13 (climate action) and SDG 15 (life on land).</p>
<p>Appendix 3 to the global action plan for the prevention and control of NCDs (2017)</p> 	<p>An updated version of Appendix 3 was adopted in 2017 and consists of a menu of interventions (referred to as policy options) organized based on their cost-effectiveness to assist Member States in implementing actions to achieve the nine voluntary global targets for the prevention and control of NCDs. These policy options were again updated in 2022 (5).</p> <p>Following the 2022 updates, the best buys (most cost-effective interventions) include:</p> <ul style="list-style-type: none"> • increasing taxes on alcoholic beverages; • enacting and enforcing bans or comprehensive restrictions on alcohol advertising; and • enacting and enforcing restrictions on the physical availability of retailed alcohol (via reduced hours of sale). <p>Other effective interventions that have a higher cost (> \$100 per disability adjusted life year) include:</p> <ul style="list-style-type: none"> • enacting and enforcing drink-driving laws and blood alcohol concentration limits via sobriety checkpoints; and • providing brief psychological intervention for persons with hazardous and harmful alcohol use. <p>Other recommended interventions to support implementation of the best buys and other effective interventions include:</p> <ul style="list-style-type: none"> • carrying out regular review of prices in relation to the level of inflation and income; • establishing minimum prices for alcohol where applicable; • enacting and enforcing appropriate minimum age for purchase/consumption of alcohol; • reducing the density of retail outlets; • restricting/banning promotions of alcohol beverages in connection with sponsorships and activities targeting young people; • providing prevention, treatment and care for alcohol use disorders and comorbid conditions in health and social services; and • providing consumer information and labelling alcoholic beverages to indicate the harm related to alcohol.

Instrument	Guidance
<p>WHO Global alcohol action plan 2022–2030 (2022)</p> 	<p>The WHO Global alcohol action plan proposes global actions and measures in six areas to implement the WHO Global strategy to reduce the harmful use of alcohol:</p> <ul style="list-style-type: none"> • implementation of high-impact strategies and interventions; • advocacy, awareness and commitment; • partnership, dialogue and coordination; • technical support and capacity-building; knowledge production and information systems; and • resource mobilization. <p>Measures pursued by the action plan are complemented by the following guiding principles:</p> <ul style="list-style-type: none"> • multisectoral action; • universal health coverage; • life-course approach; • protection from commercial interests; • equity; • human rights; and • empowerment of people and communities.

¹ In the Global strategy, “surrogate alcohol” refers to liquids usually containing ethanol and not intended for consumption as beverages, that are consumed orally as substitutes for alcoholic beverages with the objective to produce intoxication or other effects associated with alcohol consumption.

The WHO Secretariat has developed a variety of technical documents to support the implementation of WHO recommendations.

The SAFER technical package is a policy package and an initiative supporting Member States in reducing alcohol-related harm (6). SAFER focuses on the best buys, using three strategies: implement, monitor and protect. The SAFER package focuses on five interventions:

- **Strengthen** restrictions on alcohol availability.
- **Advance** and enforce drink driving counter measures.
- **Facilitate** access to screening, brief interventions and treatment.
- **Enforce** bans or comprehensive restrictions on alcohol advertising, sponsorship and promotion.
- **Raise** prices on alcohol through excise taxes and pricing policies.

Other technical guidance includes:

- Global status report on alcohol and health (7, 8)
- Snapshot series on alcohol control policies and practice (9)
- Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion: a technical report (10)
- Restricting digital marketing in the context of tobacco, alcohol, food and beverages, and breast-milk substitutes: existing approaches and policy options (11)
- WHO technical manual on alcohol tax policy and administration (12)
- Empowering public health advocates to navigate alcohol policy challenges: alcohol policy playbook (13).

4. Alcohol legislation: a lawmaking process

The adoption of alcohol laws or regulations follows a process that differs from one jurisdiction to another. However, some generic steps in the lawmaking process can be identified and are reflected in Figure 2. These steps are described briefly here, not to establish a general policy process for developing laws on alcohol, but to highlight elements that can help ensure that such laws are as strong as possible. The steps listed, from identifying the problem (characterizing the health risks) to implementation and enforcement of the law or regulation, can help ensure that interventions are rational, reasonable and proportionate to the problem and to the health objectives pursued. This can help strengthen a government's legal position in the event that the lawfulness of an alcohol law, regulation or related intervention is challenged before the courts, such as by the alcohol industry.

Fig 2. Lawmaking process for the adoption of alcohol laws or regulations



4.1 Step 1: Identification of the problem(s) (public health risks and their causes)

Often, the first step in the process is to characterize the health risk of concern and/or the factors that contribute to that risk.

Governments generally have primary, overarching or high-level health objectives relating to alcohol. For example, reducing the average amount of alcohol consumed across the population (reducing demand) may be one such objective. Primary objectives may also be social (for example, reducing violence against women and/or children due to alcohol use) or economic (for example, addressing the financial burden of families with alcohol addictions). Primary objectives might be pursued through a combination of interventions including taxation, marketing restrictions, labelling measures and public education campaigns, among others. For each of these measures, more proximal or intermediate objectives exist, such as reducing the affordability of alcohol products, delaying initiation of alcohol use, preventing impulse purchases and ensuring that consumers are informed about the risks of consumption and about what they are consuming.


The setting of an objective and the choice of an intervention (see below) should be related to the problem identified. For example, tax or price measures relate to affordability, marketing restrictions relate to demand stimulated by marketing and labelling measures relate to consumer awareness. The sections on “rationale” under each intervention provide details regarding specific primary and intermediate objectives that might be pursued through the intervention (see sections 6, 7 and 8).

Data-gathering may support the identification of public health risks, their underlying causes and the socioeconomic impact of the risks. This might include data around behaviours, prevalence of use, patterns of use, disease burden and deaths attributable to alcohol, and associated trends over time. Data that are disaggregated among different population groups and that are as specific as possible may also assist in characterizing the problem. It may also point to health objectives to be pursued. For example, if the data shows that a particular area has a high level of alcohol consumption among youth, the health objective might be reducing consumption by youth or delaying the initiation of alcohol consumption. Annex 1 provides a template with data that can be gathered by governments at this stage of the process.

Identification of the specific health risks of concern enables the development of a theory of change, which is a statement of how different interventions might address the risks identified. Formulation of the theory of change can underpin subsequent steps in the process, including the setting of government objectives.

4.2 Step 2: Analysis of policy options in light of existing laws, regulations and governance arrangements

Having characterized the public health, social or economic problem of concern (and possibly its underlying causes) and the objectives to be pursued, the government is in a position to examine the available policy options to achieve those objectives. For instance, in the case above where the jurisdiction had a high level of alcohol consumption among youth and sought to reduce youth alcohol consumption and delay the initiation of alcohol consumption, some of the available policy options would include: restricting alcohol marketing to children (assuming the absence of a comprehensive ban), increasing the legal purchase age, restricting the availability of alcohol in premises popular among young people and reducing the affordability of alcohol.

 **Mapping existing national and subnational legislation can be conducted using the legal environment assessment methodology provided in Annex 1."**

The analysis of policy options may involve mapping existing national or subnational alcohol laws, policies and programmes. This mapping exercise may identify gaps in existing legislation, areas that can be further strengthened and policy options to be prioritized. An assessment of existing laws, policies and programmes may also point to what avenues may be used for regulation, as well as the legal constraints those instruments may impose. At this stage, governments might also consider existing WHO guidance and international legal obligations.

Section 5 provides information about the legal powers, duties and restrictions that may need to be considered.

Mapping of existing national and subnational legislation can be conducted using the legal environment assessment methodology provided in Annex 1. Any review of existing legislation should be comprehensive and go beyond alcohol policy or public health instruments to cover broader areas such as advertising, consumer protection, mental health, education, agriculture, environment and taxation. This exercise should seek to identify areas already covered by legislation and determine gaps where new laws may be needed, existing laws amended or regulations introduced by the executive branch of government under existing delegations of power. As alcohol interventions may be provided for in a variety of instruments and at different levels of government, legal coordination may be required, as explained in Box 2.

Box 2. Legal coordination for alcohol laws and regulations

The analysis of policy options should take account of the fact that alcoholic beverages may be regulated by different legal instruments at the national level, including laws regulating the production, distribution and retail of alcoholic beverages specifically (often called liquor or alcohol laws), excise laws, consumer protection laws, advertising laws and others. Subnational laws on alcohol, advertising, licensing (retail trading), planning (zoning) and other matters may also be relevant.

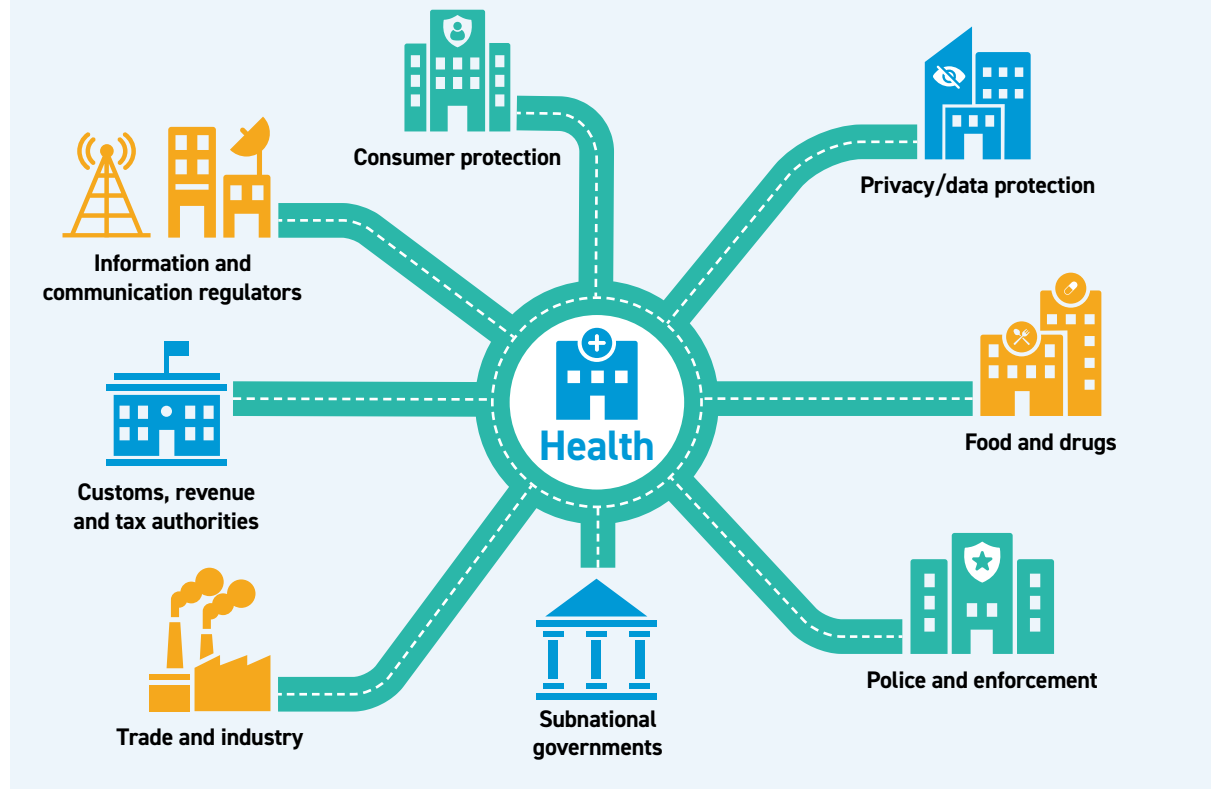
Mapping different laws and then seeking to ensure that policy options support coherence and coordination may aid implementation and reduce the risk of contradictions within the legal system. For example, in one country public health legislation prohibits the advertisement of the production, distribution, dissemination and transmission of materials advertising alcohol, but legislation governing advertising does not mention alcohol among the areas where advertising is banned. The silence of the advertising law led to contradictory interpretations by different government agencies of the applicable rules with regard to the advertising of alcoholic beverages, resulting in a challenge being brought before the Supreme Court. The Supreme Court issued an interim order providing that the law prohibits all advertising of alcoholic beverages and that it should be strictly implemented. The final ruling of the Court is still pending at the time of writing.

Mapping different laws and coordinating them may also help ensure that they coherently pursue a clear policy objective. For example, in one country, alcoholic beverages are subject to different rules in accordance with their alcohol content, but the classification of beverages by category varies under different laws. Under the excise law, alcoholic beverages above 20% alcohol by volume (ABV) are subject to an excise duty rate of 65%, those under 20% ABV to a rate of 35% and beer to a rate of 65%. By contrast, under the alcohol law, alcoholic beverages above 15% ABV cannot be advertised at all, whereas those under 15% ABV can be advertised with restrictions. No particular rules apply to beer. Therefore, beer is subject to the highest excise duty rate but not to the strictest advertising restrictions, while alcoholic drinks with between 15% and 20% ABV are subject to a full advertising ban but to the lowest excise duty rate. While this difference may be by design and intended to achieve different objectives (including raising revenue), the health impact of one intervention (excise taxation) could be maximized and reinforced if it was coherent with the other intervention (advertising restrictions).

Conducting a legal environment assessment and identifying the policy objectives pursued by existing legal instruments can contribute to understanding a government's general strategy and ensuring coherence. Annex 1 and the WHO/United Nations Development Programme publication *Legal environment assessment for the prevention of noncommunicable diseases* provide guidance in this regard (14).

The variety of legal instruments applicable to alcoholic beverages may also require a whole-of-government approach. The full implementation of existing rules will benefit from appropriate allocation of mandates to, and cooperation between, different ministries, authorities and agencies at the national and subnational levels responsible for some alcohol interventions. Figure 3 illustrates some of the bodies that may be consulted.

Fig 3. A whole-of-government approach to alcohol laws and regulations



Irrespective of how domestic laws are coordinated, governments will often need to consider how different categories of alcoholic beverages are defined by law. National excise tax laws frequently distinguish between different product categories (such as beer, wine, spirits and others) based on how those product categories are defined in national customs codes because this facilitates tax administration by customs authorities at the point of implementation and through customs bonded warehousing. Sometimes, for excise duty purposes, there may also be differences within one beverage category. For example, South Africa applies different excise duties to malt beer and traditional African beer.

National and subnational alcohol laws may adopt these same definitions for purposes of product classification. However, customs codes are generally based on the World Customs Organization Harmonized System Code, which categorizes products based on their objective characteristics, rather than based on their health risk.

In the event that national alcohol policies seek different approaches to product categories based on other characteristics, such as alcohol content, additional product category definitions may be present in national or subnational alcohol laws. This may call for an analysis of the coherence of different definitions and their impacts.

Finally, governments may also review laws and regulations in other countries to determine elements commonly included and identify good practices and effective measures. This publication provides examples of laws and regulations across jurisdictions and may therefore assist in these efforts.

4.3 Step 3: Development of legislation or regulations

Once objectives and policy options have been defined, governments may decide that it is necessary to adopt or amend legislation or regulations. In this case, they will need to define the most appropriate legal pathway and the process for adoption. Processes vary from country to country and may also differ between national and subnational levels, but generally include preparation of drafting instructions, legal drafting and approval either by cabinet, parliament and/or an authorized decision-maker.

Public consultation may also occur in accordance with national rules and customs at this stage of the lawmaking process. This also varies from country to country, but examples include publication of an exposure draft of legislation, publication of a bill or draft law, publication of a notice and initiation of a comment process and/or an ad hoc public consultation. This stage of the lawmaking process may also involve a legal analysis of the validity of the draft law under national and international law and an economic, social or environmental impact assessment.

At this point, defining alcoholic beverages and/or categories of alcoholic beverages is ordinarily an important initial step that establishes the scope of application of the law and of specific provisions within the law. Alcoholic beverages might be defined in alcohol laws, food laws, excise tax laws, customs codes or others. They are ordinarily defined by reference to the characteristics of the product, including the alcohol content and ingredients. For example, the European Union (EU) applies rules on alcoholic beverages to drinks with an alcoholic strength above 1.2% ABV (15).

When defining alcoholic beverages, laws often make a distinction between products intended for human consumption and those that are not. In Mexico, the General Health Law defines alcoholic beverages as drinks with an alcohol content of between 2% and 55% ABV; products with an alcohol content above 55% ABV cannot be sold as a beverage for human consumption (16, 17). The distinction between alcoholic beverages, alcohol for industrial use and alcohol for medical use may be relevant for specific interventions. For example, each category of products may be subject to different labelling requirements, marketing restrictions, retail conditions and tax rates.

The scope of application of the law may also differentiate between alcohol categories. Different categories are often found in customs codes or excise tax laws. For example, in South Africa, the Customs and Excise Act 1964 provides for different excise duty rates for different categories of alcoholic beverages, including beer, wine, vermouth and spirits, with several subcategories within each category (18). However, alcohol categories may also be found in alcohol or food laws, with different rules applying to different alcoholic beverages. For example, the United States of America regulates the trade of wine in a specific manner (19). Under these provisions, the term “wine” means a fermented alcoholic beverage that:

- is made from grapes or other fruit;
- contains not less than 0.5% ABV and not more than 24% ABV, including all dilutions and mixtures thereof by whatever process produced; and
- is for nonindustrial use.

In the Republic of Moldova, different rules apply to wine and other alcoholic beverages. Article 2 of Law No. 57/2006 on Vine and Wine defines wine as:

a food product obtained exclusively through the alcoholic fermentation, total or partial, of fresh or frozen grapes, pressed or not, or of fresh grape must (20).

As different laws within one jurisdiction may provide different definitions of alcoholic beverages and/or some categories of such beverages, legal coordination, as described in Box 2, may also be required at this stage.

4.4 Step 4: Enactment of legislation or issuance of regulations

Once a draft law or a bill is available, it follows the appropriate national or subnational procedures for enactment.

The legislative procedure ordinarily concludes with the legislative body approving or rejecting legislation, although special procedures may exist in each legal system for legislative and non-legislative measures. The law will often only come into force once it has been sanctioned by the head of State or the equivalent at subnational level (often through his or her signature) and published in an official journal or gazette. Legal instruments often do not come into effect immediately after their official publication but rather on the following day or after a month or a longer period of time, especially when transitional periods are required to adapt products to the new rules. Specific procedures for the enactment of legislation may apply for subnational legislation.

Non-legislative measures, such as regulations issued by an executive branch agency, generally should be enabled by legislation, consistent with existing applicable legislation and developed in accordance with any other procedural rules set out in law. These types of measures are frequently issued by regulatory agencies, such as food and drug administrations, but may also be issued by health agencies where powers are delegated to them. Although the full range of reasons for choosing between legislation or regulation are beyond the scope of this discussion, regulation is frequently used where a higher degree of flexibility, responsiveness or oversight is needed and it is not practical to refer the issues concerned to parliament.

4.5 Step 5: Implementation of legislation or regulations

Legislation often addresses implementation, including by:

- enabling promulgation of regulations or other legal instruments issued by the executive branch of government implementing the law or other legal instruments;
- establishing government bodies, such as national authorities on specific issues;
- allocating authority for enforcement of the law;
- establishing funding mechanisms, for example to fund national authorities or enforcement; and
- establishing more general rules, such as for implementation reviews.

Other possible actions for the implementation of legislation or regulations include:

- providing the necessary administrative and financial resources for implementation (where not provided for in the legislation itself);
- providing training to relevant stakeholders, including enforcement officers;
- raising public awareness and developing public education campaigns, including awareness among relevant economic operators; and
- ensuring compliance with the law, and issuing enforcement measures.

Kenya's legislation provides an example of a law establishing a government authority and providing dedicated funding. This example illustrates how legislation can create institutions that are responsible for ensuring a public health response to alcohol, as well as creating mechanisms for sustained financing of that work.

Example 1. Implementation framework in Kenya

The Alcoholic Drinks Control Act 2010 establishes a framework for the effective implementation of the law (21). This framework consists of two elements.

- The establishment of an agency – Section 4, which provides that the relevant agency shall:
 - (a) keep statistics on the level of alcoholic drinks consumption and related deaths and carry out research, documentation and dissemination of all relevant information on alcoholic drinks;
 - (b) promote national treatment and rehabilitation programmes;
 - (c) advise the Minister on the national policy to be adopted with regard to the production, manufacture, sale, and consumption of alcoholic drinks;
 - (d) advise the Minister generally on the exercise of his powers and the performance of his functions under this Act (...);
 - (e) recommend to the Minister and to participate in the formulation of the regulations to be made under section 68;
 - (f) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the Minister.

Example 1. Implementation framework in Kenya (continued)

- The establishment of a fund administered by an accounting officer – Sections 5 and 6, which provide that:
 - 5. (1) There is established a fund to be known as the Alcoholic Drinks Control Fund.
 - (2) The Fund shall consist of –
 - (a) such licence and other fees as may be payable under this Act;
 - (b) such sums as may be realized from property forfeited to the Government under this Act;
 - (c) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
 - (d) moneys earned or arising from any investment of the Fund;
 - (e) all other sums which may in any manner become payable to, or vested in, the Fund.
 - [...]
 - (4) The Fund shall be used for meeting the capital and recurrent expenditure relating to –
 - (a) research, documentation and dissemination of information on alcoholic drinks;
 - (b) promoting national cessation and rehabilitation programs; and
 - (c) assisting in the operations of the District Committees and civil society programmes in accordance with subsection (5);
 - (d) any other matter incidental to the matters stated in paragraphs (a) (b) and (c).
 - (5) An amount of not less than fifty per cent of the Fund's annual income shall be used to equitably finance the District Committees in their operations and an additional amount of not less than fifteen per cent shall be used to fund relevant civil society programmes.
 - (6) Unless the Treasury otherwise directs, the receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes of the Fund.
- 6.(1) The Fund shall be administered by the Accounting Officer.

While a specific agency or body may be responsible for ensuring the implementation of the law, effective implementation often requires cooperation with different ministries, agencies and stakeholders. Some countries establish cooperation mechanisms in the law, as the example of Sri Lanka illustrates.

Example 2. The National Authority on Tobacco and Alcohol of Sri Lanka

The National Authority on Tobacco and Alcohol Act 2006 (NATA Act 2006) is the main instrument regulating alcoholic beverages (and tobacco products) in Sri Lanka (22). This instrument establishes the National Authority on Tobacco and Alcohol, which advises the government on the implementation of the law and monitors its application and impact. In accordance with Section 3(1) of the Act, the National Authority consists of the following members:

- (a) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Health, nominated by that Minister;
- (b) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Justice, nominated by that Minister;
- (c) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Education, nominated by that Minister;
- (d) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Media, nominated by that Minister;
- (e) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Trade, nominated by that Minister;
- (f) an officer, not below the rank of a Senior Assistant Secretary, of the Ministry of the Minister in charge of the subject of Sports and Youth Affairs, nominated by that Minister;
- (g) The Chairman of the National Dangerous Drugs Control Board;
- (h) a representative of the Commissioner-General of Excise nominated by the Commissioner-General of Excise;
- (i) a representative of the Inspector-General of Police nominated by the Inspector-General of Police; and
- (j) five members appointed by the Minister from among persons who have wide experience and knowledge, in the field of medicine, and other fields related to tobacco products and alcohol products.

4.6 Step 6: Monitoring and evaluation of policies and monitoring and enforcement of laws

The impact of laws and regulations ordinarily depends on their enforcement by responsible government authorities. This requires compliance monitoring and appropriate enforcement action in the event of non-compliance. These issues, and steps that can be taken to support compliance monitoring and enforcement are discussed in further detail in section 9.

In addition to compliance monitoring, governments often monitor and evaluate the impact of policies in terms of the health objectives pursued (including where interventions pursuing those policies are implemented through laws or regulations). This is discussed in the SAFER technical package, which recognizes that regular and robust monitoring of policy and programme implementation is essential for maintaining quality, applying best practices, measuring impact and informing public communication. Where feasible, a law or regulation should therefore be

monitored and evaluated in light of the objectives pursued. Monitoring and evaluation systems might include the following elements:

- tracking of policy, programme and legislative implementation according to best practices;
- ongoing monitoring of key indicators of consumption and sales;
- measurement of health outcomes (morbidity and mortality);
- measurement of social outcomes attributable to alcohol, such as violence; and
- regular reporting of the above metrics.

The impact of an intervention may be a key factual question in the event of litigation challenging legislation before domestic or international courts and/or in some arguments where government takes enforcement action before domestic courts. For example, industry bodies or companies might argue that the intervention is ineffective and that the impact on their rights is therefore not proportionate to the health objective pursued. Although section 10 provides examples of litigation across jurisdictions for each alcohol intervention and presents some legal considerations to be taken into account to minimize the risk of litigation, it is worth noting that monitoring and evaluation of policies may be relevant to litigation risk and the strength of a government's legal position. Put differently, for those interventions where government anticipates litigation, it may be prudent to coordinate monitoring and evaluation of policy impacts with efforts to strengthen a government's legal position (discussed in section 5). For example, data gathering for purposes of monitoring and evaluation should be aligned with the government objectives pursued and geared towards the legal defence of an intervention.

4.7 Consultation and due process

Depending on national rules and typical practices, government agencies may need to conduct public consultations in the planning and design of legislation, or at one or more specific stages of the process.

This might include one governmental body consulting another, such as health consulting social welfare, law, finance, or trade on their administration of relevant legislation or the roles they might play in implementation, as well as political entities (members of parliament, political parties) that will play a role in enactment.

Other public sector stakeholders might include professional bodies or groups (psychiatrists, oncologists, social workers, child protection workers, domestic violence specialists), civil society organizations, non-governmental organizations, faith-based organizations, academia, as well as people with lived experience. Stakeholder engagement may seek different objectives, including:

- identifying the problems;
- identifying the regulatory options;
- strengthening the substance and implementability of the proposed legislation or regulations;
- increasing understanding among stakeholders of the topic;
- building consensus and political will; and
- facilitating the enactment and implementation of legislation.

In some countries, public consultation is required by law or accepted practice. For legislation, this might include publishing exposure drafts of legislation before it is introduced into parliament and/or providing open access to parliamentary documents. For regulations, “notice and comment” provisions may apply to regulatory agencies, or due process requirements under administrative law may require that interested parties, including the alcohol industry, have an opportunity to be heard by decision-makers.

In some instances, alcohol legislation may also create formal governance structures for consultation within or outside of government. For example, in Thailand, the Alcoholic Beverage Control Act 2008 establishes an Alcoholic Beverage Control Committee to propose alcohol policies, workplans and measures (23). In accordance with Section 10, this committee shall consist of the following members:

- the Minister of Public Health;
- the permanent secretaries of the Ministry of Public Health, the Ministry of Finance and the Ministry of Interior;
- permanent secretaries from other ministries as ex officio members;
- three representatives of nongovernmental organizations having non-commercial objectives and providing support or running campaigns in relation to the reduction of alcohol consumption or providing protection to children, youths, women or consumers; and
- three qualified persons having knowledge and experience in medicine, psychology, public health, social work, social sciences, economics, mass communication, education, religion or culture.

Box 3. Managing vested interests throughout the lawmaking process

The WHO Global alcohol action plan notes that some countries experience challenges in protecting alcohol policy development from commercial interests and that safeguarding alcohol policy development at all levels from vested interests is also a major challenge in international policy dialogues. At the same time, evidence shows that the alcohol industry attempts to defeat, delay or weaken the design, implementation and evaluation of alcohol laws and regulations during legislative development and through litigation, coalition-building, or propagating misinformation in the media and influencing scientific research (24, 25). In addition, the alcohol industry uses corporate social responsibility (CSR) techniques to legitimize its participation in the public health agenda. For example, between 1998 and 2020, the alcohol industry spent \$541 million on lobbying in the United States in order to influence alcohol policies to favour their economic interests, and industry expenditure on this has been increasing over time (26).

Some examples of industry conduct that have been experienced in the contexts of alcohol, tobacco and/or unhealthy foods and beverages around the world are:

- attempts to delay public health legislation;¹
- placing pressure to interfere with the implementation of legislation already adopted (pre-litigation);²
- legal challenges to laws or regulations brought before national and international courts (27);
- adoption of voluntary measures that are less effective at changing industry behaviour or achieving public health objectives (28);
- investment agreements between the industry and national governments that seek to restrict space for government to take action (29);
- sponsorship of major events, including to build relations with policymakers (30); and
- CSR strategies that seek to convey a positive image of the industry and build relations with government that can then be leveraged to avoid or minimize regulation (31).

Box 3. Managing vested interests throughout the lawmaking process (continued)

Section 10 of this publication focuses on arguments brought by the industry in the context of legal challenges to laws or regulations. Broader non-legal arguments made by the industry have been described in the alcohol policy playbook published by the WHO Regional Office for Europe (13).

Protecting policy developments from vested interests and conflicts of interest is good practice. In the area of tobacco control, for example, Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) and its implementation guidelines provide key measures to prevent the interference of the tobacco industry in setting and implementing public health policies with respect to tobacco control. The guidelines recommend the following actions, among others:

- raise awareness about the addictive and harmful nature of tobacco and about tobacco industry interference;
- establish measures to limit interactions with the tobacco industry and ensure transparency of those interactions that occur;
- reject partnerships and non-binding or non-enforceable agreements with the tobacco industry;
- avoid conflicts of interest for government officials and employees;
- require that information provided by the tobacco industry be transparent and accurate;
- regulate activities described as “socially responsible” by the tobacco industry;
- do not give preferential treatment to the tobacco industry; and
- treat State-owned tobacco industry in the same way as any other tobacco industry.

There is no similar global guidance in the alcohol sector. However, WHO has published a policy brief providing approaches to addressing and managing conflicts of interest in alcohol policies (24). Moreover, some countries have legislated to limit conflicts of interest and address industry behaviour.

- In Thailand, the Alcoholic Beverage Control Act 2008 establishes an Alcoholic Beverages Control Committee, the members of which cannot be “an entrepreneur in alcoholic beverages business” or an “interested party in alcoholic beverages business” in accordance with Section 11(6) (23).
- In Ghana, the Public Health Act 2012 establishes a Food and Drugs Authority. According to Section 86(1) of the Act, members of the Board of the Authority must disclose any interest in a matter for consideration and refrain from participating in the deliberations of the Board on that matter. A failure to disclose that interest or participation in the deliberations on that matter result in the member ceasing to be part of the Board (Section 86(2)) (32).
- In the Philippines, the Department of Health has a policy prohibiting interactions of the government with the alcohol, tobacco and milk industries, including engagements, projects and activities.

¹ For example, in Ireland, 100 representations were made to government by industry over a single year during the adoption of the Public Health (Alcohol) Act 2018. In Viet Nam, the 2019 alcohol law was negotiated in the context of active engagement from the alcohol industry through partnership-building with politicians, using corporate social responsibility and direct lobbying (see Casswell S. Development of alcohol control policy in Vietnam: transnational corporate interests at the policy table, global public health largely absent. *International Journal of Policy and Management*. 2022; 11(12):3032-3039). In Australia, the alcohol industry has submitted several comments about Australia's free trade agreements with a view to shaping trade negotiations relating to alcohol (see Miller M, Wilkinson C, Room R, O'Brien P, Townsend B, Schram A et al. Industry submissions on alcohol in the context of Australia's trade and investment agreements: A content and thematic analysis of publicly available documents. *Drug and Alcohol Review*. 2021; 40(1):22-30).

² For example, around 20 alcohol industry organizations submitted comments under the European Commission's Technical Regulation Information System (TRIS) when Ireland notified the adoption of the Public Health (Alcohol) (Labelling) Regulations.

5. Legal powers, duties and restraints

National constitutions establish the powers of legislative bodies, such as the powers that national parliaments rely on to pass legislation. They also ordinarily establish the executive branch of government and give it general administrative powers. These general powers are added to specific powers created by legislation, such as the power of the executive branch to take specific action in administering a law or to issue regulations, decrees and other forms of what is sometimes referred to as “subsidiary legislation”. National constitutions also establish the judicial branch of government, which is responsible in part for restraining the actions of the legislative and executive branches of government in order to ensure compliance with constitutional and other laws.

In this general context, parliaments typically have legal powers that provide a basis for alcohol legislation (see section 5.1). Constitutional and international laws may also impose duties on the legislative or executive branches of government to address alcoholic beverages (see section 5.2). However, both branches of government must also be aware of the limits to their legislative and regulatory powers under domestic and international law (see section 5.3).

These rights, duties and restrictions can play an important role in shaping the legal and regulatory options available to the legislative and executive branches of government. For example, legal issues surrounding them may provide grounds invoked in litigation challenging the lawfulness of interventions. Legal powers, duties and restrictions are outlined here to explain the basic principles that are ordinarily pertinent to lawmaking. Section 10 discusses the relevance of legal restraints in further detail by considering how specific interventions outlined in sections 6, 7 and 8 have been challenged in relevant litigation.

5.1 Legal powers to legislate or regulate concerning alcoholic beverages

Parliaments may rely on a variety of legal powers to regulate alcoholic beverages and implement the interventions discussed in this publication. However, in considering the powers available, parliaments may need to consider not only the scope of the power but also its allocation across different levels of government within a country as well as under international commitments.

In the case of alcohol taxes, for example, parliaments ordinarily rely upon their general fiscal powers to impose taxes. However, governments need to consider how such powers have been allocated in their national systems and whether all fiscal powers are attributed to national governments or whether some are attributed to subnational entities. For example, Australia has a federal system of laws, with powers allocated between the federal and state governments. The High Court of Australia has ruled that Australian states lack the constitutional power to impose alcohol excise taxes, as this is a federal power (33). This highlights the importance of allocation of powers in some countries, as it may

determine which measures may be adopted by different levels of government to regulate alcoholic beverages. For example, in India, states have the power to regulate the production, distribution and sale of alcohol in accordance with the State List in the Seventh Schedule of the Constitution (34).

As these two examples illustrate, the allocation of powers between different levels of government may constrain the options available to a national or subnational government. This issue was also observed when Scotland, the United Kingdom of Great Britain and Northern Ireland, adopted a minimum unit price for alcoholic beverages (discussed below), with the Scottish government arguing that it alone had the power to impose a minimum price, whereas tax powers were attributed to the United Kingdom (35).

Another example can be found in restrictions on the availability of alcoholic beverages. These often involve regulating points of sale or consumption or the times when alcohol can be served, which may be a subnational (regional or local) competence. For example, the Supreme Court of Justice of Mexico held that rules prohibiting alcohol retail and consumption in cinemas fell within local powers to regulate public entertainment and were therefore a competence of local authorities and not Mexican states (36). Hence, rules on the availability of alcohol can vary substantially across regions within a country.

Similarly, parliaments often rely on powers concerning trade and commerce to adopt marketing or labelling restrictions in legislation. In this case, governments need to be aware of their international obligations, as membership of a customs union or the World Trade Organization (WTO) places limits on how governments may regulate trade. For example, in the European Union, Member States must comply with harmonizing measures adopted at the EU level. EU legislation covers, fully or partially, alcohol excise duties, marketing, labelling and composition, thus limiting Member States' power to act in those areas. Where no harmonizing measures exist, they retain the power to regulate the trade of alcoholic beverages but, in doing so, they need to comply with internal market rules. As section 10 of this publication indicates, advertising restrictions, labelling requirements or minimum prices adopted by Member States, for example, may be considered to restrict the free movement of goods under EU law, although such interventions can often be justified on public health grounds.

5.2 Legal duties requiring the regulation of alcoholic beverages

Legal duties refer to things that governments (legislative or executive branches) must do. They are often framed in general terms to give the government scope to implement their duties as appropriate to context. The nature of legal duties differs in each legal system based on several factors that will be briefly mentioned in section 5.2.1. However, laws and regulations addressing alcoholic beverages often implement obligations that exist under constitutional, statutory and common law instruments or under international human rights law (see section 5.2.2). Principles and objectives established in constitutional and legislative instruments also play an important role in the justification of specific interventions (see section 5.2.3).

5.2.1 Preliminary considerations

Legal duties, and the ability to invoke those duties before domestic courts, may vary based on several factors. First, this ability may depend upon whether the alcohol intervention at stake is adopted by the legislative or executive branch of government, as the duties that apply to each of them may vary. This difference is particularly relevant in common law systems with a strong separation of powers. For example, in the United States, the legislative branch (the United States Congress) enacts statutory law, whereas the executive branch (the president, agencies of the executive branch and independent regulatory agencies) adopts federal administrative law in the form of rules, regulations, procedures, orders and decisions. Executive branch duties are ordinarily defined by statute, but are sometimes also established under common law (by judicial bodies), as executive branch action is ordinarily justiciable under administrative law. Legislative branch duties may derive from the Constitution, but in many systems such duties may not be invoked before the courts to compel government to adopt legislation (as this will ordinarily be considered a parliamentary function that is non-justiciable before the courts).

Second, and more specifically, the extent to which rights or duties under international law may be invoked before domestic courts to compel legislative or executive branch action depends on each legal system. Some legal systems automatically incorporate international treaties into domestic law, enabling them to be invoked before domestic courts. Other legal systems require that a treaty be incorporated into domestic law through the adoption of a national legal instrument before it can be invoked in domestic courts.

Third, it is worth noting that in federal or decentralized legal systems, legal duties also depend on whether it is the federal or a subnational government that adopts the measure. The legal duties and governance arrangements of subnational governments may be established in the national constitution, subnational constitutions, statutory law or common law in some countries.

5.2.2 Human rights

Although not a binding international treaty itself, the WHO Global alcohol action plan establishes human rights as an operational principle for the implementation of the WHO Global strategy to reduce the harmful use of alcohol. The action plan thus recognizes that alcohol policies are grounded in human rights found in international and regional treaties and conventions (37). More specifically, it recognizes that protection from alcohol-related harm contributes to the fulfilment of the right to the highest attainable standard of health, a right that is enshrined in several international and regional human rights instruments. Beyond the right to health, alcohol policies may also contribute to the fulfilment of other international human rights, as Table 2 illustrates.

Table 2. Examples of international human rights provisions relevant to the regulation of alcoholic beverages

Human rights obligations	Relevant provisions for alcohol regulation
International Covenant on Civil and Political Rights	Right to life (Article 6); children's rights (Article 24).
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Right to equality between men and women (Article 3); protection of mothers before and after childbirth (Article 10); right to health (Article 12).
Convention on the Elimination of all Forms of Discrimination against Women	Elimination of discrimination in the field of health care (Article 12).
Convention on the Rights of the Child (CRC)	Non-discrimination (Article 2); children's rights and best interests of the child (Article 3); right to life (article 6); right to privacy (Article 16); right to access appropriate information (Article 17); protection against physical and mental violence (Article 19); right to health (Article 24); right to education (Articles 28 and 29); right to rest, leisure, recreation and cultural activities (Article 31); protection from the illicit use of narcotic drugs and psychotropic substances (Article 33).
International Convention on the Elimination of All Forms of Racial Discrimination	Elimination of racial discrimination with regard to the right to public health, medical care, social security and social services (Article 5).
Convention on the Rights of Persons with Disabilities	Right to life (Article 10); right to health (Article 25) and to habilitation and rehabilitation (Article 26).

While the above-mentioned human rights instruments refer to the right to health generally, without explicitly referring to alcohol, the latter has been addressed in general comments from human rights bodies. General comment No. 14 of the Committee on Economic, Social and Cultural Rights recalls that Article 12 of the ICESCR discourages the abuse of alcohol and underlines that the right to health, like all human rights, imposes on States parties the obligations to respect (States must refrain from interfering with the enjoyment of the right to health), protect (States must take measures that prevent third parties from interfering with the right to health) and fulfil (States must adopt legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health). The obligation to fulfil results, in particular, in a duty of States parties to carry out information campaigns with regard to the abuse of alcohol (38).

General comment No. 4 of the Committee on the Rights of the Child provides that the right of adolescents to access appropriate information is crucial if States are to promote measures regarding the abuse of alcohol; that States have a duty to prevent and eliminate interpersonal violence among adolescents by restricting access to alcohol; that they should regulate or prohibit information on and marketing of alcohol, particularly when it targets children and adolescents; and that States should provide information on the use and abuse of alcohol (39).

General comment No. 15 of the Committee on the Rights of the Child recognizes that, under Article 24 of the CRC, children have a right to information and education on all aspects of health to enable them to make informed choices in relation to their lifestyle, including information on the dangers of alcohol, and imposes on State parties a duty to protect children from alcohol, including through the regulation of its advertising and sale and of its promotion in places where children congregate and in media, channels and publications accessed by them. This document also states that private companies should refrain from the advertisement, marketing and sale of alcohol to children (40).

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has urged countries to ban the advertising, promotion and sponsorship by alcohol manufacturers of all children's sporting events and of sporting events that could be attended by children (41). The Committee on the Rights of the Child has asked countries to make the best interests of the child a primary consideration when regulating marketing to children and to prohibit all profiling and targeting of children for commercial purposes (42).

While human rights instruments assign the duty to respect, protect and fulfil human rights to States, the United Nations Guiding Principles on Business and Human Rights highlight that businesses also have a responsibility to respect human rights, including the right to health (43).

At national level, several national constitutions recognize the right to health and the rights or interests of the child (44). Some national constitutions also protect the right to a healthy or nutritious diet. In Mexico, Article 4 of the Constitution protects all three of those rights: the right to health, the rights of the child and the right to a healthy diet (45). Ireland regularly reports on alcohol policies under the CRC and the ICESCR, thus linking alcohol policies and human rights (46). Domestic courts have also found that alcohol interventions contribute to the fulfilment of human rights, including the right to health, consumer rights and the rights of the child. For example, the High Court and the Court of Appeal of Kenya held that the Alcoholic Drinks Control Act 2010, which contains provisions on health warnings, contributes to the right of consumers to have access to the information necessary for them to gain full benefit from goods and services and the protection of consumers' health, safety and economic interests. In balancing these rights with the limitations imposed on the right to property, the courts concluded that the legislation was constitutional (47).

5.2.3 More general constitutional principles and objectives supporting alcohol interventions

The regulation of alcoholic beverages may also contribute to public health and social principles and other more general objectives established in constitutions and statutory laws. Constitutions typically provide broad public health objectives. For example, in India, Article 47 of the Constitution provides that:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health (34).

Beyond public health principles and objectives, alcohol interventions may contribute to broader constitutional goals. For instance, labelling measures and marketing restrictions are particularly suited to strengthening access to information (see section 6) and, thus, consumer protection, which

is also a State duty under more than 50 national constitutions and 100 statutory laws on consumer protection (48). One of the objectives of consumer protection is access to information, as provided in the United Nations Guidelines for Consumer Protection (49). The legal value of general objectives varies from one legal system to the other and may therefore be contested, but objectives can, at least, be used to interpret other provisions. In some jurisdictions, religious and cultural concerns underpin a complete prohibition of production, transportation, sale and consumption of alcoholic beverages (50).

Referring to these legal duties and objectives in alcohol laws or regulations may be useful in subsequent interpretation and implementation of the laws and for evaluation of the compatibility of laws with national and international obligations. This may be the case, for example, if a court has to weigh and balance competing interests in order to reach a conclusion on the lawfulness of an intervention. Explicit links between the alcohol intervention and legal duties are particularly relevant when the latter are more difficult to identify and when legal duties are general rather than specific. To address this issue, some alcohol laws provide a clear and strong statement of objectives.

The objectives of the Alcoholic Drinks Control Act 2010 in Kenya provide an example of a legislative provision setting out a specific health objective alongside complementary objectives, as follows (21):

The object and purpose of this Act is to provide for the control of the production, sale, and use of alcoholic drinks, in order to –

- (a) protect the health of the individual in the light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect the consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;
- (c) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
- (d) inform and educate the public on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (e) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (f) promote and provide for treatment and rehabilitation programmes for those addicted or dependent on alcoholic drinks; and
- (g) promote research and dissemination of information on the effects of alcoholic drink consumption, in particular the health risks that may arise therefrom.

Example 3. General objectives pursued by the Decree on Alcohol Consumption of Colombia

Decree 120 of 2010 on Alcohol Consumption of Colombia aims to protect minors and the community in general from the harmful effects of alcohol consumption and establish measures to decrease harm and minimize the risk of accidents, violence and criminality associated with alcohol consumption (51).

To support those objectives, the preamble of the decree recalls that the Constitution imposes upon the State the obligation to protect families and children and recognizes the right of adolescents to protection and education. The preamble also mentions international obligations ratified by Colombia related to the rights of the child and the interpretation followed by the Constitutional Court regarding what the child protection obligation entails for the State. The preamble further refers to the objectives pursued by other laws applicable to alcoholic beverages and provides some evidence on consumption patterns and health and social risks associated with alcohol consumption.

5.3 Restraints on the regulation of alcoholic beverages

Legal powers and duties, including those referred to above are rarely without limits. Rather, limits on government powers and duties frequently exist because, for example, the power or duty is limited in scope or because there are limitations arising from human rights obligations (see section 5.3.1), trade/commerce clauses, international trade and investment obligations (see section 5.3.2) or procedural requirements such as due process obligations. Depending on the content and legal system, these limitations may constrain both the legislative and executive branches of government. Put differently, there are ordinarily limits on the power of the legislature to make laws, as well as limits on their administration by the executive branch of government.

Limits on executive branch action can also arise under administrative law, which may be set out in legislation, developed through case law or established in national or other constitutions. This may provide a basis for judicial review on substantive grounds, such as unreasonableness, or on procedural grounds, such as lack of due process.

Claims that government (legislative or executive branch) has exceeded its powers or violated procedural obligations are highly specific to their facts and are therefore not described here. However, claims invoking human rights and/or commerce or trade obligations are more generalizable. In each context, similar approaches to balancing different interests are involved, and these are described briefly here before being addressed more specifically in section 10.

5.3.1 Restraints grounded in human rights

As the discussion above implies, from time to time human rights might be invoked to challenge alcohol interventions. For example, it might be argued that an alcohol marketing ban violates the freedom of expression or that the obligation to include specific information on alcohol labels violates

property rights. Measures imposing sales bans or restricting retail hours might be challenged based on the right to trade or the freedom to conduct a business. These types of arguments might be grounded in constitutional, statutory or common law rights and freedoms or in regional human rights instruments, including the American Convention on Human Rights, the European Convention on Human Rights and the African Charter on Human and People's Rights. The same caveats mentioned in section 5.2.1 apply here.

However, existing case law reveals that such arguments challenging alcohol or similar laws are ordinarily unsuccessful in the context of well-designed interventions. Courts usually conclude that well-designed measures are justified and proportionate or reasonable with respect to the objectives pursued. In adjudicating these types of disputes, courts around the world apply different standards of proof and approaches. However, they often consider some of the following questions in their assessment.

- What, if any, limits are there on the scope of the rights in question? Human rights and freedoms are not absolute and can therefore be limited in order to balance the human rights of the plaintiff against society's demands or the needs of the State (52). For example, in examining the alcohol licensing system of the state of Tamil Nadu in India, the Supreme Court held that there was no fundamental right to trade in liquor, and therefore no vested right to obtain a licence. In the alcohol context, the right to practice a profession had to be balanced with other legitimate interests promoted by the licensing system (53). Some rights also have inherent limits. For example, the right to property might be limited by reference to the scope of the property right in question.
- Does the intervention pursue a legitimate purpose? Courts will ordinarily examine the objectives pursued by the alcohol intervention. States often invoke public health protection, consumer protection or the best interests of the child, although other rights and freedoms may be raised (see Table 2). The grounds for limitations and whether these are explicitly provided or implied varies across legal systems.
- What is the relationship between the alcohol intervention and the purpose? This question takes different forms in different legal systems. For example, in the United States, the standard of proof applied differs depending on the right invoked, whereas in the European region the question is ordinarily framed as whether the measure is appropriate to attain the purpose. While public health is generally admitted as a legitimate purpose, courts then examine how closely related the intervention is to the purpose, such as whether the challenged measure is capable of attaining that goal. Several elements may be relevant at this stage.
 - Objectives pursued by the measure: for example, in Scotland, the United Kingdom, the Supreme Court was asked whether a minimum unit price for alcoholic beverages was contrary to EU law. For the assessment of this question, the Supreme Court examined the objectives of the measure, which were: reducing, in a targeted way, both the consumption of alcohol by consumers whose consumption is hazardous or harmful and, generally, the population's consumption of alcohol; and targeting the correlation between the health and social problems arising from extreme drinking by those in poverty in deprived communities. The specificity of these objectives contributed to justifying why a minimum unit price for alcohol, instead of any other measure, was suitable (54).
 - Evidence: at this stage, States may also be required to provide evidence that the contested intervention will effectively contribute to attaining the objectives pursued. For example, the High Court of South Africa examined the validity of a temporary alcohol sales ban during COVID-19, which was adopted to contain hospital admissions and reduce the number of cases of alcohol-

related trauma, with the ultimate objective of increasing the capacity of the health care system to accommodate the increased demand created by the pandemic. In assessing these arguments, the High Court evaluated the number of beds that could be expected to be freed as a result of this measure and the impact it would have on COVID-19 admissions (55).

- Consistency of the policy: in some cases, courts may also look at the consistency of the government's approach to determine whether the intervention is appropriate to attain the objectives pursued. For example, the Court of Justice of the European Union (CJEU) determined that Scotland's minimum unit pricing legislation was appropriate to achieve the objectives pursued because it was not a stand-alone intervention but, instead, was one of a range of 40 interventions designed to "combat the devastating effects of alcohol" and reduce alcohol consumption "in a consistent any systematic manner" (56). By contrast, the Constitutional Court of Colombia ruled that alcohol monopoly legislation was unconstitutional because it did not apply in a consistent manner. While the law allowed Indigenous communities to keep producing traditional alcohol despite the establishment of an alcohol monopoly, this exception did not apply to all Indigenous communities and, in particular, it excluded some Afro-Colombian communities. The differentiated treatment had not been justified by the legislator and resulted in discrimination (57).
- Are there less restrictive measures for attaining the objectives pursued? Claimants will often claim that alternative measures exist that are less restrictive but would reach the same objective as the one pursued by the government. For example, in Scotland, the United Kingdom, the Scotch Whisky Association claimed that taxation would be a less restrictive and equally effective alternative to minimum unit pricing. However, the Supreme Court of the United Kingdom held that taxation would be less effective to achieve the aims pursued because it would increase prices of all alcoholic beverages, whereas minimum unit pricing would target cheap alcohol products by reference to their alcohol content. It thus concluded that taxation would impose an unintended and unacceptable burden on those whose alcohol consumption was not a problem. The Supreme Court also held that minimum unit pricing was easier to understand, simpler to enforce and less open to absorption by retail outlets than taxation.
- Is the measure proportionate *stricto sensu*? In a final step, some courts examine whether the restriction that is imposed on the claimant's rights or freedoms outweighs the benefits that result from the public health measure. In the Scotland, the United Kingdom, alcohol minimum unit price case, the Supreme Court of the United Kingdom held that health and the market were essentially incomparable values and that the trade consequences of minimum unit pricing for the claimants could not outweigh the health benefits intended by the measure. In South Africa, the Constitutional Court examined whether the alcohol retail ban on Sundays, Christmas day and Good Friday violated the right to economic activity and the freedom of religion. In a dissenting opinion, Justice Sachs admitted that this rule restricted the freedom of religion by endorsing the Christian religion while marginalizing and discriminating against other faiths. However, this restriction was indirect and marginal, so the retail ban was a proportionate measure to reach the State's interest in encouraging temperance (58).

5.3.2 Restraints grounded in commerce, trade and investment obligations

In addition to protecting the right to conduct a business, national constitutions may also restrain government's ability to limit trade within the national territory. In the case of federal systems where commerce occurs across state borders both the national and subnational governments may be expressly limited in their power to stop interstate trade.

Private law may provide further examples of how domestic law can be used to restrain government power. For example, government may contract in ways that limit its authority, such as by offering tax concessions to a manufacturer as part of an investment incentive or entering into a concession or other agreement that permits a retailer or venue to operate on public land. Although this is not akin to a constitutional restraint on power, it may nonetheless constitute a legal limitation on action once in place.

More generalizable examples of restraints can be found in trade and investment obligations that arise under international economic law, such as from membership of: (i) the WTO, (ii) a free-trade agreement, (iii) a customs union, and (iv) an investment treaty. Although these agreements come in a wide variety of forms, and they are mentioned only briefly here to describe international restraints in very general terms, they commonly involve legal analysis similar to that under human rights norms.

In the case of WTO law, for example, WTO Members must ensure that their alcohol laws and regulations comply with WTO covered agreements regarding tariffs and trade in goods (59), technical barriers to trade (60) and sanitary and phytosanitary measures (61). They must also comply with WTO rules on registration and use of trademarks and other intellectual property rights protected by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (62). However, WTO covered agreements protect a balance between rights and obligations and thereby provide scope, including through exceptions, for governments to restrict trade for public health purposes. As the discussion in section 10 illustrates, the most relevant legal principles are that measures must be non-discriminatory and not more trade-restrictive than necessary to protect health.

Although the necessity test may differ slightly across WTO covered agreements, it generally begins with a weighing and balancing test whereby WTO panels weigh the contribution of a measure to its objective against the trade restrictiveness of the measure in light of the importance of the objective pursued or the risks to be addressed. Panels may then consider whether there are reasonably available, less trade-restrictive alternative measures to achieve the objective. A final step involves examining whether the measure is applied in good faith, such as by asking whether there is some unjustifiable or arbitrary discrimination or whether the measure is a disguised restriction on trade.

Customs unions, such as the EU, the Southern Common Market (MERCOSUR), the Gulf Cooperation Council (GCC) and the West African Economic and Monetary Union (WAEMU), typically aim to liberalize trade between its members and thus incorporate free movement rules. Customs unions also provide some level of harmonization, meaning that they regulate certain issues regionally and thereby limit the power of individual Member States to legislate. In the alcohol field, customs unions may have legislation on marketing, consumer protection, food composition and labelling, online retail and excise taxes, for example. In areas not covered by harmonizing legislation, Member States typically retain the power to adopt national legislation as long as it does not violate free movement rules or other general principles, rights and freedoms of the customs union. National legislation on alcoholic beverages often restricts free movement, although restrictions can typically be justified on public health grounds. Case law from customs unions courts and tribunals will be explored in section 10 on legal considerations.

Alcohol laws may also fall within the scope of obligations in free-trade and/or investment agreements (63, 64). Free trade agreements (FTAs) aim to further liberalize trade (beyond WTO commitments) between contracting parties by further reducing tariffs and other barriers to trade. As is the case in WTO law, alcohol is generally subject to the same liberalizing measures as other products. Furthermore, some of these agreements include provisions that address alcohol trade

specifically (63). For example, some FTAs provide that alcohol labelling requirements must allow suppliers to provide information on a supplementary label affixed to the alcohol container instead of requiring such information to be printed on the label itself (65). However, FTAs typically provide exceptions similar to the necessity test, including for public health reasons (see for example Article 18 of Chapter 2 of the Singapore-Australia Free Trade Agreement (SAFTA) or Article 2.22 of the EU-Viet Nam Free Trade Agreement). Therefore, alcohol interventions are ordinarily considered lawful provided they are non-discriminatory and not more trade-restrictive than necessary to achieve their health objective.

International investment agreements may also restrain or limit alcohol laws. These agreements may be found as investment chapters in FTAs or as stand-alone international treaties. Among other standards of protection, they generally require a State party to ensure fair and equitable treatment and protection against expropriation to foreign investors and investment within their scope. Some agreements may include necessity exceptions or specific references to health (66), but many others are silent on health, leaving the right to regulate open to interpretation. However, it is important to note that no disputes on alcohol regulatory measures have arisen under such agreements, so they are not discussed further in this publication.

Restraints imposed by human rights and trade obligations, such as those mentioned above, underline the significance of proportionality. In both cases, restrictions will ordinarily be deemed lawful if they are justified and proportionate to the objectives pursued. Hence, defining the legitimate aims pursued by a regulation, considering whether the measure achieves the objectives pursued and examining alternative measures may be useful steps in the lawmaking process. The consistency of the overall alcohol policy of the country in question will also be crucial in this assessment. These questions will be assessed in detail for each specific intervention.

Table 3 summarizes general steps that may be taken to strengthen a government's legal position, considering the legal powers, duties and restrictions described in this section.

Table 3. Steps to strengthen a government's legal position

Step	Description
Consider legal issues throughout the lawmaking process	<p>Work with lawyers to evaluate your legal powers, duties and restrictions (see section 5).</p> <p>Seek advice from lawyers to assess domestic and international legal implications of the design and implementation of the law/measure. Potential constitutional challenges might be considered, as well as case law for balancing competing rights, to ensure that the law or measure is a valid, proportionate, reasonable exercise of power (see section 10).</p>
Define robust regulatory objectives	<p>Define regulatory objectives in a way that:</p> <ul style="list-style-type: none"> • links the law or measure to internationally recognized treaties (including human rights treaties), conventions, standards and rights set out in national law, under which the government has duties to protect citizens from alcohol harm (see section 5.2); • links the law or measure to supportive evidence that the proposed intervention is effective in achieving the government's public health and other objectives (see the rationale in sections 6, 7 and 8); • links the law or measure to WHO recommendations and other international guidance to align with international consensus and global expert guidance (see section 4); and • includes proximal/intermediate objectives that are achievable in the short to medium term, and for which achievement can be used to establish progress towards broader public health goals (see the rationale in sections 6, 7 and 8 to identify proximal objectives).
Implement alcohol interventions in a comprehensive package of coherent measures	<p>A comprehensive approach, including several interventions such as marketing restrictions, labelling measures, and tax and price policies, is more likely to achieve maximum impact on the government's policy goal.</p> <p>Implementing a framework of measures may strengthen the government's position against legal claims that alternative, less trade-restrictive measures should have been adopted instead.</p>
Adopt a whole-of-government approach	<p>There will be a need for input, at an appropriate point in the lawmaking process, from a range of government agencies, such as those with responsibility for health, children and families, legal and constitutional affairs, trade and industry, consumer protection, communications, broadcasting, marketing and advertising, and intellectual property (see Figure 3).</p> <p>Ensure that new commitments are not made to investors in the alcohol sector for purposes of inducing foreign investment that may be inconsistent with proposed restrictions.</p>

Step	Description
Ensure flexibility in the law to permit amendment if necessary	<p>Consider delegating authority to a relevant agency in the executive branch of government to make or amend regulations. This may allow the government to address unintended or unanticipated impacts and loopholes once restrictions are implemented, as well as developments in marketing technology, practices and product innovation.</p> <p>Use the legal environment assessment regularly to keep track of existing laws and regulations, gaps, and potential inconsistencies that may need to be addressed (see Annex 1).</p>
Gather the best available evidence of risk and policy effects	<p>Gather and use domestic evidence on alcohol use and harms, using disaggregated data whenever possible (see Annex 1).</p> <p>Use regional or international evidence and explain its relevance and applicability to national circumstances.</p>
Respect due process rights and procedural requirements in the lawmaking process	<p>Comply with procedural requirements to reduce the risk of a successful legal challenge. Domestic processes for developing policy, enacting legislation or publishing regulations differ between jurisdictions and may be set out in law, established through government procedure or established through usual practice (see sections 4 and 5).</p> <p>Due process requirements also exist under international law, such as the notification procedures of the WTO Committee on Technical Barriers to Trade, and under regional trade agreements or customs unions.</p> <p>Where due process requires public consultation on a policy, law or regulation, consider documenting compliance with evidence that submissions from the public consultation process were given due consideration.</p>
Create a document development, retention and management policy	<p>Freedom of information requests are a tactic used by industry to tie up government resources and delay implementation. Where freedom of information laws are in place, governments should be prepared to respond to such requests in advance by providing sufficient resources and developing an approach to document management from the outset of the lawmaking development process.</p>
Provide sufficient notice to allow compliance	<p>Provide notice before the law comes into force, or before compliance becomes mandatory, to ensure that producers have sufficient time to adapt to the new regulatory environment. Sufficient notice weakens any industry argument that it has suffered loss as a consequence of the new regulations. What constitutes a sufficient period of time differs between jurisdictions, but guidance may be available from prior national experience or from other jurisdictions implementing similar measures.</p> <p>In providing sufficient notice for product adaptation, consider also how any new intervention might apply to vintage alcoholic beverages, such as cellared products.</p>

6. Addressing the acceptability of alcohol through laws and regulations

The acceptability of alcohol is one of the determinants that drives alcohol consumption and is maximized by strategies aimed at making alcohol socially acceptable (normalization) and even associated with positive features, such as associating alcohol consumption with social, physical or sexual success, or with relaxation or disinhibition.

Interventions aimed at addressing the acceptability of alcohol may come in a wide variety of different forms. Often, they will seek to raise awareness about alcohol-related harms and reduce the social acceptability or appeal of alcohol consumption (without stigmatizing consumption). Health promotion interventions that contribute to these objectives include public health campaigns; restrictions on availability, such as in public or social spaces; restrictions on public display, such as during public events; restrictions on marketing (see section 6.1); and labelling requirements (see section 6.2).

Approaches to marketing and labelling to address the acceptability of alcohol:

- Introduce comprehensive marketing bans or restrictions:
 - Introduce a comprehensive marketing ban for alcoholic beverages applying to all direct and indirect advertising, promotion and sponsorship activities and all beverage categories.
 - In the absence of a comprehensive ban, introduce partial marketing bans/restrictions for alcoholic beverages, such as prohibiting some forms of advertising, promotion or sponsorship; prohibiting marketing to which children are exposed; restricting the content of marketing; and/or prohibiting marketing of designated beverage categories.
 - Include all media, including digital media, in any marketing ban or restriction adopted.
- Regulate the labelling of alcoholic beverages:
 - Define in the law those elements that must be included on the label of alcoholic beverages, such as the ingredients list, nutrient information, alcohol content and/or number of servings (standard drinks).
 - Require health warning messages and/or pictograms on the label of alcoholic beverages.
 - Ban or restrict nutrition and health claims on alcohol labels.
 - For any label required by law, specify the size, font, colour, rotation, placement and any other formal specifications.

6.1 Legislating comprehensive marketing bans and restrictions

Restricting marketing is recommended in the WHO Global strategy to reduce the harmful use of alcohol, and the WHO Global action plan for the prevention and control of NCDs also include bans or comprehensive restrictions on alcohol advertising as one of its best buys (most cost-effective interventions). Restrictions or bans on promotions of alcoholic beverages in connection with sponsorships and activities targeting young people are included as a recommended intervention.

The WHO Global strategy recommends that Member States:

1. Set up regulatory or co-regulatory frameworks, preferably with a legislative basis, and supported when appropriate by self-regulatory measures, for alcohol marketing by:
 - (i) regulating the content and the volume of marketing;
 - (ii) regulating direct or indirect marketing in certain or all media;
 - (iii) regulating sponsorship activities that promote alcoholic beverages;
 - (iv) restricting or banning promotions in connection with activities targeting young people;
 - (v) regulating new forms of alcohol marketing techniques, for instance social media.
2. Develop effective public or independent systems of surveillance of marketing of alcohol products.
3. Set up effective administrative and deterrence systems for infringements on marketing restrictions.

Given that this publication focuses on laws and regulations, it is worth noting that comprehensive bans offer a higher level of health protection than partial restrictions, limit the substitution of marketing expenditure from one form of marketing to another and are ordinarily simpler to enforce than other measures. Accordingly, the discussion here focuses first on comprehensive alcohol marketing bans, with partial restrictions being discussed later, recognizing that they are likely to achieve a lower level of health protection.

6.1.1 Rationale

There is an inverse association between increased marketing restrictions and total alcohol consumption volume (67). That is, marketing restrictions can reduce total alcohol consumption. The WHO Global strategy is premised on this association, as it acknowledges the impact of alcohol marketing on youth's initiation of alcohol use and higher risk and hazardous patterns of youth alcohol use (68).

In light of the risk that marketing can stimulate demand, governments might restrict it with the objectives of decreasing exposure to marketing and/or the power of marketing. In imposing marketing restrictions, governments may seek to achieve more proximal objectives, such as:

- decreasing recognition and awareness of alcoholic beverages;
- decreasing the appeal, attractiveness and/ or social acceptability of alcoholic beverages;
- decreasing intentions to purchase or consume alcoholic beverages; and
- decreasing alcohol initiation;

thereby decreasing purchases, consumption and, ultimately, harm associated with alcohol.

Some more specific forms of marketing restrictions may also have more specific objectives. For example, restricting or prohibiting price promotions may seek to reduce unplanned purchases and/or heavy episodic drinking. Similarly, content restrictions, such as prohibitions on references to social, sporting or sexual success, may seek to limit the ability of marketing to increase the attractiveness of alcoholic beverages or limit misleading marketing. The SAFER technical package acknowledges that alcohol marketing restrictions may also seek to prevent young people's exposure, reduce the presence of alcohol cues for alcohol-dependent persons and prevent industry influence on social norms relating to alcohol consumption.

Governments may also have other objectives, as may be evident in partial restrictions such as a prohibition on marketing directed at children. Such measures might seek to achieve the general aims above while also reducing the initiation of alcohol use among children. The level of health protection sought by marketing restrictions will be evident in their design, with comprehensive bans seeking a higher level of protection. Similarly, mandatory laws and regulations applicable across the sector seek to achieve a higher level of health protection as compared with voluntary measures, which are less likely to be implemented.

6.1.2 Approaches to legislating marketing restrictions

Although the WHO Global strategy recommends adopting comprehensive restrictions on alcohol marketing, in practice governments have followed a variety of approaches. These approaches vary in intensity and scope, and the choice among interventions depends on legal powers, restrictions and political preferences. Two approaches are described in this section. The first approach refers to comprehensive bans on alcohol advertising, promotion and sponsorship, whereby all advertising, promotion and sponsorship is banned. The second approach is partial, referring to restrictions on alcohol advertising, promotion and/or sponsorship. These include restrictions on time, content or placement applicable to alcohol advertising, promotion and/or sponsorship and to measures that apply only to some categories of alcoholic beverages.

6.1.2.1 Comprehensive bans on the advertising, promotion and sponsorship of alcoholic beverages

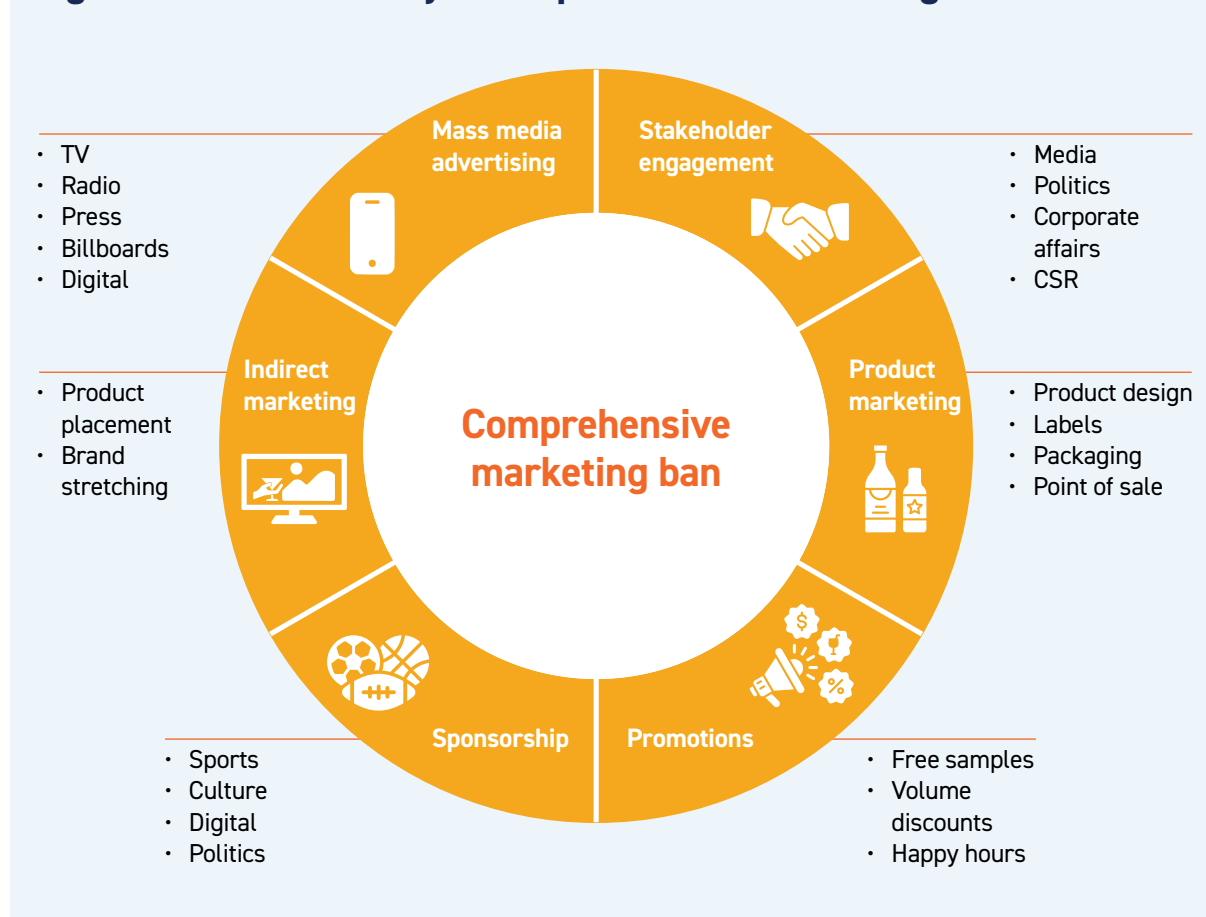
A comprehensive ban on the advertising, promotion and sponsorship across all media is the most encompassing regulatory measure to restrict marketing of alcoholic beverages. This intervention is frequent for tobacco products, as it is required by Article 13 of the WHO FCTC. The Guidelines for implementation of Article 13 of the WHO FCTC provide that comprehensive bans on advertising, promotion and sponsorship cover at a minimum the following practices (non-exhaustive list) (69):

- direct promotion:
 - television and radio advertising;
 - advertising in print publications (such as magazines and newspapers);
 - advertising in digital media (such as online platforms, social media, videogames, apps);
 - billboards and outdoor advertising;
 - point-of-sale advertising;
- indirect promotion:
 - free distribution of products;
 - promotional discounts;

- brand stretching;¹
- brand sharing;²
- product or brand placement in television, films and other media contents;
- sponsorship;
- Point-of-sale product displays;
- Promotional packaging and product design features;
- CSR activities.

Comprehensive bans on the advertising, promotion and sponsorship of alcoholic beverages may also follow a broad approach to marketing and cover the same practices as those described above. The following figure illustrates the practices to be prohibited under a comprehensive marketing ban.

Fig 4. Areas covered by a comprehensive marketing ban



¹ According to the guidelines for implementation of Article 13 of the WHO FCTC, brand stretching occurs when a tobacco brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated.

² According to the guidelines for implementation of Article 13 of the WHO FCTC, brand sharing occurs when a brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) on a non-tobacco product or service is connected with a tobacco product or tobacco company in such a way that the tobacco product or company and the non-tobacco product or service are likely to be associated.

Several countries, including Bangladesh, Indonesia, Lithuania, Norway and Sri Lanka, have adopted comprehensive alcohol marketing bans (70).

One option for defining a comprehensive ban is to draft a media-neutral provision and cover any current or future means of communication. For example, Section 35(1) of the NATA Act 2006 of Sri Lanka provides:

A person shall not publish or cause to be published, or authorize the publication of, a tobacco advertisement or an alcohol advertisement (22).

Under this instrument, alcohol advertisement is defined as any distinctive writing, still or moving picture, sign, symbol or colours or other visual image or any audible message or any combination of the aforesaid that promotes or is intended to promote –

- (a) the drinking of liquor;
- (b) the purchase or use of an alcohol product;
- (c) a trademark registered in respect of any alcohol product or articles that include alcohol products;
- (d) a brand name associated with an alcohol products;
- (e) the name of the manufacturer of an alcohol products.

The NATA Act 2006 further prohibits alcohol sponsorship and promotion. Under Section 36, alcohol brand names, trademarks or symbols cannot be used in education, cultural, social or sporting events and activities. Under Section 37, alcohol manufacturers, importers and distributors cannot distribute alcohol products free of charge, nor can they offer any prizes, gifts, discounts or contests to the purchasers of alcohol products.

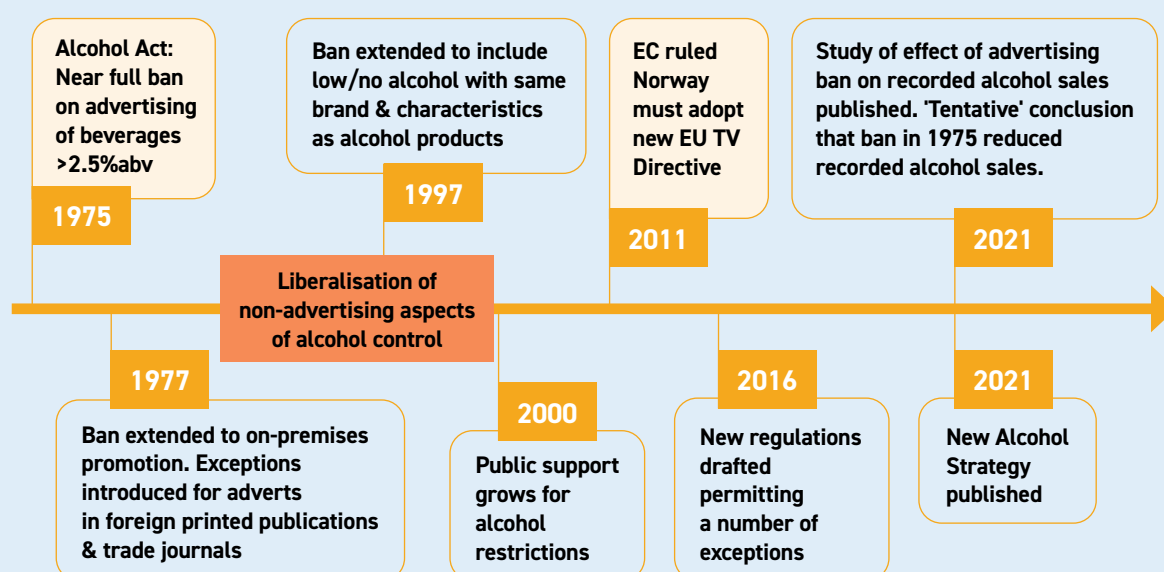
Where a comprehensive ban is established, some commercial communication may still be permitted on an exceptional basis. For example, in Lithuania, Article 29 of the Law on Alcohol Control allows alcohol producers and retailers to provide information about their products on their websites (71). This information is limited to labelling requirements, alcoholic beverage category, country of origin, geographical indication, names and registered trademarks of producers and price. The Supreme Administrative Court of Lithuania clarified that this exception is limited to websites and, therefore, the law does not permit information to be published in the brand's accounts on social media. The Court further noted that the information provided on websites must not go beyond a mere description of the product and must not be aimed at promoting the alcoholic drink (72). In Sri Lanka, Section 35 of the NATA Act 2006 also provides a list of exceptions to the general advertisement ban. For example, descriptive information about the products and their prices can be provided at the point of sale and in professional publications, and alcohol advertisements are permitted in printed and broadcast materials when the advertisement is produced abroad and the publication or programme is not solely intended for Sri Lankan readers, listeners or viewers (22).

Some countries have developed legal provisions defining both prohibited and permitted marketing practices, providing exceptions to general rules and laying down procedural clauses. The measures implemented in Norway illustrate this approach.

Example 4. Norway's alcohol marketing ban

Under its Alcohol Act (73) and Alcohol Regulations (74), Norway has established one of the most comprehensive alcohol marketing bans in the world. An evaluation of this alcohol ban suggests that it has had a protective effect by reducing total alcohol consumption (75). This ban is implemented in concert with a retail monopoly on the sale of alcoholic beverages with an alcohol by volume content exceeding 4.75%. The stepwise development of this measure is illustrated in the figure below.

Fig 5. Norway's alcohol marketing policy timeline (76)



The objectives pursued by the marketing ban are:

- decreasing demand for alcoholic beverages; and
- maintaining awareness in the population that alcoholic beverages differ from other commodities and that special provisions are required to limit alcohol consumption.

Section 9-2 of the Alcohol Act bans, in general, all alcohol advertising, including indirect advertising:

The advertising of alcoholic beverages shall be prohibited. The prohibition also applies to the advertising of other products carrying the same brand or distinctive mark as alcoholic beverages.

Example 4. Norway's alcohol marketing ban (continued)

The Alcohol Regulations elaborate on this provision. Section 14-1 specifies that alcoholic beverages must not be included in advertising for other products or services. Section 14-2 defines "advertisement" as:

...any form of mass communication for the purpose of marketing, including advertisements in printed matter, films, radio, television, telephone networks, data networks, illuminated advertisements, hoardings, signboards and similar devices, depictions, exhibitions and the like, distribution of printed matter, trade samples, etc.

In accordance with these provisions, the Norwegian alcohol marketing ban includes:

- a prohibition of all forms of marketing in all communication channels, including digital media and product packaging;
- a prohibition on indirect marketing, which is the marketing of other products that share the same branding or identifying features as alcoholic beverages, such as non-alcoholic and low-alcohol beverages which serve as advertising for alcoholic beverages;
- a prohibition on using alcoholic beverages to advertise other products; and
- a prohibition on all forms of free distribution of alcoholic beverages for marketing purposes.

As in Lithuania and Sri Lanka, Norway provides exceptions to the marketing ban, including:

- plain product information on the product packaging itself, such as alcohol content, bottle size and manufacturer, as well as plain and fact-based notes on taste, use and storage;
- plain product information in alcohol shops and restaurants; and
- plain product information on the producers' websites.

The ban applies to marketing but not to other content protected by freedom of speech. Editorial reference to alcohol in newspapers, magazines, television and other media and statements by individuals generally fall outside the scope of the marketing ban, as long as they are not designed, initiated, influenced or funded by industry operators or other actors with an interest in the sale of alcohol.

The example of Norway shows an option for banning alcohol marketing through specific and detailed provisions. This approach contributes to greater legal certainty but involves a more complex process and more frequent revisions and amendments than the Sri Lankan approach.

6.1.2.2 Partial bans on the advertising, promotion and sponsorship of alcoholic beverages

Some jurisdictions only prohibit specific elements of alcohol advertising, promotion and/or sponsorship. Governments have implemented partial bans on the advertising, promotion and sponsorship of alcoholic beverages in different ways.

- Some countries only ban the advertising, promotion or sponsorship of alcoholic beverages, but not all three of them. For example, Article 31 of Law No. 1100-XIV of the Republic of Moldova regarding the manufacture and circulation of ethyl alcohol and alcohol products prohibits the offering of alcoholic beverages as prizes in contests and games of chance (alcohol promotions), but it does not prohibit (although it restricts) the advertising of alcoholic beverages (77).
- Some countries ban the advertising, promotion and/or sponsorship of alcoholic beverages, but only in specific media. For example, Article L3323-2 of the Public Health Code of France prohibits alcohol advertising in most media, but it allows such advertising, inter alia, on the Internet, subject to certain restrictions (78).
- Some countries ban the advertising, promotion and/or sponsorship of specific alcohol categories. For example, Viet Nam only bans alcohol advertising for beverages with an alcohol content above 15% ABV, whereas it allows, with restrictions, the advertising of alcoholic beverages with a lower alcohol content (see Example 5).

One difficulty in the implementation of partial restrictions is that the law may need to be regularly updated to specify prohibited marketing, taking into account, for example, technological developments. In order to avoid legislative gaps, some countries have adopted a positive list of admitted practices rather than a negative one of prohibited practices. For example, France follows a system under which the Public Health Code does not specify which forms of marketing are prohibited but rather which forms are allowed. This means that, as technology evolves or marketing methods develop, new forms of marketing are prohibited unless they are incorporated into the list of permitted practices.

In principle, governments should consider their objectives and how the scope of any restriction relates to them (that is, whether the restriction with its current or proposed scope is apt to achieve the objectives pursued). Evidence in the context of tobacco control shows that partial marketing bans of certain products or media often result in the expansion of marketing activities in other, permitted products or media (79). Accordingly, WHO guidance recommends a comprehensive approach in order to offer a higher level of health protection and achieve health objectives.

6.1.2.3 Restrictions on time, placement, content and similar measures

Some jurisdictions regulate alcohol marketing by imposing time, placement or content limitations on the advertising, promotion and/or sponsorship of alcoholic beverages, but do not ban such activities.

Time restrictions typically seek to reduce the exposure of children to alcohol advertising. They usually prohibit alcohol advertising at times when children are more likely to be exposed. For example, in Kenya, the Information and Communications Act provides that content intended for adult audiences can only be aired during the “watershed period”, from 22:00 to 05:00 (80). The Kenya Film Classification Board has interpreted this provision as including alcohol advertising (81). However, restricting alcohol marketing at certain times may reduce advertising exposure among the youngest viewers but increase exposure among older teenagers, as advertising shifts to later times of the

day when this portion of the population is more likely to be watching and/or listening to broadcast and non-broadcast media (82). Recognizing the difficulties of targeting alcohol marketing to (young) adults without exposing minors, the WHO Global strategy proposed considering a precautionary approach to protecting young people against marketing techniques (83).

Placement restrictions may seek to reduce exposure to and/or the power of alcohol marketing. They ordinarily prescribe limits for placing alcohol advertising, promotion or sponsorship on different media. For example, restrictions may determine the percentage of advertising space that alcohol advertising can occupy in a printed publication or on television, they may prohibit alcohol advertising, promotion or sponsorship in media intended for children, or they may prohibit alcohol advertising on the front or back cover of publications. Placement restrictions may also allow alcohol advertisements in specialized publications only or restrict alcohol advertising, promotion or sponsorship in specific locations (for example, near schools and parks, on the highway or in public transport). For example, in Viet Nam the Law on the Prevention and Fight against the Negative Effects of Alcohol completely bans advertising for alcoholic beverages with more than 15% ABV (see example 5) and restricts the advertising of alcoholic beverages containing between 5.5% and 15% ABV:

- at cultural, theatre, movie and sports events and activities;
- in outdoor advertising facilities, except for signboards of alcohol trading entities;
- on vehicles; and
- within a certain distance from educational and recreational facilities frequented by minors and from vocational training establishments and universities.

Where the primary objective of placement restrictions is to reduce children's exposure to alcohol marketing, the law sometimes bans the placing of marketing in media and programmes intended for children and at a minimum prescribed distance from certain venues or at events attended by children.

Content restrictions generally seek to reduce the power of alcohol marketing and strengthen consumer protection. They may prescribe mandatory health warnings (discussed in further detail below in the context of labelling) whenever alcohol advertising occurs, prohibit certain content or prescribe an exhaustive list of permissible contents. For example, in the Republic of Moldova Article 43 of the Law on Advertising requires health warnings about the harms of excessive alcohol consumption in all audiovisual advertising for alcoholic beverages (84). In Kenya, Section 45 of the Alcoholic Drinks Control Act 2010 prohibits alcohol advertising that creates a false impression that:

- a link exists between alcohol consumption and social or sexual success;
- alcohol consumption is acceptable while driving, operating machinery, doing sports or other activities that require concentration;
- alcoholic drinks have a therapeutic value or can prevent, treat or cure human disease, and that it is wrong or foolish to refuse an alcoholic drink (21).

Some countries restrict the content of alcohol advertising with the specific aim of protecting children. For example, Chile prohibits any advertising, promotion and sponsorship of alcoholic beverages targeted at children. As a result, it is prohibited to use fictional or real characters and persons popular among children and adolescents in alcohol advertising. This includes sports figures and actors influencing children and adolescents. It is also considered that children are being targeted when advertisements include fantastical statements or arguments, children's voices, childish language and expressions or situations specific to children, such as school settings or family and

social gatherings. The decree also prohibits alcohol advertising on websites and digital platforms in programmes or videos targeted at children or which have an audience composed of at least 20% minors (85). However, rules restricting alcohol marketing to children may be difficult to implement and enforce due to difficulties in determining whether children are present, especially in online environments and due to the presence of a mixed audience of adults and children for most broadcasting programmes.

One approach to content restrictions is to define a positive list of contents allowed in alcohol advertising and exclude any other content. For example, in France, the Public Health Code only allows alcohol advertising that is purely descriptive or informative (78). Advertisers may describe the alcohol content, origin, name, composition of product, name and address of manufacturers, agents and distributors, the method of production, methods of sale and methods of consumption. Alcohol advertising can also refer to production areas, awards obtained and designations of origin or geographical indications and make objective references related to the product's colour, smell and taste. All other contents promoting alcohol consumption are prohibited in advertising. For example, in a case on influencer marketing, the Judicial Court of Paris held that the posts published by influencers on their social media accounts were unlawful because they promoted the abusive consumption of alcohol and associated alcohol with positive features such as parties, trips and holidays (86).

In addition to considering whether partial measures meet a government's public health objectives, it is worth noting that the implementation, monitoring and enforcement of such restrictions is more complex. It may be necessary, for example, to monitor more advertising and (unless a positive list approach is used) to make determinations about whether the content of advertising is compliant. This may require stronger administrative capacity, although this may depend on the enforcement mechanisms, including whether an avenue for public complaints exists.

Many countries have a mix of different restrictions for alcohol advertising in place, as the example from Viet Nam illustrates.

Example 5. Partial marketing bans and restrictions in Viet Nam

Viet Nam regulates alcohol marketing under different instruments:

- Law 16/2012/QH13 on advertising, as amended in 2018 (Advertising Law)
- Law No. 44/2019/QH14 on prevention and control of harmful effects of alcoholic beverages, which entered into force in 2020 (Alcohol Law)
- Decree No. 24/2020/ND-CP detailing a number of articles of Law No. 44/2019/QH14 on prevention and control of the harmful effects of alcoholic beverages (Alcohol Decree)
- Decree No. 70/2021/ND-CP amending Government Decree No. 181/2013/ND-CP of 14 November 2013 elaborating on some articles of the Advertising Law (Digital Advertising Decree)

Under these instruments, alcohol marketing is subject to three different regimes based on the alcohol content of the drink.

- Alcoholic beverages containing 15% ABV or more: all alcohol advertising and promotions are prohibited (Articles 5.7 and 5.9 of the Alcohol Law).
- Alcoholic beverages containing between 5.5% and 15% ABV (Article 13 of the Alcohol Law):
 - cannot be advertised in cultural, theatrical, cinematographic and sports programmes and events; and
 - cannot be advertised via outdoor means, except signboards of alcohol businesses.
- Alcoholic beverages containing less than 15% ABV (Article 12 of the Alcohol Law):
 - Advertisements must not (Articles 12.2 and 13 of the Alcohol Law):
 - contain information or imagery aimed at encouraging alcohol use;
 - imply that alcoholic beverages may enable maturity, success, friendliness or sexual allure;
 - be targeted at children, students, adolescents or pregnant women;
 - use objects, imagery, symbols, music, movie characters or brands of products intended for children or students; and
 - use people under 18 years of age in their images.
 - Advertisements must be accompanied by health warnings, which must comply with the requirements of Article 5.3 of the Alcohol Decree.
 - Advertising at events, in media or in products directed at people under 18 years old and pregnant women is prohibited.
 - Advertising on radio and TV before, during and after children's programmes, and between 6 p.m. and 9 p.m. every day, is prohibited.
 - Advertising in means of transport is prohibited.

Example 5. Partial marketing bans and restrictions in Viet Nam (continued)

- Outdoor advertising is restricted.
 - The size of the billboard must comply with technical standards.
 - The advertisement must be at a minimum distance of 200 meters from nurseries, primary schools, high schools, recreational or entertainment centres intended for people under 18 years old.
 - The advertisement must be at a minimum distance of 100 meters from vocational or higher education institutions, except for signboards of alcohol businesses.
- Product placement of alcohol is restricted under the Alcohol Decree.
- Alcohol can never be offered as a prize as part of a sponsored programme (Article 14 of the Alcohol Law).
- Promotion of alcoholic drinks to persons under 18 years old is prohibited (Article 5.3 of the Alcohol Law).
- Digital advertising must have content filtering technology and software to control the age of visitors (Articles 12.5 and 13 of the Alcohol Law). This provision has been specified by Article 5.4 of the Alcohol Decree, which provides that alcohol advertising cannot:
 - be displayed before the viewer declares his/her age;
 - be targeted at the account of a user under the age of 18 years; or
 - be targeted at pages or other online media dedicated strictly to people under 18 years old or with a majority of users under 18 years old.
- Moreover, providers of digital advertising services must:
 - provide their contact details to the Ministry of Information and Communication (Articles 13.4.1 of the Alcohol Decree and 1 of the Digital Advertising Decree);
 - block and remove any illegal advertising content upon request of the Ministry (Articles 14.2 of the Alcohol Decree and 1 of the Digital Advertising Decree); and
 - submit annual reports on provision of cross-border advertising services in Viet Nam to the Ministry (Article 1 of the Digital Advertising Decree).

6.2 Regulating alcoholic beverage labelling

The WHO Global alcohol action plan proposes that WHO Member States develop and implement labelling requirements for alcoholic beverages that display essential information for health protection on alcohol content in a way that is understood by consumers and also provides information on other ingredients with potential impact on the health of consumers, caloric value and health warnings (87).

These approaches are also reflected in national labelling requirements or prohibitions, which include:

- requiring products to have health warnings or health information;
- requiring the inclusion of alcohol content or number of standard drinks;
- requiring an ingredients list and/or nutrient declaration on the labelling; and
- prohibiting the inclusion of nutrition or health claims on labels.

6.2.1 Rationale

Collectively, labelling measures seek to enable people to make more informed choices regarding alcohol consumption. The overarching rationale or objectives pursued by labelling therefore include both consumer protection and protection of health. In these contexts, objectives underpinning labelling measures might include:

- increasing information available to people;
- increasing consumer awareness of alcohol content, nutrient information, ingredients and/or health risks;
- decreasing the appeal of alcoholic beverages and/or their social acceptability; and
- decreasing heavy episodic drinking, decreasing total sales and consumption and delaying initiation of drinking.

It is also important to note that labelling measures can better enable the public to manage proximal risks, such as risks that might increase if a consumer is unaware of the amount of alcohol he or she will consume in a single episode, as well as more distal risks to health that might arise over the longer term. For example, the rationale for requiring labelling on ABV, number of standard drinks or total amount of alcohol in a container may relate to proximal risks associated with a single episode of drinking. On the other hand, the rationale for warning labels focused on more distal health risks, such as cancer risk, will more likely be related to longer-term health impacts.

6.2.2 Approaches to regulating alcoholic beverage labelling

6.2.2.1 Health warnings

As noted above, health warnings seek to inform consumers of the health risks associated with alcohol consumption. A variety of health warnings have been implemented in different forms (text and/or graphics) and with different specifications in terms of size, placement, font, colour, language and rotation. The effects may vary based on those specifications in different places and for different population subgroups. Where feasible, these effects can be examined prior to implementation through pre-market testing, but they are not examined in this publication.

Text warnings

Health warning messages appear in written form on the labelling of alcoholic beverages. Countries require a variety of messages depending on the information they seek to convey to consumers, as the examples in the following table illustrate. These examples illustrate current practice.

Table 4. Examples of health warning messages

Message	Example
General harm to health	<ul style="list-style-type: none"> Turkmenistan: "Alcohol is harmful to your health!"
Alcohol-impaired driving	<ul style="list-style-type: none"> Prescriptive messages: Ethiopia: "Don't drink and drive". Informational messages: Panama: "Driving under the influence of alcohol increases the risk of accidents". Statistical messages: Sweden: "Every second driver who dies in single traffic accidents is under the influence of alcohol".¹
Pregnancy harm	<ul style="list-style-type: none"> General warnings: Albania: "Drinking can harm your unborn baby". Disease-specific warnings: Republic of Korea: "Drinking during pregnancy creates a risk of congenital anomaly".
Specific diseases	<ul style="list-style-type: none"> Kenya: "Excessive alcohol consumption can cause liver cirrhosis". Uzbekistan: "The excessive consumption of alcoholic beverages leads to severe diseases of the human nervous system and internal organs".
Youth	<ul style="list-style-type: none"> Legal: Germany: "Sale is prohibited to persons under 18 under § 9 of the Youth Protection Act". Social: Sweden: "Children who receive alcohol at home get drunk more often than other children".¹
Social harm	<ul style="list-style-type: none"> Panama: "Alcohol can lead to violent behaviour and family disintegration".
Alcohol cessation tools	<ul style="list-style-type: none"> Ireland: "Visit askaboutalcohol.ie"

¹ Swedish health warnings appear in advertisements instead of labels. Section 13, Alcohol Ordinance (2010:1636).

Graphic warnings

Health warnings can take the form of pictograms as an alternative or in addition to written messages. The most common pictograms are for alcohol use during pregnancy, alcohol-impaired driving and underage alcohol use. France and Lithuania, for example, require pregnancy pictograms on alcoholic beverages (88). In Australia and New Zealand, all alcoholic drinks containing more than 1.15% ABV must include a pregnancy warning label under the Australia New Zealand Food Standards Code (89):

2.7.1-2 Definitions

In this Code

Pregnancy warning label means either the pregnancy warning pictogram or the pregnancy warning mark.

Pregnancy warning mark means the following image comprising

- (a) the pregnancy warning pictogram,
- (b) the signal words "Pregnancy Warning" and
- (c) the statement "Alcohol can cause lifelong harm to your baby",

all within a border.



Pregnancy warning pictogram means the following pictogram with the silhouette of a pregnant woman holding a wine glass within a circle with a strikethrough:



2.7.1-8 Requirement to display a pregnancy warning label

- (1) A prescribed alcoholic beverage³ that has one layer of packaging must display a pregnancy warning label on its package.
- (2) A prescribed alcoholic beverage that has more than one layer of packaging must display a pregnancy warning label on:
 - (a) the outer package; and
 - (b) either:
 - (i) the individual unit; or
 - (ii) each individual unit—if the packaging includes more than one individual unit.

³ A prescribed alcoholic beverage is one that has more than 1.15% ABV and is for retail sale or is sold as suitable for retail sale without any further processing, packaging or labelling.

Some countries have also proposed tobacco-style graphic health warnings using photographs on alcoholic beverage labels. For example, in 2013, Thailand proposed photograph-style health warnings, but the proposal was eventually withdrawn after other countries raised objections in the WTO Committee on Technical Barriers to Trade (TBT Committee) (90). Although this did not amount to a formal legal dispute under WTO law, Thailand elected not to move forward with the warnings, and no other WTO Members have notified the WTO of a similar intention at this point in time. The relevance of WTO law to alcohol labelling is discussed in section 10 in the broader discussion of legal considerations.

Ireland provides a recent example of a country that has adopted comprehensive alcohol labelling requirements, comprising both text and graphic messages.

Example 6. Ireland's alcohol labelling regulations

In Ireland, Section 12 of the Public Health (Alcohol) Act 2018 establishes the obligation to provide health information and health warnings on the labels of alcohol products and in other settings (91). Under this provision, the Minister for Health is empowered to make regulations to require that labels of alcoholic beverages contain:

- i. A warning to inform people of the danger of alcohol consumption.
- ii. A warning to inform people of the danger of alcohol consumption when pregnant.
- iii. A warning to inform people of the direct link between alcohol and fatal cancers.
- iv. The quantity of grams of alcohol contained in the product.
- v. The number of calories contained in the alcohol product.
- vi. A link to a health website which gives information on alcohol-related harms.

In addition, Section 12 provides that those selling alcohol in on-licensed premises will be required to display a notice containing the same health warnings, a link to the public health website and an indication to the customer that the alcohol and calorie content of alcohol products for all "poured drinks" is available in a document on request.

The Public Health (Alcohol) (Labelling) Regulations 2022 set out the implementing regulations for the Public Health (Alcohol) Act 2018 and provide details on the obligations established under Section 12 (92). In relation to the requirements for health warnings, the requirement under Section 12(i) to provide for a warning to inform people of the danger of alcohol consumption has been specified as a warning on the risk of liver disease. In addition, the requirement for a pregnancy warning under Section 12(ii) can be fulfilled through using a specified pictogram. The health website required under Section 12(vi) is www.askaboutalcohol.ie. The regulations also provide that for alcohol products that have a small surface area the health warnings and information can be of a smaller size or a flag label can be used. Finally, the regulations specify that websites that sell alcohol products must display the same information as would be available to the consumer in a physical shop so that the online consumer has all the information at the point of purchase. A model label is represented in the following figure.

Example 6. Ireland’s alcohol labelling regulations (continued)

Fig 6. Alcohol labels under the Irish alcohol labelling regulations

XX grams XX kJ/ XX kcal	DRINKING ALCOHOL CAUSES LIVER DISEASE
	THERE IS A DIRECT LINK BETWEEN ALCOHOL AND FATAL CANCERS
	Visit askaboutalcohol.ie

The draft regulations were notified to the European Commission in June 2022. In the absence of any negative opinion by the European Commission, EU rules on food labelling allowed Ireland to pass the procedural hurdles to adopt the regulations into law. The regulations were also notified to the WTO TBT Committee in February 2023 and are the subject of discussions at the TBT Committee at the time of writing.

Designing health warnings

In addition to prescribing the content of health warnings, jurisdictions ordinarily regulate the format of warnings in the law. Table 5 provides some of the specifications that are typically regulated in the law.

Table 5. Specifications in alcohol health warnings

Element	Examples
Number of warnings	<p>Mexico:</p> <p>All alcoholic beverages must display the health warning “the abusive consumption of this product is harmful to health”, AND</p> <ul style="list-style-type: none"> • alcoholic beverages with low alcohol content must include an age pictogram (2 health warnings in total), whereas • alcoholic beverages with medium and high alcohol content must include three pictograms: legal age, pregnancy and drink-driving (4 health warnings in total) (17). <p>Türkiye:</p> <p>All alcoholic beverages must have three graphic warning messages (on legal age, drink-driving, and pregnancy) and a text warning message (“alcohol is not your friend”) (93).</p>
Product categories	<p>Israel:</p> <ul style="list-style-type: none"> • For drinks with an alcoholic content of up to 15.5% ABV: “Warning: Contains alcohol – it is recommended to refrain from excessive consumption”. • For drinks with an alcoholic content above 15.5% ABV: “Warning: Excessive consumption of alcohol is life threatening and is detrimental to health!” (94).
Size	<p>Uzbekistan:</p> <p>Health warnings must occupy no less than 40% of the surface (95).</p> <p>Chile:</p> <p>Health warnings must occupy no less than 15% of the label surface and no more than 30% of the package surface, and have a size of at least 6.2 cm in width and 3.5 cm in height. Each of the pictograms within the label must have a size of at least 1.7 cm in width and 1.7 cm in height (96).</p> <p>Türkiye:</p> <p>The size of the health warnings and the total area of the label depend on the volume of the drink and that of the packaging (93).</p>
Colour, font, contrast	<p>Turkmenistan:</p> <p>Health warnings have to be written in black capital letters on a white background and with a bold, clear and easy-to-read font (97).</p>

Element	Examples
Wording	<p>Differences in the wording include reference to “alcohol consumption” or “excessive alcohol consumption” or the causal relationship between alcohol consumption and a specific consequence.</p> <p>Ireland:</p> <p>“Alcohol causes liver disease” (92).</p> <p>Israel:</p> <p>“Warning: Excessive consumption of alcohol is life threatening and is detrimental to health!” (94).</p> <p>Turkmenistan:</p> <p>“Alcohol is harmful to your health!” (97).</p>
Placement	<p>Chile:</p> <p>Health warnings have to be printed on the back of the bottle or package (96).</p>
Rotation	<p>Mexico:</p> <p>For beverages with medium and high alcohol content, the label must include three pictograms simultaneously or individually on an alternating basis. If they alternate, pictograms must rotate every four months (17).</p> <p>Uzbekistan:</p> <p>Health warnings rotate every five years (95).</p>
Visibility	<p>Health warnings are sometimes posted directly on the label of alcoholic beverages (visible health warnings). In other cases, they can only be accessed through a link or a QR code (non-visible health warnings). For example, in the EU, the full nutrition declaration and list of ingredients must be included on the label of grapevine and aromatized wine products, but both elements can be provided by electronic means (QR codes) (98). However, evidence indicates that health warnings that are only accessible through QR codes are less effective than health warnings where the message is directly visible on the labelling of the product (99).</p>

6.2.2.2 Alcohol content, ingredients, nutrient information, or number of standard alcoholic drinks

Labels showing the composition of alcoholic beverages aim at increasing knowledge about product content both at the point of purchase and the point of consumption. The extent of disclosure required varies, but common elements include alcohol content, ingredients and, to a lesser extent, the number of standard alcoholic drinks in a beverage.

Labelling is frequently subject to international standardization. At the time of writing, the Codex Alimentarius Commission had initiated a process to consider amending existing standards or developing a new specific standard on alcohol labelling. The Codex Alimentarius Commission can adopt standards, guidelines and codes of practice, all of which are voluntary (not mandatory under international law) and must be transposed into national legislation or regulations to be enforceable. There is a General Standard for the Labelling of Prepackaged Foods and Guidelines

on Nutrition Labelling, both of which apply to alcoholic beverages and include a list of ingredients and a nutrient declaration (100). However, there is divergence among Codex Member States around alcohol labelling and low levels of domestic implementation of those standards with regard to alcoholic beverages. Consequently, alcohol labelling was brought to the Codex Committee on Food Labelling (CCFL) at the initiative of WHO in 2017. In 2019, five alternative options for action to be undertaken by CCFL were presented, ranging from not initiating any new work related to alcohol labelling to initiating new work on a new Codex standard on alcohol labelling, with different options in between to provide clarity to current Codex standards on food labelling for their applicability to alcoholic beverages. In 2024, WHO presented a new discussion paper at the 48th session of CCFL. Discussions in this forum are still ongoing as Codex Member States are yet to agree a path forward and no specific standard or guideline has been adopted to date.

Alcohol content

The obligation to display the alcohol content is the most common requirement for ingredients and nutrient labels across jurisdictions (101). Where this information is regulated, laws ordinarily prescribe how the alcohol content must be displayed. Most countries require that alcohol content be displayed as a percentage of ethanol or as alcohol by volume (vol. % or % ABV). In such cases, manufacturers have no discretion to display the alcohol content under a different format. For example, Colombia requires the alcohol content to be displayed on the label of all alcoholic beverages, expressed in alcohol degrees or percentage of alcohol by volume, and recorded at 20°C (102).

Some countries provide differentiated specifications for the display of alcohol content for different categories of beverages (ordinarily based on the level of alcohol by volume). For example, Australia and New Zealand require the following alcohol content labels on alcoholic beverages (103).

- For alcoholic beverages that contain more than 1.15% ABV, the alcohol content must be expressed in mL/100g, mL/100mL or as the percentage of alcohol by volume.
- For alcoholic beverages that contain between 0.5% and 1.15% ABV, the alcohol content must be expressed in words to the effect “contains not more than X% alcohol by volume”.

Some jurisdictions require alcohol manufacturers to indicate the number of standard alcoholic drinks per container and define what amounts to a standard drink as a way to inform consumers about alcohol content. This requirement is generally intended to enable consumers to better track their total alcohol consumption (given that beverages differ in ABV and serving size) and support public education regarding the risks and possible harms caused by different levels of alcohol consumption. Australia and New Zealand prescribe a statement of the approximate number of standard drinks for all alcoholic beverages containing more than 0.5% ABV. The statement must be accurate to the first decimal place for a beverage containing 10 or fewer standard drinks and to the nearest whole number of standard drinks for beverages containing more than 10 standard drinks (104). India also requires the display of the number of standard drinks on alcoholic beverages. It defines a standard drink as the amount of an alcoholic beverage containing 12.7 mL of ABV as measured at 20°C (105).

Ingredients and nutrient information

The requirement to include a list of ingredients on the labelling of alcoholic beverages is not uniformly applied across jurisdictions.

- Some countries, such as the Republic of Moldova, require an ingredients list for all alcoholic beverages, whereas others only require it for certain product categories. For example, in Canada, only unstandardized alcoholic beverages (those that do not have a standard of identity or composition under the Food and Drug Regulations, such as sake, mojitos or ouzo) must have a complete list of ingredients and components (106).
- Some countries require that all constituents be displayed, whereas others only require the display of some of them, typically allergens and/or additives. For example, Mexico requires ingredients that can cause allergies or intolerance to be displayed, including cereals containing gluten, eggs and egg products, peanuts, soy, milk and milk products, nut products and sulphite in concentrations of 10 mg/kg or more (107). Costa Rica requires a list of additives in all alcoholic beverages (108). India requires wine products to include a declaration on preservative and additive residues as well as on allergens (109).
- Some countries prescribe how ingredients need to be displayed. For example, Ghana requires the listing of ingredients to be displayed in descending order of ingoing weight (110).

Less frequently, countries may prescribe labels on the energy content and/or the nutrient information. However, there is a lot of diversity in this area. For example, Chile requires all alcoholic beverages above 0.5% ABV to display their energy value in kilocalories per 100 mL. This information must be indicated on the back of the packaging and the regulation specifies the font to be used, the format of the message and its size (111). Mexico allows alcohol manufacturers to include the energy value of the drink, expressed in kilojoules or kilocalories (112). India explicitly prohibits disclosing nutrient information on the label of alcoholic beverages, except the energy content, which can be declared on a voluntary basis (113).

6.2.2.3 Restricting nutrition and health claims on alcoholic beverages

Some jurisdictions restrict the nutrition and health claims that may be displayed on the labelling of alcoholic beverages, in particular those that highlight positive features of the product. At the international level, the Codex Alimentarius Commission has adopted guidelines on nutrition and health claims, which apply to all foodstuffs, including alcoholic beverages, and provide the following rules:

- The only nutrition claims permitted shall be those relating to energy, protein, carbohydrate, and fat and components thereof, fibre, sodium, and vitamins and minerals.
- Health claims are subject to strict conditions, including that they must be based on scientific evidence, they must be acceptable to the competent national authorities, and the health benefit must result from the consumption of a reasonable quantity of the product (114).

In the EU, Article 4 of Regulation No. 1924/2006 on Nutrition and Health Claims prohibits health claims about alcoholic beverages containing more than 1.2% ABV and only allows nutrition claims referring to low alcohol levels, the reduction of alcohol content or the reduction of the energy content. Article 2 of this instrument defines health claims as:

...any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

In the *Deutsches Weintor* judgment, CJEU considered that the label “easily digestible”, although in principle neutral, qualified as a health claim on a bottle of wine because it suggested that the wine could be easily absorbed and therefore that the human body would suffer less from it. This health claim was therefore prohibited (115). The finding of the CJEU upheld a strict interpretation of the concept of “health claim” in accordance with a broad interpretation of public health (116).

Example 7. Excerpts of the Mexican alcohol labelling rules

In Mexico, alcohol labelling rules are defined in Official Standard NOM-142-SSA1/SCFI-2014 on alcoholic beverages (17). Some of the provisions of this instrument are shown below.¹

Art. 9.3.6: Indicate the alcohol content [percentage of alcohol by volume at 293 K (20°C)], with the following abbreviations: % Alc. Vol.; % Alc Vol.; % alc. vol.; % alc vol.

Art. 9.3.7.1.1: The list of ingredients must appear on the label of prepared alcoholic beverages, liqueur or crème liqueur and all alcoholic beverages that, after distillation and/or before packaging, use optional ingredients and/or additives that may cause hypersensitivity, intolerance or allergies and that are present in the final product. The following ingredients and foodstuffs have been proven to cause hypersensitivity and must always be declared:

- 9.3.7.1.1.1. Cereals containing gluten
- 9.3.7.1.1.2. Eggs and egg products
- 9.3.7.1.1.3. Peanuts and peanut products
- 9.3.7.1.1.4. Soy and soy products, with the exception of soy oil
- 9.3.7.1.1.5. Milk and milk products, including lactose
- 9.3.7.1.1.6. Nuts and derivatives
- 9.3.7.1.1.7. Sulphites in concentrations of 10 mg/kg and above

Art. 9.3.7.1.2: The list of ingredients must be preceded by the term “ingredients”.

Art. 9.3.7.1.3: Ingredients must be declared in decreasing order in terms of quantity.

Art. 9.3.7.2.1: The label of alcoholic beverages must include the health warning message “THE ABUSIVE CONSUMPTION OF THIS PRODUCT IS HARMFUL TO HEALTH”, in accordance with article 218 of the law, in contrasting colour, capital letters, Helvetia font, clear and easily readable characters, in conformity with the following table:

Example 7. Excerpts of the Mexican alcohol labelling rules (continued)

VOLUME	MINIMUM SIZE OF THE FONT
0 to 50 ml	1.5 mm
50.1 to 190 ml	2.0 mm
190.1 to 500 ml	2.5 mm
500.1 to 1000 ml	3.0 mm
1000.1 to 4000 ml	5.0 mm
More than 4000 ml	7.0 mm

There must be a minimum free space of 3 mm around the health warning.

Art. 9.3.7.2.4: The labelling of all products subject to this standard must include the pictograms set out in section A.2 of Appendix A, which refer to the prohibition of alcohol consumption by minors under 18 years of age and pregnant women and to driving under the influence of alcohol. Beverages with low alcohol content, as defined in Art. 9.4.1.1 of this standard, are only required to display the pictogram in section A.6 of Appendix A.²

Art. 9.3.7.3.1: Products with a low energy content must display on the label the claim “low energy content”.

Art. 9.4.1.2.1: The energy content per portion can be declared in kJ or kcal in accordance with the following sizes of standard beverage [...].

Art. 9.4.1.4: In the labelling of alcoholic beverages, the following message may be included: “For more information, visit the website: www.conadic.salud.gob.mx, where information about the harmful use of alcohol can be found”.

These provisions raise several comments.

- Labelling rules in Mexico include provisions on health warnings, information about ingredients, alcohol content and nutrient information, and health claims.
- Some labels are mandatory whereas others are optional.
- The rules define in a specific manner the format applicable to most labels in terms of size, colour, font, location and visibility, as well as the way in which certain measurements need to be calculated.
- Regarding health warnings, Mexico combines health messages and pictograms, with differing requirements across beverage categories.
- The compulsory list of ingredients is not exhaustive, and the energy content is not required.

¹ Provisions have been translated from Spanish into English by the authors.

² Appendix A provides the pictograms to be displayed, specifies the colour, contrast, size and location of the pictograms and requires the rotation of pictograms when only one pictogram at a time is displayed on a bottle.

7. Restricting the availability of alcohol

The availability of alcohol refers to how easy it is to physically access alcoholic beverages for the general population. Availability constitutes one of the determinants impacting alcohol consumption. The easier it is to get physical access to alcohol – in terms of opening times of retail outlets, distance to the shop, categories of alcoholic beverages available and age controls – the more likely people are to consume it.

The easier it is to get physical access to alcohol, the more likely people are to consume it."

Interventions to address the availability of alcohol come in a wide variety of different forms, some of which may also address the acceptability of alcohol. For example, prohibiting or removing alcohol from specific social settings may address both availability and acceptability. From a legislative perspective, to decrease the availability of alcohol, countries often regulate alcohol product characteristics (what is available in the market)

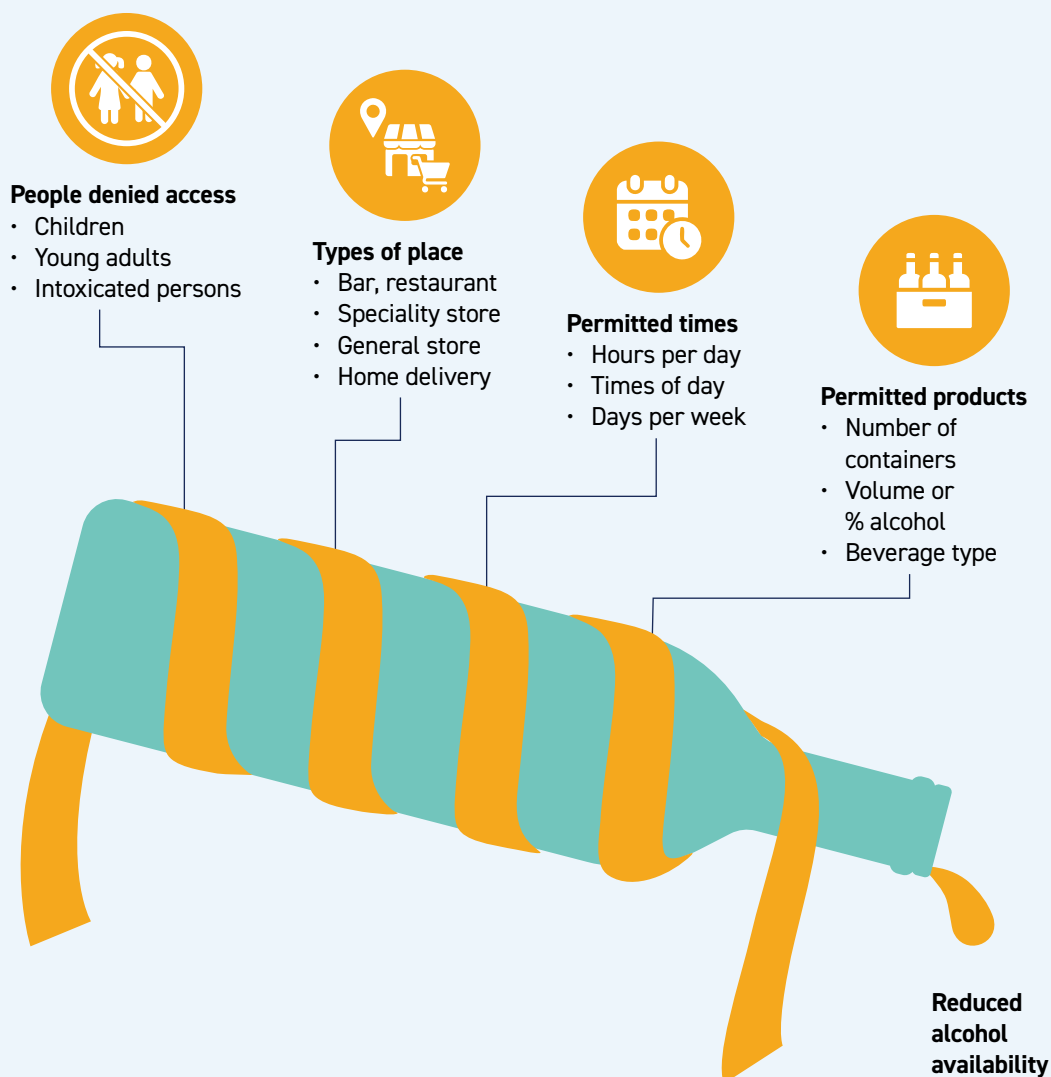
(section 7.1), restrict alcohol sales (section 7.2) and restrict alcohol service (section 7.3). In contrast to interventions on labelling and marketing discussed above, these interventions are often considered supply-side interventions. Examples discussed below include licensing measures, restrictions on outlet density, online sales and other measures.

Approaches to legislating on the availability of alcohol (see Figure 7):

- Regulate product characteristics (what form products in the market may take), including:
 - regulating the composition of alcoholic beverages, including their alcohol content and food safety standards;
 - regulating the packaging of alcoholic beverages, including the size(s) of the containers allowed and the categories of containers allowed; and
 - regulating the production and consumption of unrecorded alcohol, including:
 - whether any exemptions to the general regime for regulating the availability of alcohol apply to unrecorded alcohol; and
 - whether any additional restrictions apply to unrecorded alcohol.
- Establish a monopoly or a licensing system at all or some stages of the supply chain (production, import, export, retail) and, if licensing,
 - attach strict conditions to the granting and renewal of licences; and
 - use licensing to support implementation of other interventions.
- Establish restrictions on the sale and service of alcoholic beverages, including:
 - opening times of retail outlets and venues;
 - location and density of retail outlets and venues; and
 - restrictions on the modes of retail, including online retail.

- Require retailers of alcoholic beverages and venues to undertake mandatory training on responsible service and sale of alcoholic beverages.
- Establish a minimum age for the purchase and/or consumption of alcohol.
- Ban sales to intoxicated persons.
- Restrict or regulate the secondary supply of alcoholic beverages to people under the legal age and/or intoxicated persons.
- Require venues to adopt measures to reduce harms in alcohol consumption environments, such as:
 - making food and non-alcoholic beverages available where alcohol is served;
 - having comprehensive information on means of transport from the premises; and
 - adopting measures to prevent violent or disorderly conduct on the premises.

Fig 7. Using multiple interventions implemented through laws to restrict the availability of alcohol



7.1 Regulating product characteristics (what forms products may take)

The WHO Global strategy recommends regulating production and reducing the alcoholic strength within different beverage categories as a policy option to reduce the harm from alcohol intoxication (117). Examples of product regulation may include:

- establishing minimum and/or maximum alcohol limits concerning products to be marketed as alcoholic beverages or within a specific beverage category;
- regulating food safety standards applicable to alcoholic beverages; and
- regulating the size of alcohol containers and other product or packaging characteristics.

7.1.1 Rationale

The rationale underpinning the regulation of product characteristics will vary from one measure to another and from place to place, depending on trends in consumption and other local circumstances. In general, measures regulating product characteristics may seek:

- the reformulation of products (such as a reduction in alcohol content, the use of different ingredients or a change in packaging to regulate serving sizes);
- to reduce the ABV of available products, the frequency of consumption or the risks associated with specific ingredients; and
- to reduce total alcohol consumption or other safety risks.

For example, limiting the strength (ABV) of specific product categories through the legal definition of those categories may seek to decrease the total amount of alcohol served or consumed. Placing upper limits on serving sizes in venues or on containers sold by retail may be intended to achieve similar objectives, while requiring minimum package sizes, such as with respect to small format spirits, may be intended to reduce affordability, accessibility and impulse purchases.

It is also worth noting that other interventions may sometimes be used in concert with regulation of product characteristics or in place of them to achieve the same objective. For example, fiscal measures such as taxes may be structured so as to reduce the affordability of designated product categories, such as higher-strength products or smaller containers.

7.1.2 Approaches to regulating product characteristics

7.1.2.1 Alcohol content regulation

Some laws define the maximum alcohol content that alcoholic beverages may have. This may be done to distinguish alcohol products for human consumption from those used for medical or industrial purposes or from narcotic drugs. For example, in Mexico, alcoholic beverages for human consumption may have a maximum alcohol content of 55% ABV. In Rwanda, alcoholic beverages

may have a maximum alcohol content of 45% ABV. Article 24 of Law No. 03/2012 Governing Narcotic Drugs, Psychotropic Substances and Precursors provides:

Any drink that exceeds forty-five per cent (45%) of alcohol and any other drink which does not have the required quality for consumption shall be considered as narcotic drug (118).

Some countries define lower and upper limits of alcohol content to distinguish low-alcohol and no-alcohol drinks from regular alcoholic beverages. For example, in Belgium, low-alcohol beer must have an alcohol content of between 0.5% and 1.2% ABV and no-alcohol beer must have a maximum alcohol content of 0.5% ABV (119). In Italy, light beer must have an alcohol content of between 1.2% and 3.5% ABV and non-alcoholic beer must have a maximum alcohol content of 1.2% ABV (120). Other countries, such as Austria, have a category for alcohol-free beer (under 0.5% ABV) but do not have a specific category for low-alcohol beer (121).

Defining alcohol limits may also be a means of distinguishing between different categories of alcoholic beverages or establishing different excise duty rates. For example, in accordance with its Foodstuffs Act, Switzerland applies different rates to light beer (up to 10 degrees Plato), normal and special beer (10.1 to 14 degrees Plato) and strong beer (over 14 degrees Plato) (122).⁴

7.1.2.2 Food safety standards

Alcoholic beverages are ordinarily subject to food safety standards aimed at protecting consumers' health. Alcoholic beverages typically fall within the definition of food and must therefore comply with food safety standards defined in food laws or regulations. In some cases, more specific standards are adopted for alcoholic beverages. For example, in India, the Food Safety and Standards (Alcoholic Beverages) Regulations 2018 establish composition requirements for each category of beverages, including the following (113):

- Under Section 1.3, alcoholic beverages must be free from chloral hydrate, ammonium chloride, paraldehyde, pyridine, diazepam or narcotic, psychotropic substances including caffeine except naturally occurring caffeine. Water used in the production process must meet the requirements of the Indian Standards for Drinking Water, and additives, enzymes and processing aids must be permitted under the Food Safety and Standards (Food Products Standards and Food additives) Regulations 2011.
- According to Section 3.2, wine must be preserved by pasteurization or by using preservatives specified in the Food Safety and Standards (Food Product and Food Additives) Regulations 2011 and must be free from coliforms and pathogenic microorganisms.
- According to Table 1 of the regulations, gin may have an alcohol content of between 36% and 50% ABV, a maximum level of copper of 5 mg/L and a maximum level of lead of 0.2 mg/L.

⁴ Degrees Plato refer to a specific measurement used in brewing to express the concentration of extract (mostly sugars) in wort before fermentation.

7.1.2.3 Other product and packaging characteristics

Legislation sometimes regulates other product characteristics. Some examples are provided in the list below.

- The quantity of beverage that can be sold per unit. For example, Section 31 of the Alcoholic Drinks Control Act 2010 of Kenya prohibits manufacturing, packing, distributing and selling alcoholic beverages in containers below 250 mL (21).
- The packaging that can be used for alcoholic beverages. For example, Article 4A of the Liquor Act 1974 of Nepal prohibits the production, sale and distribution of alcoholic beverages in plastic pouches (123). Section 31 of the Alcoholic Drinks Control Act 2010 of Kenya prohibits manufacturing, packing, distributing and selling alcoholic beverages in sachets (21).
- The ingredients that can be used to manufacture alcoholic beverages (depending on how they are to be labelled). For example, in the Australia New Zealand Food Standards Code and in the Australian excise legislation, Australia defines ingredients and components that can and cannot be used for a product to qualify as beer.

7.2 Regulating the sale of alcoholic beverages

The WHO Global strategy recommends decreasing the availability of alcohol. This intervention involves “establishing, operating and enforcing an appropriate system to regulate production, wholesaling and serving of alcoholic beverages that places reasonable limitations on the distribution of alcohol and the operation of alcohol outlets” and includes the following recommendations on sales and service:

- establishing licensing systems for retail sales or government monopolies;
- regulating the number and location of on-premises and off-premises alcohol outlets;
- regulating days and hours of retail sales;
- regulating modes of retail sale of alcohol;
- regulating retail sales during special events;
- adopting policies to prevent sales to intoxicated persons and those below legal age; and
- adopting policies to reduce and eliminate the availability of illicit production, sale and distribution of alcoholic beverages.

Building on the WHO Global strategy, the SAFER technical package calls on countries to strengthen restrictions on alcohol availability and makes recommendations on how they can do so. The types of interventions listed above are frequently implemented in countries. In addition, some jurisdictions also restrict alcohol sales through full or partial bans (see section 7.2.2.1).

7.2.1 Rationale

Restrictions on the sale of alcoholic beverages may pursue proximal objectives such as:

- reducing outlets, drinking hours or other measures of availability;
- reducing exposure to alcohol;
- changing perceptions, such as of alcohol acceptability or safety.

In doing so, restrictions on the sale of alcohol may contribute to:

- reducing the early initiation of alcohol consumption by children;
- reducing alcohol purchases and consumption at night and during special events, therefore reducing heavy episodic drinking and associated road traffic accidents and alcohol-related violence; and
- denormalizing alcohol, therefore reducing its social acceptability,

thereby reducing overall demand, consumption and, ultimately, harm due to alcohol, including violence, hospital admissions, accidents and road traffic injuries.

Distinctions between restrictions on the sale and service of alcohol are frequently drawn. In this publication, sales restrictions refer to those measures addressed at retailers including licensees (where there is a licensing system), shop owners, managers or staff. By contrast, regulation of service of alcohol involves regulating venues in which alcohol is sold in open containers and is intended to be consumed on-site. Laws governing service may also govern the provision of alcohol by parents or guardians to children or by hosts to guests in private settings. There may be some overlap in laws governing retail sales and service for consumption on-site, such as restrictions on sale to intoxicated persons or those under the legal age. However, differences also exist, with those responsible for service of alcohol often needing to comply with additional laws or requirements. These might include, for example, laws compelling the availability of food on site, the presence of security staff to prevent violence, limits on the number of people in a venue and the availability of toilets and adequate lighting or general legal obligations such as to prevent harm due to negligence. Overlaps between retail and service restrictions become all the more relevant in venues where both on- and off-premises sales take place.

7.2.2 Approaches to restricting the sale of alcoholic beverages

7.2.2.1 Retail bans

Some jurisdictions ban the sale or consumption of alcoholic beverages. Although some retail bans are adopted for religious and cultural reasons, they may also aim at other objectives, including reducing violence or protecting vulnerable communities.

Example 8. Bans and restrictions on alcohol production and sale in India

Article 47 of the Indian Constitution encourages States to take measures to bring about the prohibition of consumption of intoxicating drinks and drugs that are injurious to health. Consequently, States have used their legislative powers to regulate the production, distribution and sale of alcohol differently across the country.

Some states have a full ban on the production, sale and consumption of alcoholic beverages. This is the case, for example, in Bihar (124), parts of Manipur (125), and Mizoram (126). The State of Gujarat used to have a full ban, but exemptions have recently been introduced to allow the sale of alcohol in its financial hub and thus enable alcohol consumption at hotels, restaurants and clubs with different categories of temporary permits (127). Some states, including Nagaland, have full bans but are reconsidering their policy at the time of writing (128). Other states impose partial prohibitions of some categories of alcoholic beverages. For example, the states of Tamil Nadu, Kerala, Andhra Pradesh, Karnataka and Uttar Pradesh ban the production and consumption of arrack, a distilled alcoholic drink (129).

While total prohibition of alcohol production and sales on a countrywide basis is currently rare, it is more common at subnational level. In addition to the example of India, prohibition persists in some local jurisdictions in the United States and in indigenous communities in areas of Canada and Australia (130).

Example 9. Alcohol ban in Australia's Northern Territory

The Northern Territory is an Australian internal territory. Nearly one third of the population are Aboriginal people. Under the Liquor Act 2019, the Northern Territory of Australia applies different alcohol bans.

First, alcohol possession, consumption, sale or supply is prohibited in interim alcohol protected areas, which are defined by the Director of Liquor Licensing. Communities that have been included in the list of interim alcohol protected areas can request to have their status revoked, but it is for the Director of Liquor Licensing to accept or deny such request.

Second, alcohol consumption is prohibited in specific public places and cities, including Alice Springs, Darwin, Katherine, Palmerston and Tennant Creek.

Third, alcohol possession, consumption, sale or supply may be restricted or banned in general or in special restricted areas. These areas may be defined by the Liquor Commission on its own initiative or on application of any interested person.

These types of measures are, however, contested, as they do not necessarily aim at promoting public health, are criticized by some on the basis that they discriminate against people in situations of vulnerability and have not been found to be effective at reducing alcohol-related violence (131). Fully involving affected communities in the decision-making process is an option to address concerns relating to discrimination, as is devolving authority to the communities themselves to decide how alcohol should be regulated. For example, in Canada, Section 85 of the Federal Indian Act allows First Nation councils to establish by-laws to prohibit the possession, production, sale or supply of alcohol. Several communities have adopted such by-laws, including Attawapiskat (Ontario) and Ahousaht (British Columbia) (132). Departing from the Federal Indian Act, some First Nations have also adopted their own laws regulating alcoholic beverages, without banning them. For example, in Ontario, a traditional Anishinaabe law on alcohol possession was adopted in 2021. The law was supported by a council of elders and limits the amount of alcohol that can be possessed by individuals. It provides an enforcement system that combines community justice and the Ontario enforcement authorities (133).

Some countries allow the temporary ban of alcohol sales and/or consumption for legitimate reasons. For example, in Greenland, the general alcohol sales ban was lifted in 1954, but temporary sales bans are still allowed at local level and are regularly applied to prevent alcohol-related violence (134).

7.2.2.2 Government monopolies and licensing systems

Monopolies

Government alcohol monopolies exist when governments exercise exclusive control over the alcohol supply chain or some aspect of it. In general, they seek to decrease consumption by limiting and supervising the production and/or distribution of alcohol, the number of alcohol retail outlets and the outlets' operating hours and by putting other alcohol policy measures in place (such as marketing restrictions or price and tax measures) and eliminating the commercial incentive to maximize profits (135). Where a government monopoly for the retail sale of alcohol exists, the SAFER technical package recommends preserving it to effectively limit the availability of alcohol and reduce alcohol-related harm.

Government alcohol monopolies have been implemented in several jurisdictions, including Finland, Iceland, Norway and Sweden (the so-called Nordic alcohol monopolies), some Eastern European countries (for instance, in the Russian Federation), some Southern African countries and some states or provinces in Canada, India and the United States (136). There are several types of alcohol monopolies: monopolies with an exclusive right to produce alcoholic beverages; monopolies with an exclusive right to import and export alcoholic beverages; wholesale monopolies with an exclusive right to sell to stores and restaurants; and retail monopolies, which may enjoy an exclusive right to serve alcoholic beverages on premises or to sell alcohol containers off premises. Accordingly, where monopolies are in place, differences remain as to how these are designed and implemented, as Table 6 illustrates (137). In the case of the Nordic monopolies, differences result from varying public policy goals and limits imposed by EU membership (for Finland and Sweden) or the European Economic Area Agreement (for Norway and Iceland).

Table 6. Comparison of Nordic alcohol retail monopolies

Element	Finland	Iceland	Norway	Sweden
Responsible authority	Alko, a State-owned company reporting to the Ministry of Social Affairs and Health	State Alcohol and Tobacco Company of Iceland (ÁTVR), a State-owned company reporting to the Ministry of Finance and Economic Affairs	Vinmonopolet, a State-owned company reporting to the Royal Ministry of Health and Care Services	Systembolaget, a State-owned company reporting to the Ministry of Finance
Supporting act(s)	Alcohol Act No. 1102/2017	Act No. 86/2011 on Trade in Alcohol and Tobacco	Alcohol Act	Alcohol Act and Marketing Act
Categories of beverages	Fermented beverages over 8% ABV and distilled beverages above 5.5% ABV	Alcoholic beverages over 2.25% ABV	Alcoholic beverages above 4.7% ABV	Alcoholic beverages over 3.5% ABV

Element	Finland	Iceland	Norway	Sweden
Private imports	Private imports allowed under the conditions established by the CJEU	Allowed	Allowed	Private imports allowed under the conditions established by the CJEU but remain legally challenged: there is disagreement between some national courts and the CJEU
Online sales	Allowed, but delivery to monopoly pick-up points only	Exclusive rights of the monopoly to online sales remain a legally disputed area	Allowed through the monopoly	Allowed only through the monopoly, but a court case is challenging this exclusive right and a proposal to allow online sales through other providers is under discussion
Farm sales, breweries sales	Direct sales of special berry wines, malt products and craft beer up to 13% ABV allowed	Small breweries can sell directly to consumers, but large breweries and distilleries cannot	Allowed for beverages with up to 22% ABV under certain conditions: products are not covered by the EEA Agreement, production takes place at point of sale, a maximum of 15,000 litres are sold per year	Direct retail to consumers not currently allowed but a proposal to allow the direct sale of small quantities of alcohol to consumers at the production site is under discussion

It is important to note that government alcohol monopolies are not the sole measure in place in Nordic countries; rather, they are part of a broader strategy to reduce alcohol harm through a variety of measures, including high alcohol taxes, strong alcohol marketing restrictions, bans on all forms of alcohol sales promotions and discounts, high standards in enforcing legal age requirements and retail outlet density restrictions on public health grounds.

Licensing

Where a government monopoly does not exist and cannot be introduced, the SAFER technical package recommends introducing or maintaining a licensing system. Licensing systems require businesses (including individuals) to request a license to lawfully participate in some or all steps of the alcohol supply chain. Licensing can pursue the following goals.

- Regulate which establishments can participate in the sector, including by imposing quantitative limitations on the total number of licenced businesses and/or by defining qualitative requirements governing eligibility. The SAFER technical package recommends not using licensing systems merely as sources of revenue (thus leading to excessive distribution of licences) but, instead, as a means to limit the number of licences. For example, Costa Rica has a licensing system with five categories of licences, with different conditions attached to the grant of each category. For instance, licence B, which applies to on-site outlets where sale of alcohol is the main activity (such as bars, clubs or cabarets), is subject to a limit of one licence for 300 inhabitants (138).
- Regulate the personal conditions that must be fulfilled by licensees to obtain and maintain a licence. For example, in Kenya, the following persons are not eligible for a licence under the Alcoholic Drinks Control Act 2010 (21): those who have not satisfied the district committee of their good character and standing; those who have been convicted of selling an alcoholic drink without a licence; those who have been convicted of any offence relating to the distillation, manufacture, sale or use of industrial alcohol; those who have been convicted of an offence and sentenced to imprisonment for more than 6 months; for a retail licence, those who are not resident in Kenya; those who are under 18 years old; and those who are bankrupt.
- Use licensing fees and fines to fund implementation and monitoring. For example, in the canton of Neuchâtel, Switzerland, alcohol retailers are subject to a fee of 3% of their turnover related to the sale of spirits, and a minimum of 500 Swiss francs, and a fee of 2% of their turnover related with the sale of other alcoholic beverages, and a minimum of 200 Swiss francs, to fund activities related to alcohol and other substance dependence (139).
- Use licensing to enforce sector-wide specific rules and other laws and regulations, such as where suspension or loss of licence is a sanction for non-compliance. In this regard, the WHO Global strategy notes that licensing systems facilitate the implementation, monitoring and enforcement of other restrictions on alcohol availability, since infringement of laws can be met by revocation of the licence. Indeed, it may be easier for inspectors to monitor compliance with time restrictions for alcohol retail if they only need to inspect licensed outlets and, at the same time, non-compliance can result in a suspension, removal or non-renewal of the licence. For example, Section 20 the Liquor Act 2003 of South Africa provides for the cancellation of a liquor registration if the registrant becomes disqualified, does not comply with the conditions of registration, repeatedly breaches the Competition Act, the Counterfeit Goods Act, the Liquor Products Act, the Foodstuffs, Cosmetics and Disinfectants Act or the Customs and Excise Act, or violates the Liquor Act (140).

Licensing is a very common system governing alcohol availability and, in 2016, 141 out of the 164 countries submitting information for the WHO Global status report on alcohol and health applied a licensing scheme (8).

Example 10. Describing licensing systems in three African countries

Where licensing systems are in place, a law generally establishes the main elements of such systems. Regulated elements often include the definition of authorities responsible for granting, renewing and removing licences; criteria to be considered when granting new licences; categories of licences that exist; procedures for granting, renewing and removing licences; rules and restrictions licensees must abide by; and enforcement measures in case of non-compliance. The following examples illustrate different ways in which licensing laws may be designed.

In South Africa, registration is necessary in order to manufacture and distribute alcohol.

The Liquor Act 2003 (140):

- defines categories of persons who cannot be registered as manufacturers or distributors, such as minors, convicted persons or unrehabilitated insolvents;
- sets out elements that must be considered by public authorities when evaluating a registration application, including the potential for black economic empowerment, the contribution to combating alcohol abuse and the impact registration will have on competition; and
- establishes the requirements and procedure to register, transfer a registration and cancel a registration.

In Kenya, the Alcoholic Drinks Control Act 2010 sets out rules on the application of production, retail, import and export licences, their renewal and withdrawal (21). Section 8 of this law also provides for an institutional framework to manage the licensing system at the district level:

- (1) There shall be, for every district, a committee to be known as the District Alcoholic Drinks Regulation Committee which shall –
 - (a) issue licenses in accordance with this Act; and
 - (b) perform such other functions as may, from time to time be allocated to it by the Minister.
- (2) The District Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate.
- (3) The District Committee shall consist of –
 - (a) the District Commissioner of the district who shall be the chairperson;
 - (b) the District Medical Officer of Health;
 - (c) Officer Commanding Police Division;
 - (d) one person nominated by every local authority in the district;
 - (e) three residents of the district, appointed by the Minister at least two of whom shall be women;
 - (f) one person designated by the relevant agency who shall be the secretary to the District Committee.

Example 10. Describing licensing systems in three African countries (continued)

In Uganda, the Liquor Act 1960 establishes a licensing system for the production and retail of alcoholic beverages (141). In this case, Section 2 of the law defines the sanctions resulting from contravening licensing provisions:

- (1) Subject to this Act, no person shall –
 - (a) sell liquor anywhere in Uganda; or
 - (b) manufacture or sell native liquor in a municipality, town or trading centre,
 unless he or she is licensed to do so by a licensing authority under this Act.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Some jurisdictions employ a combination of licensing and monopoly systems, such as by establishing a monopoly for the retail of alcoholic beverages and a licensing system for the import, export and production of alcoholic beverages. For example, in Norway, the retail of alcoholic beverages above 4.7% ABV can only be conducted by the monopoly (see Table 6), whereas a licence is required to produce, wholesale, sell (under 4.7% ABV) and serve alcoholic beverages (74). In other countries, the combination of monopolies, licensing systems and open systems results from their federal structure and the responsibility granted to subnational entities to regulate alcohol availability. For example, in India, some states have established wholesale monopolies, retail monopolies, a combination of both, licensing systems or open systems (142).

7.2.2.3 Regulation of the number and location of on-premises and off-premises alcohol outlets

Some jurisdictions restrict the number, density and location of alcohol outlets (143). One option for doing so is to define thresholds for the density of alcohol outlets, based on the following criteria:

- Population: legislation defines a permitted number of alcohol outlets per population, and the number of outlets will then vary with population fluctuations.
- Land area: legislation defines a permitted number of alcohol outlets per land areas, which stay constant over time.
- Zoning: legislation specifies thresholds for alcohol outlet density based on specific land use or zoning, so alcohol establishments may be forbidden in some zones (such as residential areas), whereas they will be allowed or concentrated in others (such as commercial areas).

In some countries, restrictions on the number of alcohol outlets are combined with licensing systems. For example, in Kenya, Section 12 of the Alcoholic Drinks Control Act 2010 provides that (21):

The District Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the District Committee is satisfied –

- (a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law.

Other jurisdictions prohibit the sale of alcohol in specific locations, generally public spaces, such as health facilities, educational institutions, military institutions, police buildings, religious buildings, public parks, government offices or fuel service stations. Restrictions often cover the places themselves and a specified distance around them.

For example, Section 27 of the Alcoholic Beverage Control Act 2008 of Thailand prohibits the retail of alcoholic beverages in the following places (23):

- a temple or any place of worship;
- a State public health service unit, infirmary or pharmacy;
- a public office, except the area designated for the establishment of a shop or club;
- a dormitory;
- an educational institution;
- a petrol station;
- a public park provided by the government for public recreation.

Licensing systems may be suitable mechanisms to verify compliance with location restrictions, as example 11 illustrates.

Example 11. Limiting the number of alcohol retail establishments in Chile

Chile has established a licensing system for alcohol retail in Law No. 19.925 on the Distribution and Consumption of Alcoholic Beverages (144). Under Articles 6 to 8, the number of alcohol outlets is limited, subject to the following rules.

- Municipalities are competent to issue licences.
- Licences can be issued both in urban and rural areas.
- A maximum of 1 licence per 600 population can be issued in each municipality.
- The number of licences that can be issued in each municipality is determined every three years based on the number of inhabitants registered by the national institute of statistics.
- No licences can be issued to outlets located less than 100 meters from educational institutions, health centres, correctional facilities, military centres, police stations and public transport terminals and stops.

Chile therefore regulates the number of alcohol outlets through a licensing system, the establishment of density thresholds and location restrictions.

7.2.2.4 Regulation of the days and hours of retail sales

Many countries restrict alcohol sales in the evening and at night and during the weekends. Such legislation exists in Baltic countries, in several cantons of Switzerland, in several states of the United States and in some Latin American countries, among others. For example, in the Dominican Republic, Article 11 of the Law on Prevention and Control of Excessive Consumption of Alcoholic Beverages prohibits alcohol sales from 01:00 to 08:00 from Sunday to Thursday, and from 03:00 to 08:00 on Fridays and Saturdays. In some countries, restrictions vary according to different criteria, including:

- Alcohol content: for example, Kazakhstan prohibits sales of alcoholic beverages with an alcohol content above 30% ABV between 21:00 and 12:00, while sales of other alcoholic beverages are prohibited between 23:00 and 08:00 (145);
- The location: for example, in Lithuania, Article 18 of the Law on Alcohol Control bans the sale of alcohol from Monday to Saturday from 20:00 to 10:00 and on Sundays from 15:00 to 10:00 in retail outlets, except in international trains, ships, international aircraft, hotel minibars, tax-free shops and special trading venues (71). In Switzerland, the canton of Geneva bans off-premises sales of alcoholic beverages every day from 21:00 to 07:00, but allows on-premises sales, while the canton of Neuchâtel bans off-premises sales and deliveries after 19:00 (146).
- The type of retail licence: for example, in Costa Rica, Article 11 of Law No. 9047 on the Regulation and Marketing of Alcoholic Beverages allows sales of alcoholic beverages between 11:00 and midnight for holders of a licence A (off-premises establishments) and B1 (canteens, bars and taverns), between 16:00 and 02:30 for holders of a licence B2 (dancing saloons, discos, nightclubs and cabarets), between 11:00 and 02:30 for holders of a licence C (restaurants), between 08:00 and midnight for holders of a licence D (mini-markets and supermarkets) and at any time for holders of a licence E (hotels and other establishments of touristic interest) (147).

7.2.2.5 Regulation of the modes of retail of alcohol, including online sales and delivery

Some jurisdictions prohibit retail modes that make alcohol more available or hinder sales controls. Retail modes that are typically restricted include peddling and selling alcohol through vending machines. For example, Turkmenistan prohibits sales of alcohol products on the Internet and through vending machines (148). Section 30 of the Alcoholic Beverage Control Act 2008 of Thailand prohibits sales of alcoholic beverages through automatic vending machines and hawking (23). Section 32 of the NATA Act 2006 of Sri Lanka prohibits the installation of vending machines for dispensing alcoholic beverages (22). Article 30 of Law No. 1100-XIV on the Manufacture and Circulation of Alcohol of the Republic of Moldova prohibits the sale of alcoholic beverages by itinerant trade establishments, such as trailers or vehicles (77).

One specific challenge in regulating alcohol retail modes concerns online sales and delivery. Online retail and home delivery of alcoholic beverages has increased significantly in recent years but most jurisdictions do not currently regulate this mode of retail through specific laws or regulations. Generally applicable approaches, such as licensing systems and monopolies may restrict online retail of alcohol indirectly, such as where retail activities can only be conducted by a monopoly or licenced retailer, facilitating government oversight. In the absence of a licensing system or a monopoly, specific rules may be required to regulate online retail, especially to protect minors and intoxicated persons, as age and intoxication restrictions may be more difficult to implement online. For example, Colombia has a minimum purchase age of 18 years old. Article 52 of the Consumer

Protection Law provides that online retailers must take all possible measures to verify the age of consumers and, if the product is bought by a minor, the retailers must have an explicit authorization from the parents to finalize the transaction. This rule was violated by an on-demand delivery service, as the e-commerce website and mobile app lacked mechanisms to ensure that minors did not search for and buy alcoholic beverages, and the operator was found delivering bottles of liquor to a 15-year-old boy. Consequently, the Colombian Superintendency of Industry and Commerce imposed a fine of US\$250,000 on the delivery service (149). Rules regulating online alcohol retail and delivery may also seek to implement digital marketing restrictions, considering the increased integration of marketing and retail in online environments.

A study comprising 77 jurisdictions conducted in Australia, Canada, Ireland, New Zealand, the United Kingdom and the United States illustrates current regulatory challenges (150). The study reveals different approaches to online alcohol sales and delivery systems. Five jurisdictions in the United States (Alabama, Delaware, Mississippi and Utah) and one in Canada (Yukon) fully prohibit online sale and delivery of alcohol, whereas 72 jurisdictions allow it. Among the other 72 jurisdictions, seven states in the United States require age to be verified at the time of purchase for some or all online alcohol sales: Alaska, Indiana, Kansas, Michigan, Nebraska, Pennsylvania and South Dakota. In South Dakota, the law requires age verification both at the time of purchase and at the time of delivery (151):

Title 35 on Alcoholic Beverages, section 35-12B-5. Sale and shipment of wine registered for direct shipment – Requirements

Notwithstanding any other provisions of title 35, a direct shipper licensed pursuant to this chapter may sell and ship wine to any person in this state who is twenty-one years of age or older if the wine is registered for direct shipment as required pursuant to § 35-12B-2. Before shipping the wine, the direct shipper shall verify the age of the person placing the order by obtaining a copy of the person's valid age-bearing photo identification document issued by this state, another state, or the federal government, or by using an age verification service. The direct shipper shall record the name, address, date of birth, and telephone number of the person placing the order on the order form or other verifiable record. The direct shipper shall notify the person placing the order that the recipient of the shipment is required to show a valid age-bearing photo identification document issued by this state, another state, or the federal government upon delivery. No direct shipper may ship more than twelve cases of wine, containing no more than nine liters per case, in any calendar year to any person for personal use under this chapter.

Some jurisdictions do not require age verification, but do require a date of birth to be entered or a box to be ticked by purchasers confirming that they are over the legal purchase age. For example, in New Zealand, the Sale and Supply of Alcohol Act 2012, provides (152):

Section 59(3). The holder of an off-licence must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.

New Zealand's national guidance on remote sales of alcohol clarifies how this provision is to be interpreted. Remote sellers comply with the above provision if:

- (i) they ask the buyer to tick on a screen box declaring that they are 18 years of age or over when they first enter the Internet site; and
- (ii) they ask the buyer to tick on a screen box declaring that they are 18 years of age or over immediately before the sale of alcohol is completed.

However, it has to be noted that the age-verification rules provided in New Zealand's Sale and Supply of Alcohol Act 2012 were adopted prior to the growth in online ordering and delivery and were therefore not designed for the current online retail environment.

The other jurisdictions examined in this study where online alcohol sales and delivery are permitted only require age to be verified at the time of delivery.

Jurisdictions regulating online sales and delivery of alcohol often also regulate third-party delivery services. Most jurisdictions in the above-mentioned study allow all or some alcohol deliveries to be conducted by third-party delivery services and not necessarily by the licensee. Some of them require third-party services to obtain an authorization, permit or licence from the liquor authority. For example, in the Canadian province of Saskatchewan, the Alcohol Control Regulations 2016 regulate "home delivery special use permits" and "direct-to-consumer delivery permits" (153):

Section 21(3). Subject to section 73.1, the holder of a home delivery special use permit may:

- (a) deliver beverage alcohol on behalf of a retail store, restaurant or craft alcohol producer to a customer at a private place where it is lawful to store and consume beverage alcohol; or
- (b) do the following:
 - (i) take an order directly from a customer who wishes to purchase beverage alcohol for home delivery;
 - (ii) sell the beverage alcohol to the customer for home delivery; and
 - (iii) deliver the beverage alcohol to the customer at a private place where it is lawful to store and consume beverage alcohol.

Section 59(2). The authority may issue a direct to consumer delivery permit for a period not exceeding three years to any person who:

- (a) applies to the authority in the form required by the authority;
- (b) is involved in the business of shipping products and packages for consumer purposes;
- (c) intends to offer direct to consumer delivery of beverage alcohol that is purchased or acquired by an individual to be brought or imported into Saskatchewan in accordance with clause 133.1(2)(f) of the Act and section 58 of these regulations; and
- (d) in the authority's opinion, qualifies for a direct to consumer delivery permit in accordance with the Act and these regulations.

Some jurisdictions impose additional restrictions on third-party delivery services, including:

- (i) Age verification. For example, in Saskatchewan, before delivering the alcoholic beverage, the holder of a direct-to-consumer delivery permit must:

...require the purchaser, or the individual accepting delivery of the beverage alcohol on behalf of the purchaser, to show proper identification proving that he or she is not a minor.

- (ii) Responsible service of alcohol training. For example, in the state of Georgia, the United States, delivery drivers are required to complete an approved “Alcoholic Beverage Delivery Training” course.

Some jurisdictions impose further restrictions on alcohol delivery, including:

- (i) Alcohol types permitted for delivery. For example, North Carolina, the United States, permits the delivery of beer and wine but not spirits, whereas all jurisdictions in Australia, the United Kingdom and New Zealand permit delivery of any alcohol type.
- (ii) Quantities permitted for delivery. For example, in Minnesota, the United States, wineries can deliver a maximum of 18 litres of wine per year to each resident, whereas in New York they can deliver a maximum of 324 litres of wine per year to each resident.
- (iii) Trading hours. Some jurisdictions in the United States (for example, Vermont and Iowa) restrict the delivery of alcohol to fewer hours than the maximum trading hours for other premises. Most jurisdictions, however, apply the same restrictions as for standard sales and a few jurisdictions allow deliveries to occur outside the standard trading hours (for example in Scotland and in the Canadian province of Alberta and the Australian state of South Australia).

The above-mentioned examples illustrate some of the regulatory approaches that countries may follow to restrict online alcohol sales or implement existing retail restrictions in the context of online retail. These include the following:

- Countries may prohibit online alcohol sales and delivery services.
- Where these activities are not prohibited, the following approaches may be followed.
 - Where a monopoly or a licensing system is in place, the same system may apply to online alcohol retailers and delivery service providers.
 - Countries may require age verification both at the time of purchase (by the online retailer) and at the time of delivery (by the online retailer or the delivery service). By making provision in the law for the documents or tools required to verify age, countries may facilitate implementation and compliance.
 - Countries may apply all alcohol retail and service restrictions to online sales and delivery. For example, if responsible service training is required for alcohol retailers, this training may also be required for online retailers and delivery services.
 - Countries may coordinate online retail restrictions with digital marketing restrictions (see section 6), since these two activities are frequently integrated in online environments.

7.2.2.6 Restrictions on retail sales during special events

Some jurisdictions prohibit alcohol sales during events where alcohol consumption may significantly increase, such as sports events, concerts, election days or popular festivities. **India** has a system of dry days on which alcohol is not sold. Some dry days are observed throughout the country (e.g. on Republic Day, Independence Day and Gandhi Jayanti) but, generally, each state has the power to decide on its dry days, which are usually established on major religious festivals and dates.

Alternatively, some countries restrict the sale of alcohol at certain events only for beverages exceeding a specified strength. For example, Article 18 of Lithuania's Law on Alcohol Control allows alcoholic beverages to be sold at fairs, mass gatherings and sports competitions only if they do not exceed 7.5% ABV and at exhibitions if they do not exceed 13% ABV (71).

7.2.2.7 Regulation of unrecorded alcohol

The WHO Global strategy recognizes that, in some countries, informal markets are the main source of alcohol, and formal controls on the sale of alcohol therefore need to be complemented by actions addressing illicit or informally produced alcohol. Countries that regulate home-produced unrecorded alcohol follow three main approaches.

- Some countries partially prohibit the production of home-produced alcohol, based on the alcohol content of the drink. For example, Article 10 of the Law on Alcohol Control of Lithuania provides (71):

Production of home-brewed alcoholic beverages shall be prohibited in the Republic of Lithuania, except naturally fermented alcoholic beverages produced for personal use of natural persons (i.e. not for sale, but only for meeting own or family needs), where the ethyl alcohol strength of such beverages by volume is not over 18 per cent (for beer – no higher than 9.5%).

- Some countries partially prohibit the production of home-produced alcohol, based on the beverage category (which indirectly controls the alcohol content of home-produced beverages). For example, in the United States, the home-brewing of beer and wine is allowed but home-distilling is prohibited (154).
- Some countries exclude home-produced alcohol from all or some of their general rules on alcoholic beverages. In South Africa, rules on the manufacture and distribution of liquor do not apply to "liquor from a private collection", which is liquor produced or acquired for private consumption and without the intention of reselling it (155). In the Republic of Moldova, home-produced alcohol for personal consumption is not subject to taxes, licensing and other production and retail requirements, except for home-produced strong alcoholic beverages (156). In Nepal, a licence is not required to produce alcohol or jaad (a local alcoholic beverage) for personal consumption (157).

These approaches vary in terms of their underlying objectives, which include a mix of objectives concerning public health, public order, enforceability and cultural traditions.

The choice of one approach or another will determine whether or not all or some informal alcohol may also qualify as illicit alcohol and, therefore, whether any enforcement measures must be adopted for the manufacture, distribution or retail of informal alcohol.

7.3 Restricting the service of alcoholic beverages

The WHO Global strategy recommends establishing an appropriate minimum age for purchase or consumption of alcoholic beverages and restricting the service of alcohol to intoxicated persons. Beyond these two measures, restrictions on the service of alcoholic beverages may include, more generally, any measures aimed at serving alcohol responsibly. In this context, this section discusses restrictions on service, such as in licensed venues or in private settings, as distinct from retail sales of unopened containers. It is worth noting, however, that much of the discussion of minimum age requirements is equally relevant to retail sales.

7.3.1 Rationale

There is evidence that drinking alcohol during adolescence may have detrimental effects on brain development, brain functioning and neuropsychological performance (158). Moreover, adolescent alcohol use could increase the likelihood of developing alcohol use disorder and mental health disorders, such as anxiety and depression, during adolescence and later in life (159).

Imposing and increasing the minimum legal age to purchase or drink alcoholic beverages may seek to reduce the exposure of children to alcohol and their ability to purchase and drink alcoholic beverages, therefore reducing early initiation of alcohol consumption and heavy episodic alcohol use. These measures also aim to decrease alcohol consumption to protect brain development and functionality, avoid alcohol use disorders, and reduce alcohol-related problems, including road fatalities, suicide attempts and criminality.

7.3.2 Approaches to restricting the service of alcoholic beverages

7.3.2.1 Implementing minimum age restrictions

Most jurisdictions have a national or subnational minimum legal purchase or drinking age. Sometimes, the terms “minimum legal drinking age” and “minimum legal purchase age” are used interchangeably, as many jurisdictions set both ages at the same level (160). However, the distinction between setting a minimum purchase age and a minimum drinking age may be important, as it may switch liability from the seller to the alcohol consumer and determine whether government action is focused on regulating commerce or personal conduct. For the purposes of this publication, the term “minimum age restrictions” comprises both minimum purchase age and minimum drinking age. However, it is important to stress that an approach that regulates commerce and ensures that commercial conduct is the subject of a legal obligation is both more consistent with health promotion approaches and likely to have a greater impact. Laws defining minimum age restrictions differ in several regards, as the following table underlines.

Table 7. Design features in age restrictions

Regulated element	Observed approaches
Age	<p>Minimum age restrictions are ordinarily set at 18 years of age. However, the age varies from 13 to 25 across jurisdictions.</p> <p>It is not unusual for jurisdictions to define minimum age restrictions above the age of majority. For example, Sri Lanka and the United States have a minimum purchase age of 21, while Eritrea has a minimum purchase age of 25 (8).</p>
Establishments concerned	<p>Age restrictions typically apply to both on-premises and off-premises purchases. However, some exceptions exist, and age restrictions sometimes vary based on the place where alcohol is served. For example, Cameroon has a minimum legal age of 21 years old for on-premises sales and of 18 years old for off-premises sales of alcoholic beverages (8).</p> <p>In order to enforce on-premises restrictions, some countries restrict access to underage persons to specified establishments selling alcoholic beverages. For example, in Chile, Article 29 of Law No. 19.925 on the Distribution and Consumption of Alcoholic Beverages prohibits minors under 18 years of age from entering cabarets, canteens, bars and taverns; their access to clubs that serve alcoholic beverages is also prohibited (144). This shifts responsibility to the manager or owner of such establishments to verify the age of all persons entering their establishments through an official identification document, rather than verifying age at each purchase.</p>
Beverages concerned	<p>Age restrictions often apply uniformly to all alcoholic beverages. However, the minimum age sometimes varies for beer and wine, on the one hand, and spirits, on the other hand. For example, Belgium, Germany and Switzerland have a minimum age of 16 to purchase beer and wine, whereas the minimum age is 18 for other alcoholic beverages. In Norway, the minimum age is 18 for beer and wine and 20 for spirits (8).</p> <p>Different age restrictions may be based on the product category (for example beer, wine or spirits) or on the alcohol content of the product.</p>
Secondary supply of alcohol to minors	<p>It is common for laws to make it an offence for adults to supply alcohol to minors. This prohibition can assist in reducing circumvention of minimum age requirements through purchase by an adult.</p> <p>Some laws provide exceptions to this rule to allow, for example, a parent or a guardian to give alcohol to their own child or any adult to give alcohol to a minor on private property. However, the SAFER technical package recommends against allowing alcohol consumption by minors in the presence of parents, family or friends, as this undermines the purpose of laws on minimum purchase age. Moreover, such exceptions make enforcement of the minimum age requirements more difficult (161).</p>

Regulated element	Observed approaches
	<p>In general, laws allowing the secondary supply of alcohol to minors require certain conditions to be fulfilled. For example, in New Zealand, anyone who sells or supplies alcohol to any person under the purchase age of 18 commits an offence, except if (162):</p> <ul style="list-style-type: none"> the person supplying the alcohol is the parent or legal guardian and the alcohol is supplied in a responsible manner; or the person supplying alcohol has the express consent of the young person's parent or legal guardian and the alcohol is supplied in a responsible manner. Express consent may include a personal conversation, an email or a text message that the supplier has good reason to believe is genuine. <p>Under New Zealand's Sale and Supply of Alcohol Act, in order to supply alcohol to persons under 18 years of age, the supplier should:</p> <ul style="list-style-type: none"> supervise the consumption of alcohol; provide food; provide a choice of low-alcohol and/or non-alcoholic drinks; and ensure safe transport options are in place.
Enforcement	<p>It is common for laws to specify a method of age verification. For example, in Finland, Article 40 of the Alcohol Act No. 1102/2017 provides that (163):</p> <p>The buyer of alcoholic beverages and the person staying in the serving area is obliged to prove their age to the staff supervising the retail sale and serving of alcoholic beverages and to the official supervising the compliance with this law, with a picture ID card, driver's license or passport issued by the authority, or with another reliable picture document issued by the authority.</p> <p>Some laws place an obligation on the business based on the consumer's appearance. For example, in Ghana, Section 15 the Liquor Licensing Act 1970 provides that (164):</p> <p>A holder of a licence to sell spirits, wine or beer shall not allow a person under the apparent age of eighteen years to be in the bar of the licensed premises during permitted hours.</p> <p>A licensee who violates this rule is liable to a fine or imprisonment.</p> <p>As a general rule, requiring verification through presentation of an official identification document, such as a driver's licence or a national identity card, can aid enforcement by reducing subjective views regarding the appearance of an individual (see section 10 of this publication).</p>

Regulated element	Observed approaches
Liability rules	<p>Whether the law is drafted as restricting the purchase or the sale of alcohol under a certain age or whether it bans drinking alcohol under a certain age, the seller, the manager and/or the licence holder, not the consumer, are usually liable in case of violation.</p> <p>For example, section 15 of Ghana's Liquor Licensing Act 1970 provides (164):</p> <p>A licensee who contravenes subsection (1), and a person who causes or procures a person under the apparent age of eighteen years to enter or to be in the bar of a licensed premises during the permitted hours, commits an offence and is liable on conviction to a fine not exceeding twenty-five penalty units and in default of payment to a term of imprisonment not exceeding one month.</p> <p>In jurisdictions where the secondary supply of alcohol is regulated, liability may typically extend to the supplier. For example, Section 239 of New Zealand's Sale and Supply of Alcohol Act 2012 makes secondary suppliers liable if they fail to comply with the conditions established above (152):</p> <p>A person who is not a licensee or a manager of any licensed premises who sells or supplies alcohol on or from the licensed premises to any person who is under the purchase age commits an offence.</p>

Many laws have a general provision addressing purchase restrictions in general without examining all of the elements provided in Table 7. For example, Proclamation No. 112/2019 to Provide for Food and Medicine Administration of Ethiopia provides that (165):

Section 18. It shall be illegal to sell any alcoholic drink to anyone under the age of 21.

Section 67. Any person, who sells, furnishes, or in anyways gives tobacco product or alcoholic product to a person under the age of 21 shall be punishable by imprisonment for not less than three months, or by a fine from Birr one thousand to three thousand.

However, other countries have more detailed provisions including many of the elements introduced in Table 7, as the example of Namibia illustrates.

Example 12. Age restrictions in Namibia

Section 56 of the Liquor Act 1998 of Namibia defines detailed age restrictions for alcohol retail (166). The law defines a minimum legal age for alcohol sale, verification mechanisms, rules on the secondary supply of alcohol to minors and enforcement measures in case of violation of the law.

- (1) No person shall sell or supply any liquor to a person under the age of 18 years.
- (2) A person intending to sell or supply liquor to another person shall take reasonable measures to determine the age of that other person.
- (3) No person, including a licensee, or manager or employer of such licensee, shall allow a person under the age of 18 years to be present in a licensed or unlicensed shebeen, night club or dance hall unless accompanied by his or her parent, guardian or care-giver.
- (4) A licensee, or manager or employee of a licensee referred to in subsection (3), shall take reasonable measures to determine –
 - (a) the age of a person suspected to be under the age of 18 years; and
 - (b) whether an adult accompanying such person is in fact the parent, guardian or care-giver of that person before admitting such adult and such person to a licensed shebeen, night club or dance hall.
- (5) No person, including a licensee, or manager or employer of such licensee, shall sell or provide liquor to the accompanying parent, guardian or care-giver of a person under the age of 18 years if such parent, guardian or care-giver reasonably appears to be intoxicated or in circumstances where there is concern about the health, safety or well-being of the person under the age of 18 years.
- (6) No person under the age of 18 years shall falsely represent himself or herself or any other person, to have attained the age of 18 years for the purpose of obtaining liquor in violation of this section or for the purpose of entering into premises where the presence of persons under the age of 18 years is restricted.
- (7) No person shall –
 - (a) make a false document;
 - (b) sell or supply a false document to another person; or
 - (c) wilfully deface or alter any document, with knowledge or a reasonable suspicion that the document may be used under false pretences in order to circumvent the provisions of this section.
- (8) No person shall provide a document that is evidence of the age of that person to another person if there is a reasonable suspicion that such document may be used to circumvent any of the provisions of this section.
- (9) A licensee or manager or employee of such licensee who has a reasonable suspicion that a document is being presented in violation of any of the provisions of this section must seize and confiscate that document and submit it to a member of the police or a municipal police force within 48 hours for purposes of an investigation.

Example 12. Age restrictions in Namibia (continued)

- (10) No person under the age of 18 years shall –
- (a) consume liquor, except as part of a generally recognised religious sacrament;
 - (b) produce liquor;
 - (c) possess liquor;
 - (d) import liquor; or
 - (e) supply liquor to any other person.
- (11) A member of the police or a municipal police force who finds liquor, whether in an opened or unopened container, in the possession of a person who cannot provide reasonable evidence that he or she has attained the age of 18 years may immediately confiscate such liquor without a warrant.
- (12) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) relating to seizure and forfeiture apply with such changes as may be required by the context to any documents or liquor seized in terms of this section.

Minimum age requirements may be difficult to implement, as they require retail outlets and on-site establishments to enforce the law. Some elements may facilitate implementation.

- Definition of the set of actors that may be held responsible for selling alcohol to minors or to intoxicated persons. For example, in the United Kingdom, a change to the Licensing Act 1964 established that not only the licensee could be held liable, but also any person who actually sells alcohol, whether this person holds the licence of the establishment or not. This modification, which has been incorporated into the more recent Licensing Act 2003, prevented the circumvention of the law (167).
- Standards to be followed by alcohol retailers to apply restrictions on the sale of alcohol. Some legal instruments provide defences that retailers can raise if they have conducted the necessary assessment (of age or intoxication) as provided in the instrument. For example, in the United Kingdom, it is a defence for retailers to argue that they believed an individual was 18 or over and that they had taken all reasonable steps to establish the individual's age, which implies asking for evidence of age and being convinced by that evidence. Providing a list of the official documents within a jurisdiction that may be admitted as evidence may facilitate the retailer's task.
- Where the user may be held liable for alcohol consumption, the law may place additional limits to protect the offender (who is often a minor or a vulnerable person) to ensure that the sanction preserves the rights of the child and are not excessive. For example, the draft Law on Alcohol and Minors of Spain provides that a fine can be imposed on minors for consuming alcohol, but that they, their parents or their legal representatives may request the suspension of the fine if they agree to participate in rehabilitation activities.

Implementing legal purchase age requirements is more difficult where services that deliver alcoholic beverages purchased online are allowed. Regulating online alcohol retail and delivery and, in particular, online age verification may facilitate implementation (see section 7.2.2.5). At the time of writing, there are no harmonized online age verification mechanisms at the international

level. Governments and companies have therefore developed a variety of tools or requirements, including (168):

- self-certification;
- digitized identification issued by governments;
- credit cards;
- biometric data, including facial recognition;
- analysis of online usage patterns;
- offline verification; and
- parental consent.

Example 13. The United States races to introduce online age verification mechanisms

The need for effective online age verification mechanisms is apparent in the United States, where states are seeking to limit children's access to a range of goods and services. These include limiting the negative impact of social media on young people's mental health and some states' objective of restricting access to pornographic content online (169). Similar approaches may later be used for other age-restricted activities, such as age-restricted sales of alcohol, tobacco or gambling services.

In September 2022, California adopted the Age-Appropriate Design Code. This law established a working group responsible, inter alia, for making recommendations to the legislature on appropriate age assurance methods to be used by businesses (170).

In December 2022, Texas introduced a bill that prohibits Texas residents under the age of 18 from creating a social media account and requires social media companies to verify user age through a variety of methods, including a photo identification mechanism, and to provide pathways for parents to request removal of their children's accounts (171).

In January 2023, Louisiana adopted the Age Verification Act (172). It requires websites containing adult or pornographic material to implement an age verification process. The system must use a government-issued identification document or any commercially reasonable method that relies on public or private transactional data (e.g. records from mortgage, education and employment entities) to verify the age of the person.

In March 2023, Utah adopted the Social Media Regulations Act (173). The law requires large social media platforms to verify the age of users and obtain express consent from a parent or guardian prior to allowing users under 18 years of age to open an account. It also requires that parents or guardians be given access to the content and interactions of an account held by their children. In parallel, Utah adopted the Online Pornography Viewing Age Requirements (174). This law requires entities that provide pornographic and other adult materials to verify age by requiring users to provide a digitized identification card or by verification through an independent third-party age verification service. The system must compare the information provided by the user to the material that is available from a commercially available database that is regularly used by government agencies for age and identity verification.

In April 2023, Arkansas passed the Social Media Safety Act which requires social media companies to verify Arkansas users' ages by engaging a third-party vendor to perform reasonable age verification (175).

Most of these laws have been legally challenged, essentially based on freedom of speech arguments. These challenges are analysed in section 10.

7.3.2.2 Requiring responsible sale and service of alcohol

Many jurisdictions prevent the sale and service of alcoholic beverages to intoxicated persons. For example, the Hotel Management and Sale and Distribution of Liquors (Control) Act 2023 (1966) of Nepal provides for (176):

7. [A] prohibition on selling liquors to and offering liquors for consumption by minor and drunk person: No owner of hotel or shop may sell liquors or offer liquors for consumption by a minor below sixteen years of age and one who is already drunk.

9. [A] prohibition of entry of costumer who is already drunk: No owner of hotel or shop may knowingly allow one who is already drunk to enter his or her hotel or shop.

In drafting similar provisions, governments may consider banning the service of alcohol to persons intoxicated by alcohol alone or by other substances as well. For example, in Norway, Section 8-11 of the Alcohol Act provides (73):

The retailing, supply or serving of alcoholic beverages to persons who are obviously under the influence of alcohol or drugs, or the serving of alcoholic beverages in such a manner that it must be assumed that the person concerned will become so influenced, shall be prohibited.

Some jurisdictions, for example in the United States, have also adopted so-called “dram shop laws”, which hold alcohol retailers liable for damages caused by an intoxicated person to whom the retailer sold alcohol. For example, if an intoxicated person causes a car accident, victims of the accident could hold the bar where the driver became intoxicated accountable for the deaths, injuries or other damages caused by the customer. Dram shop laws typically require proof of the sale of alcohol to the intoxicated person, the injuries sustained and a causal relationship between the alcohol sale and intoxication; it must also be proved that intoxication was one cause of the damages incurred. A similar form of liability is sometimes provided for social hosts, such as homeowners who may be held responsible for serving alcohol to guests when the latter then cause harm to others (177).

Moreover, some jurisdictions require persons responsible for the supply of alcohol to complete training on responsible service of alcohol. Such a course is required, for example, in Section 26B of the Liquor Control Reform Act 1998 of Victoria, Section 103A of the Liquor Control Act 1988 of Western Australia, and Section 99 of the Liquor Act 2007 No 90 of New South Wales, Australia.

In New Zealand, the Sale and Supply of Alcohol Act 2012 requires holders of on-premises licences to adopt a number of measures to reduce alcohol intoxication, including (152):

- making non-alcoholic drinks available at reasonable prices;
- making low-alcohol drinks available;
- making a reasonable range of food available in portions suitable for a single customer, at reasonable prices and within a reasonable time of being ordered;
- having free, comprehensive and accurate information about forms of transport from the premises; and
- not allowing any violent, quarrelsome, insulting or disorderly conduct to take place on the premises.


Additionally, minimum age restrictions and responsible service or supply of alcohol are linked under this instrument. While the supply of alcohol to minors may be accepted under some circumstances (see above), this must be done in a responsible manner. In accordance with Section 241 of the Sale and Supply of Alcohol Act 2012, when considering whether alcohol was supplied to minors in a responsible manner, a court may consider (152):

- (a) the steps taken by the supplier to supervise the consumption of alcohol;
- (b) whether food was provided with the alcohol;
- (c) whether a choice of low-alcohol or non-alcoholic beverages, or both, was offered;
- (d) the nature of the occasion;
- (e) any arrangements for, or provision of, safe transport;
- (f) the period over which the alcohol was supplied;
- (g) the strength and volume of the alcohol supplied;
- (h) the age of the minor; and
- (i) any other matter it thinks relevant in the particular circumstances.

8. Reducing the affordability of alcohol

Alcohol affordability refers to the ability of consumers to purchase alcohol and can be understood as the proportion of one's income required to purchase a given amount of alcohol. Generally speaking, and without considering changes in consumers' income, an increase in the retail price of alcohol results in a decrease in alcohol affordability and is likely to result in a decrease in alcohol purchases and consumption. Tax measures (section 8.1) and pricing policies (section 8.2) aim at reducing the affordability of alcoholic beverages and will be analysed in this section.

WHO has previously published the WHO technical manual on alcohol tax policy and administration (12), which sets out detailed WHO Guidance on the implementation of alcohol tax measures. The technical manual also includes sections on legal issues, which discuss legal considerations countries might take into account in developing and implementing tax and pricing measures. Rather than repeat the information included in the manual, this section seeks to describe the legal approaches used to implement tax and pricing measures and to explore other relevant legal considerations.

 **The WHO technical manual on alcohol tax policy and administration sets out detailed WHO guidance on the implementation of alcohol tax measures."**

Approaches to reducing the affordability of alcohol:

- Increase excise duties or other taxes on alcoholic beverages.
- Ban price promotions for alcoholic beverages.
- Introduce a minimum price for alcoholic beverages.
- Regularly update any tax and/or pricing measures in relation to inflation and increased population income.
- Use increased revenue from alcohol taxes for public health purposes by establishing, where necessary, a public health foundation or similar structure.
- Ensure that no subsidies or other forms of economic incentives are provided to actors in the alcohol supply chain.

8.1 Taxing alcoholic beverages

The WHO Global strategy recommends establishing a system for specific domestic taxation on alcohol, accompanied by an effective enforcement system, and increasing excise taxes on alcoholic beverages and regularly reviewing prices in relation to the level of inflation. Alcohol taxation has been recognized as one of the most cost-effective measures for reducing alcohol consumption. Hence, the updated Appendix 3 of the WHO Global action plan on NCDs lists excise taxes among the best buys for reducing the harmful use of alcohol, with high feasibility in low- and middle-income countries. Recognizing the effectiveness of these measures, the SAFER technical package recommends raising prices on alcohol through excise taxes and other pricing policies.

8.1.1 Rationales

Alcohol taxes can be designed to increase prices and decrease affordability, purchases and consumption of alcoholic beverages, thus leading to reduced alcohol harm. Additionally, jurisdictions may seek other secondary objectives through alcohol taxes.

- As taxes lead to increased government revenue, jurisdictions may seek to increase public expenditure on alcohol policies and alcohol abuse prevention and treatment strategies. This outcome is an advantage compared to pricing policies, which increase industry revenues rather than government revenues (see section 8.2).
- Increased alcohol taxes may also aim at bringing about product reformulation (package sizes, alcohol strength or product range) so that alcoholic beverages fall within product categories with more advantageous tax rates, thus leading to reduced alcohol harm.

8.1.2 Approaches to taxing alcoholic beverages

Alcohol taxes constitute indirect taxes, as they are levied on goods and services rather than on corporate income. Three categories of indirect taxes can be imposed on alcoholic beverages: general taxes, import tariffs and excise duties (178). Most jurisdictions use excise duties as a mechanism to increase taxes on alcoholic beverages.

Excise duties are imposed on a narrow range of products, such as luxury goods, alcoholic beverages, tobacco or fossil fuels. They can therefore be targeted at alcoholic beverages, affecting their relative prices, regardless of where those goods are manufactured and without affecting other goods. Excise taxes can be based on the following elements (179):

- the alcohol content of the beverage (alcohol-content-based specific taxes);
- the overall volume of the beverage (volumetric-specific taxes/unitary taxes); or
- the wholesaler, producer or retailer price of the beverage (ad valorem taxes).

Some jurisdictions only use one of these elements to define their excise duties on all alcoholic beverages. For example, Panama applies alcohol-content-based specific taxation to all alcoholic beverages. Volumetric-specific taxes apply to all alcoholic beverages in Barbados, Dominica, Saint Lucia and Saint Vincent and the Grenadines. Ad valorem taxes apply to all alcoholic beverages in Chile, Guatemala, Mexico, Paraguay, Saint Kitts and Nevis and Venezuela (180).

Other jurisdictions make a distinction among categories of alcoholic beverages and apply a different type of taxation to each of them. For example, wine in South Africa is taxed with a volume-based specific tax, whereas beer and spirits are taxed with alcohol-content-based specific taxes. Some countries have a rate of 0% for some categories of beverages (181). For example, Argentina and Uruguay exempt wine from excise taxes (182). The same situation is observed in several European countries (183).

Some countries use mixed excise tax systems, meaning that excise duties on alcoholic beverages are calculated by mixing several of the elements above. For example, Thailand employs both an alcohol-content-based specific tax and an ad valorem tax to calculate its excise duties, with rates varying by category and suggested retail prices (for beer, wine and fermented alcoholic beverages). Hence, beer is subject to an ad valorem tax of 22% of the retail price plus an alcohol-content specific tax, resulting in a rate of 430 Thai baht (US\$ 12.94) per litre of pure alcohol, while clear spirits (called “white spirits” in Thailand) are subject to an ad valorem tax of 2% of the retail price plus an additional 155 Thai baht (US\$ 4.66) per litre for the pure alcohol content (184). In Colombia, excise duties on liquors, wine and similar drinks have an alcohol-content-based specific tax component and an ad valorem tax component (185).

Variations are also observed in the choice of excise tax rates. Some countries apply one tax rate to all alcoholic beverages (uniform design), whereas others apply different rates within one product category (tiered design), often based on product characteristics. For example, in Spain Article 26 of Law 38/1992 on Special Taxes provides for a volumetric-specific tax to beer, but there are six different tax rates based on the alcoholic strength of the drink (186). Some countries periodically review excise duties to account for inflation and maintain low affordability of alcoholic beverages. In some cases, the requirement to review excise duties is provided for in the law. For example, in Colombia, the tax law provides that the rates corresponding to the specific tax component applicable to alcoholic beverages will automatically be adjusted for inflation on 1 January of each year and that the Tax Directorate of the Ministry of Finance must publish the updated duties before that date (187). In other cases, changes are incorporated through an amendment to the law. For example, in South Africa, alcohol excise duties are established in the Customs and Excise Act 1964. This instrument is amended every year through the enactment of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, the Taxation Laws Amendment Act and the Tax Administration Laws Amendment Act (188). In Latvia, the amendments to the Excise Tax Law provide for (189):

- an annual increase in the excise tax for beer, wine, fermented beverages and intermediate products of 10% from 2024 to 2026; and
- an annual increase in the excise tax for “other alcoholic beverages” (strong spirits) of 5% from 2024 to 2026.

In addition to excise duties, some jurisdictions impose other tax measures to reduce alcohol consumption and combat illicit trade in alcohol. Tax stamps allow tax authorities to monitor production and distinguish licit from illicit alcoholic beverages (190). They require all alcoholic beverages to bear an official stamp production order in order to be marketed.

Quotas on duty-free alcohol purchases seek to reduce the illicit trade in alcohol. In South Africa, the Ministry of Finance amended the schedules to the Customs and Excise Act 1964 and Valued Added Tax Act to impose a quota system that regulates the sale and purchase of alcohol and tobacco products by people with diplomatic privileges and immunities. The constitutionality of the

Ministry's power to amend the schedules and the procedure followed to make such amendments was challenged by the alcohol industry, but the Constitutional Court upheld the validity of the amendments (191). On the question of whether the executive had the ability to amend the schedules, the Constitutional Court ruled that (192):

(99) (...) These amendments to the schedules are necessary for smooth fiscal lawmaking and to enable the executive to act speedily and effectively in capping mischief or abuse. Parliament's involvement under 48(6) of the Customs Act is necessary to make the measures long-term or permanent. In sum, the legislative delegation for the minister to amend the schedules is not constitutionally impermissible.

(100) The Executive is in a much better position than Parliament to appreciate the day- to-day needs and demands of administering the matters contained within the Schedules to the Customs and the VAT Act. Parliament's delegation promotes co- operative governance and actually enhances efficient governance, both of which are constitutional imperatives. Parliament made the conscious choice that the prevailing circumstances dictated that the lawmaking work in the form of amending the Schedules be best left to the expertise and proximity of the Executive. In the circumstances, I see nothing constitutionally impermissible with that. This is especially so since Parliament retains sufficient oversight.

Regarding the procedure followed to amend the schedules, the Constitutional Court found that the decision to impose a quota system was not arbitrary, irrational or procedurally unfair. Proper notice had been given to the industry to respond, consultations had been conducted and the proposed amendments had been published for comment.

Dedicated or hypothecated alcohol taxes are taxes on alcoholic beverages that are dedicated to alcohol policies or other health activities. Thailand, which has devoted 2% of the alcohol and tobacco excise taxes collected to health promotion since 2001, provides an interesting example of a mechanism for dedicating alcohol taxes to alcohol policies and other health promotion measures.

Example 14. Using taxes for public health purposes in Thailand

Revenue from taxes on alcohol typically goes into the general accounts of governments, but jurisdictions may consider dedicating a proportion of alcohol excise duties or a separate alcohol levy to alcohol policies, health promotion and harm prevention activities. This mechanism can facilitate the implementation of alcohol programmes and reduce health-related harm (193). Thailand is one of the countries that has adopted this approach.

Thai Health Promotion Foundation (Thai Health) is an autonomous government agency established by the Health Promotion Foundation Act of 2001. Its annual revenue is derived from a surcharge of 2% on the excise taxes on tobacco and alcohol that is collected directly from tobacco and alcohol producers and importers. Thai Health works in all areas of health promotion, including alcohol. In this area, Thai Health focuses on the following actions (194):

- development of public policies and enforcement of laws
- development of academic work, news and information systems
- development of networks, campaigns and public relations
- support for alternate sponsorship in place of the alcohol industry
- development of systems for the provision of services to help individuals with alcoholism.

Other countries have followed similar strategies by establishing health promotion foundations, including Austria, Fiji, Malaysia, Mongolia, Singapore, Switzerland and Tonga. WHO recommends that health promotion foundations have a clearly formulated and strong legislative framework for organizational structure with good governance, clear objectives and established funding mechanisms (195).

8.2 Legislating alcohol price policies

Area 7 of the WHO Global strategy includes pricing policies among the recommended interventions. More specifically, the strategy recommends:

- regularly reviewing alcohol prices in relation to the level of inflation and income;
- banning or restricting the use of direct and indirect price promotions, discount sales, sales below cost and flat rates for unlimited drinking;
- establishing minimum prices for alcohol;
- providing price incentives for non-alcoholic beverages; and
- reducing or stopping subsidies to alcoholic beverages operators.

The SAFER technical package elaborates on this, stating:

Direct and indirect price promotions, discount sales, sales below cost, and flat rates for unlimited alcohol consumption or other types of volume sales have the effect of reducing the price of alcohol. This in turn increases consumption and thus increases harm – particularly the consumption and harm that results from an occasion of heavy episodic drinking. These promotions should be restricted or banned (6).

Given that price policies increase industry revenues, they complement a well-designed tax system (rather than being used in isolation or as a substitute for taxation).

8.2.1 Rationale

Increasing the price of alcoholic beverages is one of the most effective interventions to reduce the harmful use of alcohol. In particular, pricing measures appear to be effective in reducing underage drinking, halting progression towards drinking large volumes of alcohol and/or heavy-episodic drinking, and influencing consumers' preferences (196). For example, on-premises alcohol discounts accelerate alcohol consumption by concentrating alcohol consumption into short or rapid periods of time. Moreover, alcohol consumption increases during happy hours. Discount alcohol promotions, happy hours and all-you-can-drink events increase binge drinking rates. Increased alcohol consumption then results in a greater chance of driving while under the influence of alcohol and of becoming involved in an altercation while drunk (197). Accordingly, pricing policies seek to increase retail prices for alcoholic beverages, making them less affordable to consumers. In so doing, they aim to decrease purchases, demand and, ultimately, health and social harm due to alcohol. As a secondary purpose, pricing policies may also seek to incentivize changes in product characteristics (e.g. package sizes, alcohol strength and product range) and marketing restrictions (such as where price promotions would no longer be possible, although a combination of pricing measures and marketing restrictions is the best way to achieve this objective) (see section 6).

8.2.2 Approaches to legislating price policies

8.2.2.1 Minimum prices and minimum unit prices for alcoholic beverages

Minimum prices can be defined as the establishment of a floor price below which a specific volume of alcoholic beverage cannot be sold. Minimum unit prices establish a floor price below which a specific volume of alcohol cannot be sold (198). While several jurisdictions in the world have adopted minimum prices and minimum unit prices for alcoholic beverages, they have done so in different ways.

First, jurisdictions define their pricing policies on the basis of different elements (199):

- Alcoholic beverage volume (minimum pricing). This approach was followed, for example, in Belarus, most Canadian provinces and Uzbekistan.
- Unit of alcohol content (minimum unit pricing). This approach was followed, for example, in Armenia, Scotland and Wales, the United Kingdom.

Second, jurisdictions impose minimum prices and minimum unit prices on different categories of beverages. Armenia, the Northern Territory of Australia, and Ireland, for example, apply minimum prices across all products. The province of Québec, Canada, only applies minimum pricing to beer, Kazakhstan and the Republic of Moldova only apply it to spirits, and Kyrgyzstan only applies it to domestically produced vodka.

Third, jurisdictions apply minimum prices and minimum unit prices to different alcohol outlets. For example, the province of Alberta, Canada, has minimum prices only for on-premises trade, while the provinces of New Brunswick and Québec, Canada, apply minimum prices only to off-premises

trade, and Armenia and the Northern Territory, Australia, apply it to both on-premises and off-premises trade.

Fourth, most jurisdictions apply minimum prices and minimum unit prices at retail level (for example, Ireland, Kazakhstan and Slovakia), but some of them apply them both at retail and wholesale levels (for example, the Republic of Moldova or Uzbekistan).

Fifth, many jurisdictions regularly update their prices to maintain low affordability. In some jurisdictions, the procedure for such updates is provided for in the law. For example, in the province of Ontario, Canada, Regulation 750/21 on Minimum Pricing of Liquor and Other Pricing Matters establishes an automatic annual adjustment of the minimum retail prices (200).

6. (1) On each annual adjustment date, the minimum retail price at which each container size of Class A spirits and Class B spirits set out in the Table to section 5 can be sold shall be adjusted in accordance with the following formula:

$$A + (A \times I)$$

in which,

"A" is the minimum retail price in effect on the day before the annual adjustment date of the particular year, and

"I" is the index factor determined in accordance with Schedule 1.

- (2) On or before each annual adjustment date, the LCBO [Liquor Control Board of Ontario] shall publish the minimum retail prices, as adjusted under subsection (1), on its website.

By contrast, the Public Health (Alcohol) Act 2018 of Ireland provides a procedure to adjust the minimum price on an ad hoc basis (91):

- (3) Subject to subsection (4), the Minister [for Health] may, from time to time, by order increase the minimum price per gram of alcohol for the purposes of this Act.

- (4) The Minister shall not make an order under subsection (3) earlier than –

- (a) in the case of the first such order, 3 years after the commencement of this section, or
- (b) in the case of a second or subsequent such order, 18 months after the previous order made under subsection (3).

While the adjustment of alcohol prices is provided for in the law in Ireland, the lack of an automatic procedure has resulted in alcohol prices not having increased in recent years. Alcoholic beverages have thus become more affordable over time. Providing for an automatic adjustment of prices in the law may therefore make minimum pricing more effective and easier to implement. The diverse options followed by various jurisdictions are summarized in the following table (201).

Table 8. Examples of jurisdictions with minimum alcohol prices (201)

Country	Jurisdiction	Date first introduced	Price last updated	MP or MUP?	Wholesale or retail?	Beer	Wine	Vodka	Other spirits	Notes	Source
Armenia		2016	2020	MUP	Retail	x	x	x	x	Same MUP applies to all products and both on- and off-trades ^a	(Armenian Legal Information System, 2022)
Australia	Northern Territory	2018	2018	MUP	Retail	x	x	x	x	Same MUP applies to all products and both on- and off-trades	(Department of Industry, Tourism and Trade, 2021)
Belarus		1998	2021	MP	Retail + purchase price	–	Fortified only	x	x	Separate MPs for wholesale and retail	(Ministerstvo antimonopol'nogo regulirovaniya i trgovli 2020a, 2020b)
Canada	Alberta	2008	2016	MP	Retail	x	x	x	x	Applies to the on-trade only	(Alberta Gaming and Liquor Commission, 2017)
	British Columbia	1989	–	MP	Retail	x	x	x	x	Separate on- and off-trade prices, off-trade came first	(Stockwell et al., 2019)
	Manitoba	2001	2020	MUP	Retail	x	x	x	x	Separate on- and off-trade prices	(Legislative Assembly of Manitoba, 2014)
	New Brunswick	1999	2018	MP	Retail	x	x	x	x	Applies to the off-trade only	(New Brunswick Liquor Corporation, 2022)
	Newfoundland	2007	–	MP	Retail	x	x	x	x	Separate on- and off-trade prices	(Stockwell et al., 2019)
	Nova Scotia	1990	2007	MP	Retail	x	x	x	x	Separate on- and off-trade prices	(Stockwell et al., 2019)
	Ontario	1990	–	MP	Retail	x	x	x	x	Separate on- and off-trade prices	(Stockwell et al., 2019)
	Prince Edward Island	2009	2019	MP	Retail	x	x	x	x	Separate on- and off-trade prices	(Stockwell et al., 2019)
	Quebec	1995	–	MP	Retail	x	–	–	–	Applies to off-trade only	(Stockwell et al., 2019)
	Saskatchewan	2003	–	MP	Retail	x	x	x	x	Separate on- and off-trade prices	(Stockwell et al., 2019)
Ireland		2022	2022	MUP	Retail	x	x	x	x	Same MUP applies to all products and both on- and off-trades	(Health Service Executive, 2022)
Kazakhstan		1999	2022	MP	Retail	–	–	x	x	Separate MPs for different spirits types	(Ofitsial'nyy informatsionnyy resursy Premier-Ministra Respubliki Kazahstan, 2022)
Kyrgyzstan		2013	2022	MP	Both	–	–	x	–	Applies to domestically produced vodka only	(Pravitel'stvo Kyrgyzskoy Respubliki, 2020)
Republic of Moldova		2010	2011	MP	Both	–	–	x	x	Separate MPs for wholesale and retail	(Ministerstvo sel'skogo khozyaystva regional'nogo razvitiya i okruzhayushchey sredy Respubliki Moldova, 2000)
Russian Federation		2000	2022	MP	Both + purchase price	–	Sparkling only	x	x	Separate rates for different spirits types. Separate MPs for wholesale and retail	(Ministerstvo finansov Rossiyskoy Federatsii, 2022a, 2022b)
Slovakia		2011	2011	MP	Retail	–	–	x	x	Spirits cannot be sold below the sum of MP plus VAT and excise tax	(Public Health Authority of the Slovak Republic, 2017)
Ukraine		2008	2018, 2021 for wine	MP/MUP	Retail	–	x	x	x	MUP for spirits, MP for wine, cider, perry and sparkling wine	(Kabinet Ministriv Ukrainy, 2018)
United Kingdom	Scotland	2018	2018	MUP	Retail	x	x	x	x	Same MUP applies to all products and both on- and off-trades	(Scottish Government, 2020)
	Wales	2020	2020	MUP	Retail	x	x	x	x	Same MUP applies to all products and both on- and off-trades	(Welsh Government, 2019)
Uzbekistan		2010	2022	MP	Both	–	–	x	x	Separate MPs for wholesale and retail	(Ministerstvo finansov Respubliki Uzbekistan, 2022)

MP: minimum pricing.

MUP: minimum unit pricing.

^aOn-trade refers to places with on-premise consumption, such as bars, restaurants, hotels and nightclubs. Off-trade refers to places that retail alcoholic beverages for off-premise consumption, such as supermarkets, off-licences, shops and online stores.

8.2.2.2 Other price policies

A ban on sales below cost is a pricing intervention whereby sellers must abide by directives not to sell products at a price that is below their cost of doing business or some other proximal price. Banning below-cost sales prevents retailers from selling alcohol at a price below the cost of production and retail, as a means of enticing customers into their stores. Examples of countries that ban below-cost sales are Canada, England and Wales, the United Kingdom, and Uzbekistan (202). For instance, in England and Wales, the United Kingdom, the Licensing Act 2003 (Mandatory Conditions) Order 2014 bans selling alcohol below a permitted price, which is defined as the level of alcohol duty plus value-added tax (VAT) (203).

Restrictions on sales promotions are prohibitions of marketing strategies that sellers use to temporarily increase alcohol sales, such as volume discounts, two-for-one promotions and happy hour events. Restrictions on discounts include banning multi-buy discount promotions (for instance, “buy one get one free”) or using coupons to pay for alcoholic beverages. These promotions include on-premises promotions (such as happy hours and all-you-can-drink events) and off-premises promotions (such as volume discounts if products are purchased in bulk). Countries that have implemented volume-based discounts at some point in time include Burkina Faso, Finland, Mozambique, Scotland, the United Kingdom, Sweden, and Switzerland (202). For example, Article 51 of Alcohol Act No. 1102/2017 of Finland provides (163):

It is prohibited to offer two or more packages or servings of alcoholic beverages at a reduced total price in retail sales and serving drinks.

It is prohibited to offer and pay a rebate for the price of an alcoholic beverage which is calculated on the basis of purchases of alcoholic beverages or other consumer goods and services, in retail sales and serving alcohol.

It is prohibited to announce the offer price of an alcoholic beverage package limited to a period of less than two months outside the retail outlet.

Box 4. Industry arguments against tax and pricing measures for alcoholic beverages

In addition to the legal considerations presented in section 10, the alcohol industry uses a variety of arguments against tax and pricing measures, including:

- that they will increase the use of unrecorded alcohol, leading to more health harm and a loss of tax revenue;
- that they are anti-poor and regressive;
- that they will lead to reduced tax revenue; and
- that they will have a negative impact on employment and the economy.

WHO has addressed all of these arguments in the WHO technical manual on alcohol tax policy and administration (12). While detailed responses can be found in this document, the key messages are:

- Even where unrecorded alcohol use is significant, effective countermeasures and mitigation strategies are available to governments, including fiscal markings, electronic surveillance systems and increased enforcement.
- Arguments asserting that alcohol tax and pricing measures are anti-poor and regressive do not take into account the “alcohol harm paradox”, which refers to the fact that poorer consumers of alcoholic beverages are disproportionately harmed by alcohol consumption.
- Increases in alcohol tax rates result in increases in tax revenue and provide governments with important, predictable and stable revenue streams.
- Evidence suggests that raising alcohol taxes or adopting pricing measures will have a gradual and relatively small impact on employment in the alcohol sector. Moreover, alcohol industry employment is affected by many other factors, including technological change, global trade and country characteristics.

9. Monitoring compliance and enforcing laws and regulations

Effective monitoring and enforcement mechanisms are important to ensure compliance with the law – that is, ensuring that persons regulated by the law act in accordance with the legal obligations established therein.

9.1 Compliance monitoring

Enforcement of alcohol restrictions depends on the establishment of effective compliance monitoring mechanisms. Hence, the choice between one restriction or another may depend partly on the compliance monitoring capacity of the jurisdiction.

Three common monitoring methods are (204):

- inspection and investigation;
- record-keeping and reporting by regulated entities; and
- complaints systems of public authorities, civil society or individuals.

 **Most laws include compliance monitoring provisions based on inspection and investigation carried out by enforcement authorities."**

Other compliance monitoring mechanisms are specific to certain interventions. For example, the SAFER technical package recommends using underage "mystery shoppers" to monitor compliance with minimum purchase age restrictions. It also recommends using tax stamps to monitor tax measures and unrecorded alcohol. Tracking and tracing systems are also common ways of monitoring these interventions. Market surveillance may be used to monitor marketing restrictions.

Most laws include compliance monitoring provisions based on inspection and investigation carried out by enforcement authorities. For example, in Finland, Article 60 of the Alcohol Act No 1102/2017 allocates responsibility for overseeing compliance with the law to regional administrative agencies and to the Licensing and Supervision Agency of the Social and Health Sector, in addition to customs authorities that supervise compliance with import bans and restrictions (163). In New Zealand, Section 197 of the Sale and Supply Alcohol Act 2012 provides that the chief executive of each territorial authority must appoint licensing inspectors to monitor licensees' compliance with the act and enforce it. Some laws appoint several monitoring authorities (152). For example, the Advertising Act of Estonia, which contains provisions on alcohol advertising, appoints the Consumer Protection Board as the main supervisory authority. However, it appoints other authorities for the monitoring of specific provisions, including the State Agency of Medicines, the Health Board, the Agricultural Board and the Financial

Supervision Authority. Where alcohol measures are monitored by a variety of authorities, coordination may be required (205). For example, in Uruguay, Article 29 of the Law on the Creation of a Regulatory Framework for the Problematic Consumption of Alcoholic Beverages establishes a coordination body to monitor the alcohol market. It is composed of representatives of several authorities, including the National Drugs Authority; the Ministries of the Interior, Defence, Labour and Social Security, Economy and Finance, Health, and Agriculture; and the Institute for Children and Adolescents. This body is responsible for developing a strategic plan for monitoring compliance with the law, coordinating actions of different inspection authorities and sharing information (206).

Where the law grants inspection and investigation powers to public authorities, it will generally clarify what specific competencies these authorities have, such as:

- entering and inspecting premises;
- questioning;
- obtaining information and accessing records;
- obtaining and testing samples; and
- seizing unlawful products.

For example, Samoa's Alcohol Control Act 2020 provides the following investigation and inspection powers (207).

58. Powers of entry and inspection:

(1) A police officer or alcohol inspector may:

- (a) at any time when the sale, supply or import of alcohol is authorized by a licence, enter and inspect the licensed premises for the purposes of enforcing this Act and determining whether any requirement applicable to the licence or licensed premises is being breached; or
- (b) enter and inspect any premises at any time if there are reasonable grounds for suspecting that alcohol is being unlawfully sold, supplied or imported on the premises, or that any other breach of this Act is occurring.

(2) A police officer or alcohol inspector may subject to approval of the Board:

- (a) enter and inspect a premises that manufactures alcohol for the purposes of enforcing this Act; or
- (b) enter and inspect a premises that manufactures alcohol if there are reasonable grounds for suspecting that alcohol is being unlawfully manufactured on the premises, or that any other breach of this Act is occurring.

(3) A police officer or alcohol inspector who enters any premises pursuant to this section may:

- (a) inspect alcohol at the premises, and any other matter related to the sale or supply of alcohol at the premises;
- (b) require any person at the premises who appears to be in breach of this Act to state their name, address and age, and to verify such details by providing proof of identification;
- (c) take samples for testing and analysis of any matter, substance or thing which may have constituted a breach of this Act or any requirement applying to the license or licensed premises;
- (d) take photographs and measurements, and to otherwise collect any necessary evidence relating to the enforcement of this Act;

- (e) require the production of records and information held by any person relating to any of the following –
 - (i) the sale or supply of alcohol at the premises;
 - (ii) the types and content of alcohol being sold at the premises;
 - (iii) the employment of security and other staff at the licensed premises;
 - (iv) the training provided to staff as required by the Act;
 - (v) any other matter related to compliance with this Act or any condition applicable to the licence.
 - (f) to order that any matter, substance or thing that appears to be in breach of this Act to be contained, removed or otherwise dealt with so as to prevent any further breach of this Act.
- (4) A police officer or alcohol inspector who enters any premises pursuant to this section may seize any alcohol in the premises which is in breach of this Act or which is not satisfactorily accounted for by any owner or occupant of the premises.
- (5) A police officer or alcohol inspector exercising the power of entry and inspection under this section must, within 72 hours after the inspection, submit to the Chief Executive Officer and to the Secretary a report in writing stating the reason for and results of the inspection.
- (6) A person who hinders or obstructs a police officer or alcohol inspector during an inspection conducted under this section, or who fails or refuses to comply with any lawful requirement imposed by a police officer or alcohol inspector under this section, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

Some countries have established a system of record-keeping or reporting by regulated entities. Finland, in Articles 56 to 58 of the Alcohol Act No. 1102/2017, provides for a system of self-monitoring (163). Under this system, licence holders must draw up a self-monitoring plan describing:

- the risks of harmful effects related to the implementation of the law;
- how compliance with the law is monitored;
- how risk management of critical situations is implemented; and
- how detected deficiencies are corrected.

Licence holders must also ensure that their staff know the obligations stipulated under the Act and in the self-monitoring plan, and they must keep a record of the training and skills of persons working in their establishment. The law furthermore provides that certificates showing knowledge of the Alcohol Act must be issued by educational institutions that hold a licence from the government.

Other laws provide for complaints systems that enable the public, civil society and NGOs to monitor compliance with the law, report violations and/or bring administrative or legal actions before authorities or courts. For example, in Mexico, Article 109 of the regulations applicable to the General Health Law in relation to advertising, which include provisions on alcohol advertising, allows any person to lodge a complaint in accordance with the following procedure (208):

- report the relevant facts to the health authority;
- indicate the fact, action or omission that, according to them, represents a risk or harm to public health; and
- submit data that make it possible to identify the cause of the health risk and the persons involved.

Health authorities are required to inform the claimant about the action taken on the claim.

Some countries may rely on the monitoring conducted by industry associations to initiate their own enforcement actions. For example, in India the Advertising Standards Council of India (ASCI) banned surrogate alcohol advertising by 12 liquor companies after receiving complaints about such advertising occurring during the Indian Premier League in 2020 (209). Following this action by ASCI, in 2022 the Indian Consumer Affairs Ministry issued notices to the same liquor brands for non-compliance with the rules that prohibit surrogate advertising (210).

Other countries have developed cooperation mechanisms with civil society for monitoring purposes. This can be observed, for example, in the monitoring of digital marketing of harmful commodities. The high amount of digital marketing and its targeted and ephemeral nature make monitoring in the digital environment more complex. Civil society organizations have developed interesting tools in this area, and some governments have supported these initiatives, as the example of Viet Nam reveals (211).

Example 15. Monitoring digital alcohol marketing in Viet Nam

In Viet Nam, alcohol advertising is regulated (see example 5), but some non-compliance persists, especially in digital environments (212). The Virtual Violations Detector (VIVID) automatically scans potentially unlawful advertising on company and brand pages on digital platforms through artificial intelligence and supervised machine learning. The tool scans websites, social media outlets and shopping platforms but cannot monitor the marketing received in private threads.

VIVID was originally created to monitor advertising of breast-milk substitutes but was then expanded to cover advertising of tobacco and alcohol. In all three areas, VIVID aims to become a virtual assistant for inspectors at the Ministry of Health and the Ministry of Information and Communications. In Viet Nam, the Ministry of Health has a limited number of inspectors to monitor marketing violations, so the use of VIVID can increase the capacity to identify violations and enforce applicable rules (213).

9.2 Enforcement of laws and regulations

Laws providing for alcohol restrictions ordinarily establish enforcement mechanisms to sanction violations of the law. Four elements can often be found in such enforcement provisions:

- Definition of enforcement authorities: Which authorities are responsible for enforcement and what are their powers?
- Definition of the subject of enforcement: Who is liable for violations of the law?
- Enforcement procedure: What are the steps to be followed to enforce the law and what are the powers and limitations of the enforcement authorities?
- Sanctions: What sanctions can be applied in cases of violation?

Enforcement authorities vary from one country to another, but most laws contain provisions designating the bodies responsible for enforcing their provisions, describing their powers and establishing limits to such powers. The responsibility to enforce may rest with health, trade, justice,

tax or customs authorities and/or with various national and local agencies. In Sri Lanka, the NATA Act 2006 provides that (22):

16. For the purposes of this Act—

- (a) any Food and Drugs Inspector or Public Health Inspector as appointed by the Minister; and
- (b) any Police Officer, or an Excise Officer,

shall be an Authorized Officer of the Authority for the purposes of this Act.

17. (1) Where any Authorized Officer has reasonable grounds to believe that there has been a violation of any provision of this Act or of any regulation made thereunder, he may –

- (a) at any reasonable time enter any place where he believes any tobacco product or alcohol product is manufactured, prepared, preserved, packaged, exposed for sale or stored and examine any such tobacco product or alcohol product and take samples thereof and also examine anything that he believes is used for the manufacture, preparation, preservation, packaging or storing of that tobacco product or alcohol product;
- (b) for the purpose of carrying out effective search operation, stop or detain any vehicle in which he believes that any tobacco product or alcohol product is being conveyed, search that vehicle and examine any tobacco product or alcohol product which is being so conveyed and take samples thereof;
- (c) open and examine any receptacle or package that he believes contains any tobacco product or alcohol product;
- (d) seize and detain for such time as may be necessary any tobacco product or alcohol product by means of, or in relation to which he believes any provision of this Act or regulation made thereunder has been contravened,

in furtherance of the powers, duties or functions conferred on or assigned to him under the Act.

Where several authorities have enforcement powers with regard to alcoholic beverages, a whole-of-government approach to enforcement, with close collaboration and coordination, may be required (see Box 2).

The powers of enforcement authorities generally include:

- investigation and inspection powers, as mentioned in section 9.1 above;
- administrative compliance powers: the power to take administrative action without initiating legal proceedings, such as issuing warning or infringement notices and refusing to issue and/or placing conditions on, suspending or cancelling licences, registrations or permits.
- prosecution powers: the power to seek penalties.
- adjudication powers: the power to impose civil penalties, criminal sanctions and/or corrective action and the power to arrest and prosecute offenders.

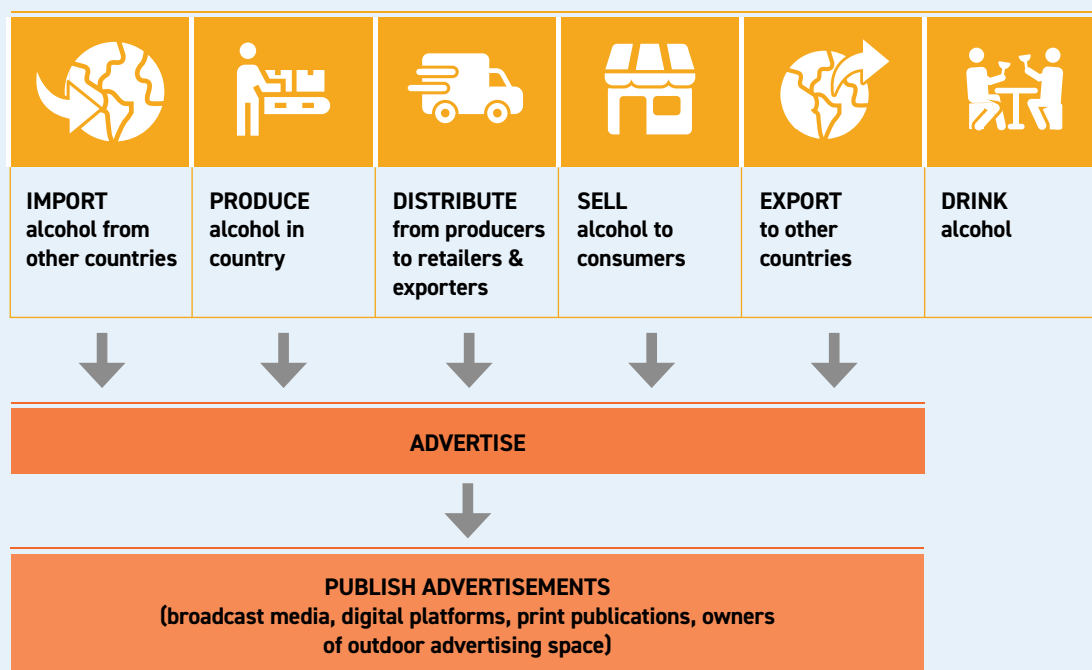
Two types of limits are typically placed on the powers of enforcement authorities:

- Authorities may only enter a place with the consent of the occupant or under the authority of a warrant.
- Authorities may not use force unless they are accompanied by a police officer and the use of force is authorized by the warrant.

Other limits may be established to ensure that enforcement powers are not abused and that authorities act within a set of principles and without violating the rights of affected persons.

Laws regulating alcoholic beverages also define who may be held liable for violating provisions. Although the supply chain for alcoholic beverages varies from one product to another, Figure 8 provides an example of the various actors that may be involved and potentially held liable.

Fig 8. Alcohol supply chain



The reasons for enforcing alcohol rules against a particular actor in the supply chain are diverse, and may depend on the enforcement capacity of authorities, their legal powers or the scope of application of the law being enforced. For example, countries with broad monitoring systems and strong enforcement capacity may be able to enforce restrictions against a broader number of actors, whereas those with more limited capacity may undertake spot checks (random sampling) or other, more selective enforcement actions. Whatever system is chosen, the principles of equity, non-discrimination and due process and the right to an effective remedy should guide the enforcement process.

Example 16. Enforcing the ban on production of alcoholic beverages in small containers in Nigeria

In 2018, the Federal Ministry of Health and the National Agency for Food and Drug Administration and Control (NAFDAC), the Federal Competition and Consumer Protection Commission, the Association of Food, Beverages and Tobacco Employers and the Distillers and Blenders Association of Nigeria decided to ban the production of alcoholic beverages in small pack volumes of 200 mL and sachets. After a transitional period, the banned products had to be completely phased out by 31 January 2024. Accordingly, no such products could be registered by NAFDAC or sold by manufacturers after that date. NAFDAC initiated enforcement actions to ensure compliance with the new policy. Although the ban is enforceable against importers, manufacturers, distributors, retailers and consumers, NAFDAC established manufacturers and printers of labels as its initial targets (214).

Liability rules will often depend on the scope of application of the law – that is, whether it regulates only licensing, advertising or taxation or applies to the overall production, distribution and marketing of alcoholic beverages. For example, Section 68 of the Liquor Act 1998 of Namibia, which essentially regulates the licensing system for alcoholic beverages, provides (166):

A person who at any time is managing, supervising or conducting a licensed business for or on behalf of a licensee shall be subject or liable to the same duties, obligations or penalties as such licensee is subject or liable to in terms of this Act or of any other law.

Under this instrument, a licence is required for distillers, brewers, wine-makers and on-premises and off-premises retailers, so liability rules apply to all those actors in the supply chain.

In Ethiopia, the Food and Medicine Administration Proclamation 2019 is a much more general law with provisions on a broad range of products. Consequently, liability rules, as provided in Section 67, are specific to each product and offence (165):

- 1/ Any person who, by sub-standardizing, misbranding, or counterfeiting a regulated product, manufactures, import, store, wholesale or sell it in retail or provide or distribute for use by the public shall be punishable (...).
- 4/ Any person who, without a registration, marketing authorization, certificate of competence or other authorization as required under this proclamation and other law issued to implement this proclamation, or using a falsified document, manufactures, import, store, wholesale or sale it in retail; or provide or distribute for use by the public shall have its product confiscated and be punishable (...).
- 18/ Any person who contravenes the provisions of this proclamation regarding prohibition or limitations on advertising, promotion, and sponsorship activities shall be punishable (...).
- 21/ Any person who sells alcohol in prohibited places shall be punishable (...).
- 24/ Any person, who sells, furnishes, or in anyways gives tobacco product or alcoholic product to a person under the age of 21 shall be punishable (...).

This instrument therefore extends liability rules to manufacturers, importers, wholesalers, advertisers and retailers.

In the Republic of Moldova, Article 52 of Law No. 62/2022 on Advertising, which contains provisions on alcohol advertising, establishes different liability rules for advertising producers, distributors and broadcasters, thus extending liability throughout the advertising supply chain (215).

Additionally, laws ordinarily define sanctions or enforcement measures for violations of alcohol restrictions. Sanctions typically include civil penalties, such as fines or other monetary penalties, and criminal penalties, such as fines, other monetary penalties and imprisonment. In Argentina, Article 20 of the National Law to Combat Alcoholism provides that 40% of the money collected through fines will be used to finance the national programme for the prevention and control of alcohol consumption and 60% to finance educational activities related to this programme and primary health care actions for the early detection of alcohol dependence problems (216).

In countries where an alcohol law exists, a unique set of penalties is sometimes provided for in that instrument. For example, in Norway, the Alcohol Act provides (73):

Section 10-1. General penalties

Anyone who wilfully or through negligence contravenes provisions laid down in or pursuant to this Act will incur the penalty of fines or imprisonment not exceeding six months.

If the contravention is particularly grave, the penalty will be fines or imprisonment not exceeding two years. In reaching a decision the court shall attach importance to whether the contravention was committed on a large scale or whether other circumstances of a particularly aggravating nature obtain.

[...]

Section 10-2. Penalties in the event of repeated contravention

If the offender has previously incurred penalties under provisions laid down in or pursuant to this Act or the Alcohol Act of 5 April 1927, fines or imprisonment not exceeding two years may be imposed.

Section 10-3. Destruction of alcoholic beverages, etc.

If the conditions for confiscation pursuant to the General Civil Penal Code are met, the prosecuting authority may decide that unlawfully produced spirits and fermenting or fermented undistilled liquid shall be destroyed. The same shall apply to any other alcoholic beverage that has been poured into a glass or is present in an opened bottle. The decision concerning confiscation of legally produced spirits shall be in writing, with statement of grounds. The owner or possessor shall, as far as possible, be informed of the prosecution authority's decision as a copy of the decision and may require the case to be submitted to the court within one month after the confiscation took place.

Section 10-4. Confiscation on behalf of the State Treasury

Alcoholic beverages that are assumed to have been the object of, or are assumed to be intended for, contravention of this Act, and whose owner and possessor is unknown, shall pass to the State Treasury, provided that the owner has not come forward within one month after the item came into the hands of the authorities.

In other countries, the law draws a distinction between different offences, resulting in different penalties. For example, the Public Health (Alcohol) Act 2018 of Ireland provides (91):

8. (1) A person guilty of an offence under section 11 (6), 13 (3), 13 (10), 14 (2), 15 (4), 16 (1), 18 (4), 19 (3), 20 (1), 22 (4), 22 (7) or section 23 (4) shall be liable –
 - (a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.
- (2) A person guilty of an offence under section 12 (1) or 12 (3) shall be liable –
 - (a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 2 years, or both.
- (3) A person guilty of an offence under section 12 (6), 12 (9), 17 (1), 25 (6) or 30 (9) shall be liable on summary conviction to a class A fine, or imprisonment for a term not exceeding 6 months, or both.

New Zealand's Sale and Supply of Alcohol Act 2012 and Sri Lanka's NATA Act 2006 establish each offence and its associated sanctions in a separate provision.

While most countries provide for a specific fine in the law, some of them tie the fine to another reference point. For example, in Mexico Article 108 of the regulations applicable to the General Health Law in relation to advertising defines the fine in relation to the economic area where the action has taken place, but without setting a specific value (208):

A fine of two thousand to four thousand times the general minimum daily wage in force in the economic zone in question will be imposed for the violation of articles [...].

This system ensures maintenance of the value of fines over time, thus accounting for inflation and economic capacity.

In addition to monetary sanctions and imprisonment, other sanctions are sometimes established. Product confiscations are frequent sanctions against non-compliance with availability restrictions. For example, Section 67(4) of the Food and Medicine Administration Proclamation 2019 of Ethiopia provides (165):

Any person who, without a registration, marketing authorization, certificate of competence or other authorization (...) manufactures, imports, stores, wholesales or sales it in retail, or provides or distributes for use by the public shall have its product confiscated and be punishable by imprisonment from three years to five years and with a fine from Birr five thousand to Birr one hundred thousand.

Where products are confiscated, the law may provide measures for the handling of those products. For example, Article 52 of Law No. 19.925 on the Distribution and Consumption of Alcoholic Beverages

of Chile provides that confiscated alcoholic beverages must be handled by the General Directorate for Secured Loans and stored in a closed and isolated establishment. They are then sold to the highest bidder (144). Non-confiscated products can be claimed by their owners and, if they are not, the judge can proceed to auction them.

Violation of marketing restrictions may also result in specific sanctions. For example, in Mexico, Article 110 of the regulations applicable to the General Health Law in relation to advertising empowers the Health Department to require audiovisual media services to suspend unlawful advertisements (208). In Uruguay, Article 35 of the Law on the Creation of a Regulatory Framework for the Problematic Consumption of Alcoholic Beverages provides the suspension of unlawful advertisements and the broadcasting of counter-advertising at the expense of the offender (206).

Where a licensing system is in place, the SAFER technical package recommends revoking licenses as a sanction for non-compliance with availability measures. License withdrawals (as well as non-renewals, modifications or suspensions) can also be adopted as sanctions for non-compliance with other interventions.

The table below lays out some of the enforcement measures that could be adopted by governments for each alcohol intervention described in this publication.

Table 9. Supply chain actors addressed by enforcement measures

Intervention	Addressee of the measure	Enforcement measures
Marketing restrictions	Manufacturers	Civil (fines, other monetary sanctions) and criminal (fines, other monetary sanctions, imprisonment) sanctions
	Distributors	
	Retailers	Seizure of advertisement
	Advertisers	Withdrawal or amendment of advertisement
	Publishers	Restrictions on future advertisement Warning letters ¹
Labelling requirements	Manufacturers	Civil and criminal sanctions
	Distributors	Product recalls
Product requirements	Manufacturers	Civil and criminal sanctions
	Importers	Product recalls
	Retailers	
Sales and service restrictions	Retailers	Civil and criminal sanctions
	Parents and guardians	Licence modifications, suspensions and withdrawals or non-renewals
		Product recalls
		Temporary or permanent closure of outlets

Intervention	Addressee of the measure	Enforcement measures
Purchase restrictions	Retailers Parents and guardians Consumers	Civil and criminal sanctions Licence modifications, suspensions and withdrawals or non-renewals
Price measures	Manufacturers Retailers	Civil and criminal sanctions Licence modifications, suspensions and withdrawals or non-renewals
Tax measures	Manufacturers Importers Distributors Retailers	Civil and criminal sanctions Licence modifications, suspensions and withdrawals or non-renewals

¹ Other enforcement measures may be provided for the specific case of digital marketing (11).

In many countries, the law provides for progressive sanctions that increase with the number of convictions. For example, Section 72 of the Liquor Act 1998 of Namibia provides (166):


- (1) Subject to subsection (2) or (3), as the case may be, a person who is found guilty of an offence in terms of section 70 or 71 shall in respect of such offence –
 - (a) on a first conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
 - (b) on a second or subsequent conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (2) On a third or subsequent conviction of a licensee or other person for a contravention of any of the provisions of paragraph (c), (d), (e), (f) or (i) of section 70, or of paragraph (a), (b), (c), (d), (e), (g), (h), (1) or (n) of subsection (1) of section 71, the Court may, in lieu of, or in addition to, any penalty which it may impose –
 - (a) cancel the licence held by such licensee; or
 - (b) declare such licensee or other person so convicted a disqualified person for the purpose of obtaining a licence or acting as a manager.

Some general principles on enforcement can be inferred from the preceding examples and may guide enforcement policies.

- *Powers and duties of enforcement authorities.* Laws applicable to alcoholic beverages have to clearly define the competent enforcement authorities for each intervention. Enforcement authorities need to be granted enough powers to carry out their activities in an effective and independent manner, but they must also be strictly regulated to avoid any abuse of power, industry interference or misconduct more generally.
- *Effective, progressive and proportionate measures.* Laws have to define the sanctions resulting from breaching their provisions. These sanctions must be effective to ensure compliance, but they must also be proportionate to the objectives pursued and the gravity of the breach. Laws typically provide a variety of sanctions that may be imposed in a progressive manner, depending on elements such as the gravity of the breach, its recurrence or the turnover of the entity having breached the law in the case of legal persons. Progressivity may be achieved by imposing increasingly severe measures (for example, first a warning, then a fine, then a licence withdrawal) or by increasing the severity of the sanctions applicable in respect of a single measure (for example, first a fine of US\$ 200, then a fine of US\$ 1000 and lastly a fine of US\$ 5000). Enforcement measures should always be compatible with fundamental rights protected in the country.
- *Complaints mechanisms.* Enforcement measures should be immediately enforceable to ensure effectiveness, but a right to complain against such decisions must be guaranteed by law to all physical and legal persons affected by a sanction. Complaints mechanisms may provide for the submission of complaints to administrative and/or judicial authorities. Whatever the legal avenue, the law must guarantee the independence of the authorities concerned, due process rights and effective judicial protection. Ideally, such mechanisms should also comprise a right of appeal if one of the parties is not satisfied with the decision adopted by the first instance body.
- *Evaluation of enforcement.* To assess the extent to which existing rules are being enforced, jurisdictions may consider monitoring the level of non-compliance and/or the enforcement actions taken by responsible agencies, such as through infringement notices issued and enforcement actions initiated.

10. Legal considerations

Drawing on experience from around the world, this section describes a number of legal considerations that may merit consideration in the design and implementation of specific interventions to minimize the risk of litigation. Legal considerations refer to legal arguments that governments may wish to consider in case they have to respond to challenges brought against alcohol laws. They are based on actual litigation observed at national level or before international trade and human rights dispute settlement bodies, either on alcohol or on analogous issues. The case law mentioned in this section is not exhaustive, but represents a sample of relevant legal challenges. In particular, the analysis of legal considerations in this publication is limited by publicly available data, language barriers and the lack of a shared database of alcohol-related case law. Among the judgments identified as relevant to each intervention, this publication analyses those that are of particular significance to legal advisers, and policy- and decision-makers in the design or implementation of a specific intervention. The outcomes and legal reasoning are not necessarily generalizable, but are illustrative of an issue. The publication does not provide WHO's opinion on the status of any national or international legal system, nor does it provide any recommendations regarding any domestic law system or approach to normative principles, or any legal advice or opinion for any specific case. The legal considerations presented here should also be read bearing in mind that national laws and policies, conceptions of rights and interests, and other important considerations may vary across countries and jurisdictions (see section 5).

 **Legal considerations refer to legal arguments that governments may wish to consider in case they have to respond to challenges brought against alcohol laws."**

10.1 Marketing restrictions

10.1.1 Freedom of expression

In some countries, marketing practices are protected as commercial speech, falling within the scope of the freedom of expression. This approach is followed, for example, in the European region (217) and in Canada (218), Colombia (219, 220) and the United States (221, 222).⁵ Where marketing is protected by the freedom of expression, alcohol marketing bans and restrictions must be designed in such a way as to comply with this protection.

⁵ In Switzerland, for example, commercial communications do not, in principle, fall within the scope of the freedom of expression and information or the freedom of the press, except if the commercial message also pursues a purpose that is in the public interest. Swiss Federal Tribunal, Case 2P.207/2000 [2002], para. 5.a).

However, the freedom of expression is not absolute, and restrictions are ordinarily lawful if they pursue a legitimate objective and are proportionate. The following considerations may be worth taking into account.

- Any restriction to the freedom of commercial speech needs to be balanced with other human rights that may be pursued by a regulation, notably the right to health (see Table 2 for a larger list of human rights). Courts often conclude that the need to protect public health outweighs the freedom of expression, especially when restricting marketing of harmful products (223, 224).
- The freedom of commercial speech is generally recognized as the least protected facet of the freedom of expression, as it is not related to political participation or democratic deliberation, meaning that governments may be able to impose more stringent restrictions on marketing communications than on other forms of speech (219, 225).⁶
- Courts in Canada and the United States tend to interpret the freedom of expression in a broad manner (221, 226). For example, in Canada, advertisers have a right to provide objective information concerning products (227). But other courts have taken a more restrictive approach. Some courts, for example in India and South Africa, have even ruled that the freedom of commercial speech generally protects advertising, but it does not protect the activities of companies that manufacture harmful products (228).⁷
- The Supreme Court of Sri Lanka concluded that the restriction on the freedom of expression imposed by the NATA Act 2006 was constitutional because, despite the “guise” of promoting choice or making informed decisions, the end result of advertising would be harmful to health (229).

Although the case law mentioned above mostly refers to tobacco products and non-alcoholic beverages, the reasoning may also be relevant to alcoholic beverages. Accordingly, the starting point for the legal analysis may be to consider how courts have treated prohibitions or restrictions on other products that are harmful to health, such as tobacco products.

10.1.2 Freedom to conduct a business

Marketing restrictions restrict the freedom of actors in the alcohol supply chain to conduct a business, but courts ordinarily uphold those restrictions if they are established by law, pursue a legitimate objective, are grounded in adequate and sufficient reasons and are proportionate and reasonable. For example, the Constitutional Court of Colombia applied a weak degree of scrutiny to assess the proportionality and reasonableness of a prohibition on promotion and advertising of tobacco products. This meant that it was sufficient to verify that the measure was potentially adequate for achieving the

⁶ Supreme Court of Justice of Argentina, *Nobleza Piccardo S.A.I.C. y F. c/ Provincia de Santa Fe* [2015] CSJ N 188/2006 (42-N)/CSI, p. 43: “the speech that the plaintiff considers impaired has the sole purpose of fomenting the consumption of goods and services (...) [but] does not bear a close relationship with the functioning of the republic and democratic system. This implies that there is no constitutional basis for according it a protection as strong as other manifestations of ideas that comprise part of the necessary participation and deliberation in any democratic society (...)” [unofficial translation].

⁷ Supreme Court of Appeal of South Africa, *BATSA v. Minister of Health* [2012] Case No. 463/2011, paras 25-26: “when commercial expression is used, as alleged here, for the purposes of inducing people to engage in harmful and addictive behaviour, its value becomes tenuous”. Delhi High Court (India), *Mahesh Bhatt and Kasturi and Sons. v Union of India (UOI) and Anr* [2008], para. 32: “advertisements inviting general public to try, promote or continue use of tobacco products, betting, gambling or commending drugs and other intoxicating substances as cure for diseases, do not come under the right to freedom of speech and expression as a fundamental right”.

intended objective and that the measure was not patently unnecessary and disproportionate (219). Similarly, in Switzerland, the Federal Tribunal ruled that a subnational law prohibiting tobacco and alcohol billboard advertising could only be considered unlawful if it was manifestly inadequate to reach the objective pursued. Consequently, it was not necessary to examine the effects of advertising on consumption, as it was held that limiting alcohol and tobacco advertising in public spaces was not completely inadequate to limit consumption. Moreover, the Federal Tribunal ruled that the measure was proportionate, as it applied to all economic operators in the same manner and it applied only to one type of advertising and only in specific locations (230).

10.1.3 Right to equality and non-discrimination

The alleged violation of the right to equality and non-discrimination has been raised against marketing restrictions in Ghana. The Supreme Court was called upon to determine whether the Food and Drugs Authority (FDA) Guidelines for the advertising of foods, which ban well-known personalities from advertising alcoholic beverages, violated the right to equality. The plaintiff in this case, a Ghanaian celebrity in the music industry, claimed that this rule discriminated against well-known personalities compared with other unknown persons, in violation of article 17 of the Constitution of Ghana. The Supreme Court did not uphold the claim. The FDA Guidelines were adopted within the broad powers conferred on the FDA by the Public Health Act 2012 to regulate the production and sale of food for public consumption with the overall aim of securing public health. Moreover, in accordance with the Ghanaian Constitution, discrimination arises where there is a different treatment due to race, place of origin, political opinions, colour, gender, occupation, religion or creed. For an action on discrimination to succeed, the plaintiff must show that, within the same class of persons, some of them have been granted an advantageous treatment whereas others have not, and that the difference is based on one of the characteristics above. The FDA Guidelines, on the other hand, apply equally to all well-known personalities, with no differentiated treatment among them, so the right to equality and non-discrimination has not been violated. The Supreme Court also recalled that constitutional rights and freedoms can be restricted on public health grounds. It then held that the marketing restrictions established in the FDA Guidelines were necessary, as they were based on WHO guidance and scientific evidence (231).

10.1.4 Right to property

Claims have been brought against marketing restrictions (such as on tobacco products or foods) for interference with the right to property, for example on the grounds that marketing restrictions impair the right to use trademarks or promotional brands in advertising. However, courts tend not to find a violation of this right when States regulate the use of property in the public interest to prevent harm to third parties.

First, courts often interpret intellectual property rights such as trademark rights as negative rights, meaning that rights holders do not have a positive right to use a trademark in the course of trade, but rather only have the right to exclude the use of a trademark by third parties under certain conditions (232). Where this is the case, limitations on the use of trademarks in advertising have a limited impact on trademarks as property rights.

Second, the right to property is generally interpreted as protecting rights holders against deprivation of their property, but not against mere restrictions or limits on the use of property

(regulation) (233, 234, 235). Strong marketing restrictions such as tobacco plain packaging (where only word marks in a standardized form are permitted on packaging) have been considered to regulate the use of property rights rather than deprive rights holders of their rights. For example, in the *British American Tobacco (BAT)* case, the United Kingdom Court of Appeal concluded that the British tobacco plain packaging legislation did not prevent manufacturers from using their trademark rights against counterfeiters, against unauthorized parallel imports or on product packaging (236). Rather, the measure regulated use of trademarks on product packaging in the course of trade.

Moreover, courts have also, as with the freedom of expression, considered that the negative public health effects of harmful products outweigh any negative effect of restrictions on property rights. For example, the High Court of England and Wales in the United Kingdom ruled that, even if restrictions on the right to property resulting from tobacco plain packaging legislation must respect the essence of the right, “there is no conceivable basis in [the Agreement on Trade-Related Aspects of Intellectual Property Rights] for saying that the “essence” of a trademark includes a right to use that property right to facilitate a lethal health epidemic” (237).

Third, courts in other countries have stressed the need to balance the right to property against other rights, freedoms and objectives protected in national constitutions and, in particular, the right to health (224, 238, 239).

10.2 Labelling requirements

10.2.1 Right to property

As for marketing restrictions, claims have been brought against labelling requirements for interference with the right to property and, in particular, asserting a right to use trademarks. Yet, in such cases, courts tend not to find a violation if labelling requirements are adopted in the public interest.

For example, in *East Africa Breweries Ltd v Attorney General*, the High Court of Kenya assessed whether the Alcoholic Drinks Control Act 2010, and its provisions on health warning labels, violated the right to property as enshrined in the Kenyan Constitution. The Court held that the right to property is not absolute and has to be balanced with the right of consumers to the information necessary to gain full benefit from goods and services as well as the protection of health, safety and economic interests (240).

Other lessons can be drawn from case law concerning tobacco control. In addition to the case law on tobacco plain packaging in the United Kingdom mentioned in section 10.1, the case law of the CJEU provides examples. In the *BAT* judgment, the CJEU was asked whether the EU ban on the use of claims such as “light cigarettes” on tobacco products violated the right to property (234). The CJEU recalled that the right to property is not absolute. Although tobacco manufacturers could not use a trademark incorporating descriptors such as “light cigarettes”, they could still distinguish their products by using other signs. A similar conclusion was reached in the *Pillbox 38* judgment, regarding provisions on electronic cigarettes in the new EU Tobacco Products Directive (238). Similarly, in *Planta Tabak*, the CJEU ruled that the prohibition of the use of trademarks referring to any flavourings in tobacco products in the EU Tobacco Products Directive was a lawful restriction on

the right of property, as it only concerned the use of such trademarks in the labelling of unit packets, the outside packaging and the tobacco product itself (235).

10.2.2 Freedom to conduct a business

Labelling requirements may be considered to restrict the freedom to conduct a business. However, courts typically uphold restrictions that do not substantially impair this freedom or that respect its essence.

For example, in the *Deutsches Weintor* case, the plaintiff argued that the prohibition on use of the health claim “easily digestible” on alcoholic beverages, was incompatible with the right to pursue a freely chosen occupation and the freedom to conduct a business. The CJEU ruled against the plaintiff. It considered that a prohibition on use of health claims in alcoholic beverages did not substantially restrict the freedom to conduct a business and, instead, merely restricted the way in which producers and distributors marketed their products. The CJEU balanced the right to pursue an occupation and the freedom to conduct a business, on the one hand, and the right to health, on the other hand. Thus, even if the claim “easily digestible” was correct due to the lower acidity level of the product, it “is silent as to the fact that, regardless of a sound digestion, the dangers inherent in the consumption of alcoholic beverages are not in any way removed, or even limited” (241). The claim was therefore considered likely to encourage alcohol consumption and increase the risks for consumers’ health. The CJEU also recalled that:

In view of the risks of addiction and abuse as well as the complex harmful effects known to be linked to the consumption of alcohol, in particular the development of serious diseases, alcoholic beverages represent a special category of foods that is subject to particularly strict regulation (242).

10.2.3 World Trade Organization obligations

Health warnings have been discussed at the WTO TBT Committee, as any proposal to implement mandatory health warnings needs to be notified to other WTO Members. While the TBT Agreement allows WTO Members to impose non-discriminatory requirements affecting international trade, these measures must not be more trade-restrictive than necessary to achieve a legitimate objective. Although there has not been any formal WTO dispute, various alcohol labelling proposals have been discussed at the TBT Committee. Six objections have been raised relating to (243):

- the content of the warning messages;
- graphic imagery forming part of the warning messages;
- design requirements being mandated for the labels;
- rotation requirements being mandated for the labels;
- governments’ refusal to allow stickers or supplementary labelling; and
- restrictions on the industry marketing images and messages on the label space.

For example, a Thai labelling proposal faced significant questioning when brought before the TBT Committee. Thailand has had text-based warnings since 2003. In 2010, it proposed changes involving the use of graphic photographs taking up between 30% and 50% of the container. The labels had to be regularly rotated. After two years of consultations and discussions, the key themes that emerged

were requests for the evidence base for the use of graphic health warnings, evidence that linked alcohol with the specific harms depicted in the warnings and claims that other measures such as educational measures would be equally effective to inform the population. Although a formal dispute was never initiated, Thailand ultimately decided not to pursue the new labelling regulations (244).

When India notified the WTO TBT Committee of a proposal to require the message “consumption of alcohol is injurious to health” on alcoholic beverages, this proposal was also contested by other WTO members, which suggested switching to “consumption of alcohol can be injurious to health” (245). Despite this opposition, India ultimately kept its initial proposal, and its alcoholic beverages regulations require the warnings “Consumption of alcohol is injurious to health” and “Be safe – Don’t drink and drive” (246). Once adopted, these regulations were not challenged through WTO dispute settlement.

Bearing in mind the discussion above on strengthening a government’s legal position, in preparing a notification to the TBT Committee, WTO Members may find it beneficial to be prepared to answer questions on the risks they are seeking to address and the objectives underpinning the measures proposed, any complementary measures that are in place or that are being introduced to address alcohol and any evidence available on the likely health impact of the measures.

In addition to the legal arguments set out above, Box 5 describes additional claims often made by the industry against alcohol health warnings, both during the legislative/regulatory process and in litigation.

Box 5. Industry opposition to alcohol health warnings

Industry opposition to alcohol warning labels includes:

- arguing that only “excessive” use of alcohol is harmful and that labels should therefore refer only to excessive use;
- arguing that causal language should be weakened, such as by saying that alcohol consumption can be harmful to health, rather than that alcohol consumption is harmful to health;
- resisting the use of graphics, either pictograms or photos, and promoting the use of non-visible health warnings through QR codes;
- arguing that warnings should be placed on the back of the packaging, rather than the front, or should be small, to limit their noticeability; and
- calling for voluntary industry practices instead of legislative requirements.

However, consistent evidence demonstrates that alcohol is harmful to health, that self-regulatory instruments provide insufficient information to consumers and have low levels of compliance, and that health warnings established in laws and regulations are effective at informing consumers, raising awareness, increasing policy support and decreasing the appeal of alcoholic beverages. Research also demonstrates that the effectiveness of health warnings depends on their features, so designing effective labels plays an important role in reaching the desired objectives (13).

Many of these industry tactics are designed to weaken the noticeability of warnings and impede consumer understanding of health risks and their overall impact. In particular, the argument that warnings should refer only to excessive use or to responsible alcohol consumption risks creating a misperception that there is a known safe level of alcohol use or that health risks only arise with intoxication (247).

10.3 Product characteristics

WTO rules concerning non-discrimination and necessity in the TBT Agreement apply to mandatory measures implemented by WTO Members when regulating product characteristics. Similar rules also often apply under free trade agreements, although more specific rules under customs unions may merit consideration.

10.3.1 Customs unions

Beyond WTO law, free movement or trade rules in customs agreements may restrict the ability of countries to mandate product characteristics for alcoholic beverages. For example, in the EU, Member States remain free to legislate in areas where the EU has not harmonized. However, national rules relating to the name a beverage can use (248), its alcoholic strength (249) or its ingredients (250) may constitute restrictions to the free movement of goods. These restrictions can typically be justified on public health grounds, but the measure must be appropriate and proportionate to achieve the public health objective pursued. Although this case law is less relevant now than it used to be due to increasing harmonization within the EU of legislation on alcoholic beverages, the main principles still apply to non-harmonized aspects and may also be relevant to other customs unions with a lower degree of harmonization.

In *Cassis de Dijon*, German law fixed a minimum alcoholic strength for various categories of alcoholic beverages. Under this legislation, fruit liqueurs were required to have a minimum alcohol content of 24% ABV. As a result, authorities restricted the importation of a French liqueur, Cassis de Dijon, which has an alcohol content of between 15% and 20% ABV, on the basis that its alcoholic strength was not sufficient for it to be marketed as a fruit liqueur in Germany. Germany argued that the purpose of the law was to avoid the proliferation of low-alcohol beverages because they induced alcohol tolerance more easily. The CJEU did not admit this justification, as a wide range of alcoholic beverages of varying alcohol content was available in the market. Germany also claimed that fixing alcohol content limits was intended to protect consumers by standardizing products placed on the market and their designation. However, the CJEU considered the measure disproportionate, as a labelling requirement would be less restrictive and would sufficiently inform consumers about the strength of alcoholic beverages.

In *De Kickvorsch*, a Dutch law defined the minimum wort and acidity levels of beers (251). The CJEU concluded that those rules restricted the free movement of goods, as beer lawfully produced and marketed in other EU Member States could not be marketed in the Netherlands. The CJEU added that such restriction could not be justified by the need to protect consumers, as the objective of the legislation was merely to define the types of beer traditionally brewed in a certain part of the EU and to safeguard its typical taste.

10.3.2 Freedom to conduct a business

In Mexico, claims were made concerning the fact that alcohol products under 55% ABV and those above 55% ABV are subject to different rules, with only the former qualifying as “alcoholic beverages”. The reason for this distinction is that products with an alcohol content above 55% are destined for industrial or medical uses and have greater health risks. Yet, they are consumed by the population

due to their greater affordability. Alcohol products for industrial use can only be sold in pre-packaged format and in specific outlets that are not accessible to the general public. They must also comply with labelling requirements, including several health warnings. Alcohol products for medical use must be denaturalized (mixed with distilled water and a denaturalizing product), they can only be sold in pharmacies, and they are subject to packaging restrictions (maximum 500 mL for the public and 20 L for medical centres) and labelling requirements, including several health warnings. The Supreme Court of Justice ruled that such restrictions do not violate the freedom to conduct a business. The limitations imposed on producers of alcohol products with an alcohol content above 55% ABV are justified considering the population's use of such products for human consumption and the health risks they cause. The court also ruled that the measures protect the interests of society by preventing such products from increasing alcohol abuse levels in the country (252).

10.4 Restrictions on sale

A number of legal issues may merit consideration in the context of restrictions on sales. For example, administrative decision-making, such as a decision on whether to grant, suspend or revoke a license, or the terms set for obtaining a license, might be challenged under administrative law. Because administrative law is ordinarily specific to a given jurisdiction, it is not discussed here. However, other restrictions on sales may be relevant more generally, such as where monopolies are established or fundamental rights are invoked, and may therefore merit consideration.

10.4.1 Human rights

The case law concerning measures to reduce the availability of alcoholic beverages raises the potential conflict of such interventions with several human rights. In South Africa, courts have examined whether a temporary restriction on the sale of alcoholic beverages adopted during the COVID-19 pandemic unduly restricted fundamental rights.

Example 17. The temporary alcohol sale ban in South Africa during COVID-19

South Africa adopted additional measures on NCD risk factors during COVID-19, namely temporary bans on the sale, distribution and transportation of tobacco products and alcoholic beverages. The objectives pursued by those interventions were to contain hospital admissions and reduce the number of people developing NCDs and, consequently, developing severe forms of COVID-19. Both the tobacco sales ban and the alcohol sales ban were challenged before national courts, and the High Court of South Africa ruled on the legitimacy of these interventions in the *South African Breweries (SAB)*, *British American Tobacco South Africa (BATSA)* and *Fair-Trade Independent Tobacco Association (FITA)* judgments (55, 253, 254). The *BATSA* and *FITA* cases concerned the tobacco sale ban, whereas the *SAB* case concerned the alcohol sale ban. The three rulings illustrate some of the legal issues that may arise, depending on national legal frameworks (255). To assess the validity of the measures, the High Court of South Africa considered the following elements.

Example 17. The temporary alcohol sale ban in South Africa during COVID-19 (continued)

- *The objective and rationality of the measures.* In the *SAB* case, the government suspended the sale, distribution and transportation of alcoholic beverages to reduce the number of alcohol-related trauma and emergency cases, with the ultimate objective of increasing the capacity of the health care system to accommodate the increased demand created by the pandemic (256). By contrast, in the *BATSA* case, the government justified the prohibition on sale of tobacco products as a measure to reduce the risk of contracting severe forms of COVID-19, as smokers are more likely to have complications due to COVID-19. The High Court of South Africa questioned whether prohibiting the sale of tobacco products for a few months would reduce the number of severe forms of COVID-19 in the short term (257).
- *The proportionality of the measure.* In the *BATSA* and the *FITA* judgments, the High Court of South Africa examined whether the measure was appropriate and necessary to achieve the aims pursued, whether the harms caused by the measure exceeded the benefits and whether there were less restrictive measures available (258). However, in the *FITA* judgement, the High Court of South Africa considered that “given that an unprecedented disaster had just hit South Africa, requiring swift and effective action from the State”, only a “strict necessity” test had to be applied (259). This test implies that, while the proportionality of the measure must also be assessed when legislating in the context of a public health emergency, a broad margin of discretion may be granted to public authorities in assessing the most appropriate measures in that particular situation.
- *The interference of the measures with fundamental rights.* In the *BATSA* case, the High Court of South Africa ruled that, in the circumstances of the case, the suspension of the sale of tobacco products violated the rights to dignity, privacy, bodily and psychological integrity and the right to choose a trade or profession, and constituted a deprivation of property.

In *State of Tamil Nadu v. K Balu and Ors.*, the Supreme Court of India discussed the right to practice a profession, as provided in Article 19 of the Indian Constitution, in the alcohol sector. It examined the directions issued by the Supreme Court in a previous judgment that banned liquor sales along state highways (and at a distance from them) to reduce alcohol availability. The Supreme Court noted that “there is no fundamental right under Article 19(1)(g) to trade in liquor. Liquor has been regarded as *res extra commercium*” (a commodity outside of commerce) (260). This ruling is consistent with previous case law in India relating to prohibitions on alcohol manufacture, retail and consumption. In another case concerning whether citizens enjoy a fundamental right to carry on business in relation to liquor, the Supreme Court held that “the State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants, their manufacture, storage, export, import, sale and possession”, since alcohol is an intoxicant that is injurious to health and is therefore a *res extra commercium* (261).

In Mexico, the Supreme Court of Justice linked restrictions on alcohol sales at night to environmental protection and the rights to health, physical integrity and life. The claimant argued that the violation of the state alcohol law, which prohibited the sale and consumption of alcoholic beverages at night, undermined his right to a healthy environment, established in the Mexican Constitution, due to the resulting noise and disorderly conducts. The Supreme Court of Justice sided with the claimant and ruled that the authorities should undertake all necessary positive

measures to protect the right to a healthy environment, including inspections of the presumed offenders (262).

In Colombia, the Constitutional Court ruled that the unequal treatment of different Indigenous groups built into the alcohol production monopoly violated the right to equality and the cultural rights of Colombian minorities. Colombian law provides an exception to the alcohol monopoly for Indigenous communities recognized by the Ministry of Interior, which may continue to produce their own traditional alcoholic beverages for their own consumption and for traditional medicine. However, the exception did not apply to some traditional Afro-Colombian communities. The Constitutional Court underlined the importance of ethnic and cultural diversity in the Colombian Constitution and the strong autonomy that ethnic groups are granted under the Constitution. The Court found that the legislature had not justified the inclusion of certain traditional communities in the law but not others, that the differentiated treatment resulted in discrimination, and that the measure was neither necessary nor proportionate. The Court concluded that the alcohol monopoly law violated the Constitution through the omission of Afro-Colombian communities from the groups authorized to produce their own distilled spirits. It ruled that the contested provision should be modified to include other traditional communities recognized by the Ministry of Interior (57).

The Constitutional Court of South Africa examined whether the restriction on alcohol retail at night, on Sundays, on Christmas Day and on Good Friday was compatible with the right to economic activity and with the freedom of religion. The Constitutional Court ruled unanimously that the contested provisions did not violate the right to economic activity, as the Liquor Act pursued a legitimate interest, which was limiting the retail of alcoholic beverages to protect the quality of life of the population. The Constitutional Court was, however, divided on the question of whether prohibiting the retail sale of alcohol on Christian holidays violated the freedom of religion. The President of the Court and four concurring judges considered that Sunday had become a secular day in South Africa, so the prohibition to sell alcohol on Sundays was not justified on religious grounds. Therefore, the law would not violate the freedom of religion. In a dissenting opinion, Justice O'Reagan held that the Sunday ban recognized days of Christian significance and not those of other religions in breach of the freedom of religion and that the provision had not been shown to be reasonably justifiable. In another dissenting opinion, Justice Sachs considered that the provision resulted in a negative symbolic endorsement by the State of the Christian religion by sending out a message of inclusion for some and exclusion for others. This position marginalized and discriminated against other faiths. However, the violation of the freedom of religion was indirect and marginal, and thus justifiable. In this regard, the State's interest in encouraging temperance on closed days was considered a legitimate justification (263).

In Switzerland, the Federal Tribunal ruled that a suspension of the licence for on-premises retail sale of alcohol during 30 days as a sanction for selling alcohol to minors was lawful. Such a sanction limited the retailer's economic freedom but was justified and proportionate to protect the health of young people. The Tribunal considered that the economic losses resulting from the licence suspension should motivate the economic operator to adopt adequate measures to ensure that the health of young people would not be put at risk in the future (264).

10.4.2 Customs unions

Customs unions require substantial liberalization of trade between member States (as they have a common external border), and the rules governing customs unions often address State-owned enterprises and monopolies. For example, in the EU, government monopolies are only allowed under certain conditions, which has led to litigation before the CJEU. State monopolies are, in principle, regulated under Article 37 of the Treaty on the Functioning of the European Union (TFEU), as a special provision. However, the CJEU tends to assess State monopolies under articles 34 and 36 TFEU (general provisions on the free movement of goods) (265).

The CJEU first upheld the compatibility of the Swedish alcohol retail monopoly with EU law in its *Franzén* judgment (266). However, subsequent rulings of the CJEU demonstrate that alcohol retail monopolies are only lawful under strict conditions. The CJEU has clarified that a retail monopoly is lawful, whereas a production, import or wholesale monopoly would be incompatible with EU law. Therefore, imposing restrictions on the importation of alcoholic beverages is prohibited. In *Rosengren* and in *Commission v Sweden (private imports)*, the CJEU ruled that the prohibition of private imports of alcohol from Denmark to Sweden was incompatible with EU law. In both cases, Sweden attempted to justify its legislation based on public health grounds, arguing that banning consumers from importing alcohol was aimed at decreasing alcohol consumption and having better age checks to protect younger persons against the harmful effects of alcohol. However, the CJEU did not admit this justification since alcohol could still be imported through the retail monopoly and since the ban applied to the whole population and thus went beyond what was necessary to protect underage drinkers. Consumers in Sweden are therefore allowed to import alcoholic beverages, either by their own means of transport or through independent intermediaries or professional transporters, as long the importer is not the same entity as the retailer, because that would be incompatible with the retail monopoly (267). Following this line of case law, the Swedish Supreme Court ruled that the importation of alcoholic drinks from Denmark to Sweden through an online retailer is also lawful, as long as the importer is different from the retailer (268).

A similar reasoning was followed in *Visnapuu*, a case which concerned the sale and import of alcoholic beverages in Finland (269). The Finnish alcohol law provides for a retail monopoly for all alcoholic beverages, except those with low alcohol content, for which a licensing system is established. The CJEU ruled that the retail monopoly was lawful because private imports by independent intermediaries and professional transporters designated by consumers were allowed. The licensing system was also deemed to be compatible with EU law. Although the requirements for obtaining a licence constituted an interference with the free movement of goods, the measure could be justified on public health grounds. As the Finnish government submitted, the system facilitated compliance by retail sellers with the obligation to sell alcoholic beverages only between 07:00 and 21:00, the prohibition on selling alcoholic beverages to persons under 18 years of age and the prohibition on selling alcoholic beverages to intoxicated persons. However, the CJEU asked the national court to verify whether the licensing system was consistent with the overall alcohol policy, as the retail monopoly was allowed, in some cases, to sell alcoholic beverages by mail order. The national court was also required to check whether less restrictive measures could achieve the same objectives as those pursued by Finland. The matter was then referred back to the Finnish Supreme Court, which held that the alcohol law was compatible with EU law (270).

Alcohol monopolies have also been examined in the Andean Community, which is an economic integration organization comprising Bolivia, Colombia, Ecuador and Peru. Article 74 of the Cartagena Agreement, the founding treaty of the Andean Community, establishes a national

treatment obligation (an obligation not to discriminate against imported products in favour of domestic products) and requirements to liberalize trade. Article 336 of the Colombian Constitution allows State monopolies with a public or social interest objective. One such monopoly covers the production, distribution and retail of distilled spirits. In 1997, the Committee of the Cartagena Agreement determined that Colombia had violated the agreement with the application of restrictions on alcohol imports through its monopoly (271). Following this resolution, and since Colombia did not take action to resolve the violation, an action was brought before the Andean Tribunal of Justice. The Tribunal ruled that (272):

- The establishment of the monopoly in the Colombian Constitution was not a justification for departing from its international commitments under the Cartagena Agreement.
- Through its monopoly, Colombia had adopted several discriminatory measures against members of the Andean Community, such as different alcohol consumption taxes for domestic and imported beverages and the requirement to obtain an authorization for the retail sale of distilled spirits, both domestic and imported, which could only be obtained after signing an agreement between the public authorities and the concerned undertakings.
- Colombia could restrict the production, distribution and retail of alcoholic beverages, but it could not restrict imports, nor could it adopt discriminatory measures that restricted trade.

10.5 Restrictions on service

Minimum age requirements have been widely implemented by WHO Member States in the context of both alcohol and tobacco control. Although the lawfulness of these restrictions is not typically an issue, there have been disputes about implementation. For example, courts in the United States have had to consider whether it is lawful for the federal government to condition access to federal funding on the implementation of minimum age requirements (273) and whether it is lawful for a state within the United States to set different minimum age requirements for men and women (274).

With the proliferation of online delivery services, challenges to age verification mechanisms established by law are an emerging issue. At the time of writing, challenges had been brought by pornography sites and online platforms in this regard. In France, pornography sites have challenged the legal requirements for age verification, which are general in nature, arguing that French law should instead specify distinct methods for verifying age.⁸ The dispute highlights one challenge in legislating for effective age-gating, which is that imposing a general obligation may leave room for argument on whether an economic operator has taken sufficient steps. On the other hand, requiring specific age verification techniques may not be future-proof as ways of circumventing such techniques are developed.

At the time of writing, a challenge alleging a violation of users' privacy is pending before the United States Supreme Court against the age verification law of the state of Texas (275). In Utah,

⁸ Legal concerns are related with the absence of guidance in French legislation on age verification tools, the proportionality of the remedies adopted for failure to effectively verify age and the impact of such remedies on the freedom of expression; see: Judicial Tribunal of Paris, Judgment on a priority question of constitutionality, *MG Freesites LTD c. ARCOM* [2022], Cour de cassation [Appeal Court], Case No 22-40.017 [2023] FR:CCASS:2023:C100092 and Council of State, Case No 463163 [2022] FR:CECHR:2022:463163.20221129.

the Free Speech Coalition, along with adult website companies, has challenged the state's age verification requirements for violating the freedom of speech and the right to privacy of individuals who want to view sexually explicit materials (276). In Arkansas, NetChoice, a firm representing major social media networks, filed a suit against the state's age verification law, alleging freedom of speech violations as established in the United States Constitution. The lawsuit also argues that the requirement to submit a digitized identification document to prove age may potentially expose sensitive information stored in an online database (277). Similar challenges are pending in other states, including Indiana, Mississippi and Ohio. These types of arguments may not directly affect online retail, but they do highlight the importance of ensuring that age-gating mechanisms mandated by law (and the form of implementation) are proportionate to the objectives pursued.

The requirement for consumers (including children) to share highly sensitive data may need to be reconciled with national or supranational data protection and privacy laws. From a policy perspective, governments may need to balance these objectives with the objectives pursued by effective age-gating across a number of areas of concern. Artificial intelligence technologies have also raised concerns about potential biases and discrimination, as the accuracy of facial analysis software can depend on the individual's gender or skin colour, among other factors (278). Accordingly, the French Commission on Informatics and Liberty has recommended that age verification systems comply with principles such as proportionality, minimal intervention, robustness, simplicity and standardization. It also recommends prioritizing third-party age verification systems, which would avoid directly providing personal data to the site the user is trying to access (279).

10.6 Tax measures

10.6.1 World Trade Organization agreements

Articles III:2 and III:4 of the GATT 1994 have led to several WTO disputes concerning alcohol taxes (280). For example, in the Philippines the *Taxes on Distilled Spirits* case concerned a tax structure whereby the Philippines taxed spirits differently, depending on the primary ingredient used in production (281). Spirits using designated raw materials, such as sugar cane and coconut, were taxed at lower rates than spirits using other ingredients, such as wheat and potato. The effect was to tax domestically produced spirits at lower rates than imported spirits because all the designated materials used in production were grown in the Philippines. Distilled spirits of the same type, such as Scotch whiskies and Philippine whiskies, were in a highly competitive relationship and the tax amounted to excess taxation of imported products, violating Article III:2 of GATT 1994. Distilled spirits of different types were in a less competitive relationship (directly competitive or substitutable), but the tax differential amounted to dissimilar taxation that had the effect of affording protection to domestic production.

None of the disputes on alcohol taxes has examined the health exception in Article XX(b) of GATT 1994 because none of the tax structures in question was designed to pursue a health objective. However, other case law on that exception offers guidance on the conditions under which a tax with discriminatory effect may be saved by the exception, suggesting that discriminatory effects must be justifiable in health terms if they are to be consistent with WTO law. In other words, any discriminatory effect should result from differential treatment based on the relative risks products pose to health.

Specific taxation reduces litigation risks, as taxes are relative to the risk posed by alcoholic beverages. Other approaches that target product categories because of a specific role they play in harmful use may also be justifiable, but this would largely depend on the evidence concerning that risk, as well as the evidence of impact of the harmful use concerned.

10.6.2 Customs unions

Through the creation of a shared customs territory, customs unions harmonize import tariffs on products entering countries in the union and eliminate them for trade within the union. Where excise taxes are collected at the point of importation, this can also create a need to harmonize tax administration rules and agree on arrangements concerning tax collection and revenue sharing among countries in a customs union.

Although it is not possible to discuss the arrangements put in place under all customs unions here, the relevant issues can be illustrated through two examples. First, in the Southern African Customs Union (SACU), excise taxes are harmonized and a common excise tax for alcohol has been established. Import tariffs and excise taxes form a common revenue pool and are distributed across countries via a revenue-sharing formula.

Second, in the EU, taxation is mainly a matter falling within national competence. However, the EU harmonizes excise duties on alcoholic beverages by setting minimum rates, although Member States can define higher rates (282). Minimum excise rates do not mean that Member States are free to establish whatever taxes they wish above the established level, as, in accordance with Article 110 TFEU, they must be defined in a manner that does not distort competition or discriminate between domestic and imported products (283). To determine whether products are similar or not, and thus whether there is discrimination, the CJEU considers whether products have similar characteristics (regarding their origin, method of manufacture, taste or alcohol content) and whether they meet the same consumer needs. For example, in *Commission v France*, the CJEU ruled that France had violated EU law by imposing higher taxes on whisky than on cognac. The differentiated treatment was considered discriminatory because the two products were partly in competition with one another (284). Similar conclusions were reached against Italy for protecting grape-based over grain-based drinks (285) and grape-based over sugar-based drinks (286). The CJEU also declared that the United Kingdom had violated EU law for increasing excise taxes on wine but not on beer, and considered that wine and beer were potentially in competition with one another because both products were capable of meeting identical consumer needs (287). In *Aquavit*, the CJEU ruled that Denmark had violated EU law by imposing a lower tax on the domestic spirit aquavit than on other spirits, and affirmed that all spirits are in potential competition (288). In *Commission v Greece*, the CJEU ruled that, by applying a lower excise tax to tsipouro and tsikoudia, two traditional Greek spirits, than to similar imported products, Greece had protected domestic goods against competition from similar imported products (289). By contrast, the CJEU concluded that Danish legislation placing a differentiated tax on fruit wines and Scotch whisky was not contrary to EU law, as it discriminated between competing products, but did so based on objective criteria, such as the nature of the raw materials used and the production processes employed. It further observed that a significant proportion of domestic production fell within each of the relevant tax categories (290).

10.7 Price measures

Minimum prices have been contested under EU free movement rules. For example, under EU law, minimum prices amount to a restriction to the free movement of goods and are therefore prohibited as a general rule. This claim was raised by the Scotch Whisky Association against the minimum unit price established in Scotland, the United Kingdom, at the time when the United Kingdom was still a Member State of the EU. However, the CJEU ruled that such a measure could be justified on the basis of public health objectives, as long as the measure was proportionate (56). The Scottish intervention pursued two distinct objectives.

- Reducing, in a targeted way, the consumption of alcohol by consumers whose consumption was hazardous or harmful.
- Reducing, generally, the population's consumption of alcohol.

The CJEU considered that a minimum price was appropriate to achieve those goals. This intervention was part of a more general policy strategy designed to combat the effects of alcohol, thus demonstrating a consistent and systematic approach. While the CJEU suggested that increased taxation might be as effective and less restrictive than minimum prices, it left that analysis to the Scottish court. The Scottish Court of Session (the highest civil court in Scotland) ruled that tax measures would not be as effective as minimum prices in this case, due, among other reasons, to the allocation of powers between the government of Scotland and the government of the United Kingdom, the possibility for retailers to absorb tax increases, and the fact that minimum prices more specifically target cheap alcohol and the groups most affected by the health hazards associated with alcohol (35). This ruling was later confirmed by the Supreme Court (54). This case highlights the need to be explicit and concrete about the objectives pursued by minimum pricing policies and to substantiate the need for such objectives with appropriate evidence and impact assessments (12).

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Annex 1: Legal environment assessment of alcohol laws and regulations

Part one: alcohol data profile

Alcohol consumption – to be filled out using latest demographic and health survey, STEPS, the Global status report on alcohol and health and any other survey that has gathered data on alcohol consumption.

The purpose of this section is to provide the data related to alcohol use in the country to establish the extent to which alcohol is a health problem in the country. According to the surveys used, specific age ranges should be added to the adult and youth sections to clarify the ages covered. Additional sections should be added as needed (e.g. adolescent, children, older adults, etc.).

I. Adult prevalence

1. Alcohol per capita consumption (recorded)
 - a. Male
 - b. Female
 - c. Total
2. Alcohol per capita consumption (unrecorded)
 - a. Male
 - b. Female
 - c. Total
3. Alcohol per capita consumption (total)
 - a. Male
 - b. Female
 - c. Total
4. Alcohol per capita consumption (drinkers only)
 - a. Male
 - b. Female
 - c. Total
5. Prevalence of heavy episodic drinking (%)¹
 - a. Male
 - b. Female
 - c. Total

¹ Consumed at least 60 grams or more of pure alcohol on at least one occasion in the past 30 days

-
6. Prevalence of alcohol use disorders and alcohol dependence (%)
 - a. Male
 - b. Female
 - c. Total
 7. Abstainers, past 12 months (%)
 - a. Male
 - b. Female
 - c. Total
 8. Lifetime abstainers (%)
 - a. Male
 - b. Female
 - c. Total
-

II. Youth prevalence

9. Alcohol per capita consumption (recorded)
 - a. Boys
 - b. Girls
 - c. Total
 10. Alcohol per capita consumption (unrecorded)
 - a. Boys
 - b. Girls
 - c. Total
 11. Alcohol per capita consumption (total)
 - a. Boys
 - b. Girls
 - c. Total
 12. Alcohol per capita consumption (drinkers only)
 - a. Boys
 - b. Girls
 - c. Total
 13. Prevalence of heavy episodic drinking (%)
 - a. Boys
 - b. Girls
 - c. Total
 14. Prevalence of alcohol use disorders and alcohol dependence (%)
 - a. Boys
 - b. Girls
 - c. Total
-

15. Abstainers, past 12 months (%)

- a. Boys
- b. Girls
- c. Total

16. Lifetime abstainers (%)

- a. Boys
- b. Girls
- c. Total

Part two: national plans

The purpose of this section is to map out the national alcohol plans, strategies, guidelines and governance structure.

1. Does the country have a national coordinating mechanism or focal points for alcohol? (Yes or No)

a. If yes, please provide the following information:

- i. What is the name of the mechanism or authority?
- ii. What is the mandate of the mechanism or authority?
- iii. What legal provision establishes it? (name of provision, date and if possible, link to the legislation/decreet)
- iv. When was it established?
- v. How are/were its members selected?
- vi. What is the frequency of meetings?

Part three: national legal frameworks

I. National legislation

National alcohol policy

1. Is there a written national policy on alcohol? (Yes or No)

a. If yes, please provide details.

2. Is there a national legal definition of an alcoholic beverage? (Yes or No)

a. If yes, please provide details.

3. Are there any state contracts in force or currently under negotiation relevant to the alcohol industry in the country? (Yes or No)

a. If yes, please provide details.

4. Is there any relevant case law on alcohol policies at national or subnational level? (Yes or No)

a. If yes, please provide details.

Alcohol availability

1. Has a licensing system on retail sales, or public health-orientated government retail monopolies been established? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

2. Has a licensing system on alcohol production or an alcohol production monopoly been established? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

3. Has a licensing system or a monopoly been established for alcohol import and export? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

4. Is there regulation regarding the number and location of on-premises and off-premises alcohol outlets? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

5. Is there regulation regarding modes of retail sales of alcohol? (Yes or No)
 - a. If yes, please explain whether the rules apply to all or certain categories of alcoholic beverages and provide details on the following:
 - i. Restrictions on sale from retail stores, such as restrictions on the types of beverages for sale or times
 - ii. Restrictions on delivery services
 - iii. Online sales
 - iv. Mandatory trainings or other regulation of delivery drivers or services
 - v. Other restrictions on home deliveries (e.g. quantity of alcohol that can be sold, times when alcohol can be delivered, types of alcoholic beverages that can be sold at distance)
 - vi. Other modes of sales (e.g. vending machines).

6. Is there regulation regarding days and hours of retail sales of alcohol? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

7. Is there an established minimum age for sale, purchase or consumption of alcoholic beverages? (Yes or No)
 - a. If yes, what is the minimum age?
 - b. Does this age correspond to the legal adult age? (Yes or No)
 - c. Does the law prohibit sale, purchase, consumption or all of these?
 - d. Does the law prohibit sale by individuals below the minimum age?
 - e. Does the same age apply to all categories of alcoholic beverages?

8. Is there an established minimum age for social supply of alcoholic beverages? (Yes or No)
 - a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.

-
9. Are there laws and regulations to prevent sales to intoxicated persons? (Yes or No)
- b. If yes, does this include liability on sellers and servers?
-
10. Is there a ban on the sale of alcohol in pouches, sachets and small containers (e.g. in quantities around 200 ml or less)? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
11. Are there restrictions on the size that alcoholic beverages containers need to respect (a minimum of maximum size of the bottle) for all or certain alcoholic beverages? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
12. Are there laws and regulations regarding drinking in public places or at official public agencies' activities and functions? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
13. Are there laws or regulations regarding drinking at specific events (i.e. sport competitions or concerts)? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
14. Are there laws or regulations restricting the sale of alcoholic beverages by specific businesses (e.g. petrol/gasoline stations, pharmacies, groceries)? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
15. Are there laws and regulations to address the production, sale and distribution of alcoholic beverages? (Yes or No)
- a. If yes, please provide details and explain whether the rules apply to all or certain categories of alcoholic beverages.
-
16. Are there laws and regulations regarding home-brewed alcohol or informal production of alcohol? (Yes or No)
- a. If yes, please provide details.
-
17. How are controls on manufacturing, distribution and informal production enforced (e.g. through customs laws, tax administration laws, others)?
-
18. Are there laws and regulations regarding other forms of unrecorded alcohol, such as smuggled or counterfeit alcohol? (Yes or No)
- a. If yes, please provide details on interventions including tracking and tracing systems, cooperation and exchange of information among authorities at national and international levels, public health warnings about contaminants and other health threats.
-

Access to prevention, screening, brief interventions and treatment

1. What mechanisms exist regarding screening for persons with hazardous and harmful alcohol use (at the national, local and community levels)?

 2. What mechanisms exist regarding integrated and/or linked prevention for alcohol use disorders and comorbid conditions (including drug use disorders, mental health conditions, HIV/AIDS and tuberculosis) in health and social services?

 3. Are prevention measures aimed at preventing harmful use of alcohol in groups at higher risk? (Yes or No)
 - a. If yes, please provide details.

 4. Are treatment services available, accessible and affordable (particularly for low socioeconomic groups)? (Yes or No)
 - a. If yes, please provide details.

 5. Do specific mechanisms exist to ensure culturally sensitive health and social services are provided? (Yes or No)
 - a. If yes, what mechanisms exist?
-

Alcohol advertising, sponsorship and promotion

1. Does the country have a comprehensive ban on alcohol marketing (including advertising, promotion and sponsorship)? (check the most appropriate response)
 - a. Yes, there is a ban on all forms of direct and indirect advertising. ☐
 - b. No, there is only a partial ban on direct and indirect advertising. ☐
 - c. No, there is a complete absence of a ban. ☐

 2. What alcohol marketing, advertising, promotion and sponsorship is covered under the ban? (check all that apply)
 Direct advertising, including:
 - a. national TV ☐
 - b. national radio ☐
 - c. international TV ☐
 - d. international radio ☐
 - e. local magazines ☐
 - f. local newspapers ☐
 - g. international magazines ☐
 - h. international newspapers ☐
 - i. billboard and outdoor advertising ☐
 - j. point of sale ☐
 - k. internet ☐
 - l. cinemas ☐
-

Indirect advertising including:

- m. free distribution in mail or through other means ☐
- n. promotional discounts ☐
- o. brand stretching, such as alcohol brands used on non-alcohol products or vice versa ☐
- p. product or brand placement in TV or films ☐
- q. bans on sponsorship, including provision of financial or other support or publicity of financial or other support ☐
- r. surrogate advertising, such as on alcohol-free beverages ☐

Additional activities, including:

- s. engaging in or publicizing corporate social responsibility activities ☐
 - t. online retail ☐
 - u. funding campaigns on harmful use of alcohol ☐
 - v. point-of-sale display ☐
-

3. Is the ban in effect all the time? (Yes or No)

- a. If no, what days and times is the ban in effect?
-

4. Does the ban target the entire population? (Yes or No)

- a. If no, which groups are targeted by the ban?
-

5. Does the ban apply to all alcoholic beverages? (Yes or No)

- a. If no, which drinks are targeted by the ban?
-

6. Has a co-regulatory framework for alcohol marketing been established, supported when appropriate by self-regulatory measures? (Yes or No)

- a. If yes, please provide details.
 - b. If yes, does it take the following measures (check all that apply):
 - i. Regulate content and volume of marketing ☐
 - ii. Regulate direct or indirect marketing in certain or all media ☐
 - iii. Regulate sponsorship activities that promote alcohol beverages ☐
 - iv. Restrict or ban promotions with sponsorships and/or activities targeting young people ☐
 - v. Regulate new forms of alcohol marketing techniques, including social media ☐
-

7. Does the country ban alcohol sponsorship and/or publicity of contributions? (Check all that apply).

- a. Complete ban on sponsorship ☐
 - b. Ban on any form of contribution (financial or other support for any event, activity or individual) ☐
 - c. Ban on corporate social responsibility (CSR) activities ☐
 - d. Prohibiting alcohol companies/the alcohol industry from publicizing their CSR activities ☐
 - e. Prohibiting entities other than alcohol companies/the alcohol industry from publicizing the CSR activities of the tobacco companies ☐
 - f. Prohibiting alcohol companies from funding or making contributions (including in-kind contributions) to harmful use of alcohol prevention media campaigns, including those directed at youth ☐
 - g. Others (please specify) ☐
-

8. Does the national legislation ban consumption, advertising, promotion and sponsorship and sales of alcohol products on premises used for educational or training purposes? (Yes or No)

- a. If yes, please provide details.
-

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9. Are there any laws or regulations imposing the use of health warnings in alcohol advertising? (Yes or No)
 - a. If yes, please provide details.
 10. What surveillance system for marketing of alcohol products exists?
 11. What deterrence systems for infringement of marketing restrictions are present?
 12. Briefly mention any legal challenges wherein provisions of the consumer protection or other laws were triggered to establish misleading claims or advertising of alcohol products.
-

Prices, excise tax and pricing policies

1. Are prices regularly reviewed in relation to inflation and income (affordability)? (Yes or No)
 - a. If yes, please provide details.
 2. Are there restrictions or bans on the use of price promotions (direct or indirect), discount sales, sales below cost and flat rates for unlimited drinking or other types of volume sales? (Yes or No)
 - a. If yes, please provide details.
 3. Is there an established minimum price or minimum unit price for alcoholic beverages? (Yes or No)
 - a. If yes, what is it?
 4. Have measures been taken to reduce or stop subsidies for economic operators in the area of alcohol? Please elaborate.
 5. What is the tax burden on alcoholic beverages? Please provide details regarding all taxes applicable to alcoholic beverages.
 6. How frequently are taxes on alcoholic beverages adjusted?
 7. How are excise taxes on alcoholic beverages measured?
 8. Are there any tax exemptions for imported alcohol (e.g. duty free)?
 - a. If yes, please provide details.
 9. Do any other tax policies apply to alcoholic beverages (e.g. excise stamps, tax incentives for non-alcoholic beverages, additional levies for specific beverages)?
 - a. If yes, please provide details.
-

Monitoring and surveillance

1. Is there an established framework for monitoring and surveillance activities? (Yes or No)
 - a. If yes, does it include the following (check all that apply):
 - i. Periodic national surveys on alcohol consumption and alcohol-related harm ☐
 - ii. Plan for exchange and dissemination of information ☐
 2. Has an institution or other entity been established or designated responsible for collecting, collating, analysing and disseminating available data? (Yes or No)
 - a. If yes, please provide details.
-

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3. Is there a defined and tracked common set of indicators for harmful use of alcohol and for policy responses and interventions to prevent and reduce alcohol consumption? (Yes or No)
 - a. If yes, please provide details.
 4. Has a repository of data been created at the country level, based on internationally agreed indicators? (Yes or No)
 - a. If yes, please provide details.
 5. Are data reported in the agreed format to WHO and other relevant international organizations? (Yes or No)
 - a. If yes, please provide details.
 6. Are there mechanisms for the evaluation of the collected data to determine the impact of policy measures, interventions and programmes put in place to reduce the harmful use of alcohol? (Yes or No)
 - a. If yes, please provide details.
-

Drink-driving policies and counter measures

1. Is there an established upper limit for blood alcohol concentration? (Yes or No)
 - a. If yes, what is it?
 2. Is there a lower limit for professional drivers, motorcyclists and/or young or novice drivers? (Yes or No)
 - a. If yes, what is it?
 3. Are there any other restrictions for young or novice drivers regarding maximum speed, number of people they can drive, or others (graduated licences)? (Yes or No)
 - a. If yes, please provide details
 4. Are there other laws to reduce drink-driving, such as restrictions on having open alcoholic beverages in cars, restrictions on alcohol sales at freeway stops, etc? (Yes or No)
 - a. If yes, please provide details
 5. Is this enforced with sobriety checkpoints and random breath-testing? (Yes or No)
 - a. If yes, please provide details
 6. What are the penalties for exceeding the legal limit (e.g. fines, suspension of driving licence, imprisonment)? Please provide details, including which agency or agencies are responsible for enforcement and prosecution.
 7. Are there mandatory driver education, counselling and/or treatment programmes for individuals driving under the influence? (Yes or No)
 - a. If yes, please provide details.
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Regulation and labelling

1. Does the country have legislation, regulations or national standards on alcohol product regulation? (Yes or No)
 - a. If yes, please specify name of legislation, date of approval and if possible, link.
 2. Are there any measures to reduce the alcoholic strength within different beverage categories (i.e., beer, wine and spirits)?
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3. Are companies required to provide consumer information about, and label, alcoholic beverages to indicate alcohol-related harm, for example through the use of health warnings? (Yes or No)
- a. If yes, please provide details.
-
4. Are there other labelling measures, such as ingredient labelling, allergen labelling, additives labelling, alcohol by volume, or number of servings? (Yes or No)
- a. If yes, please provide details.
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5. Are there widespread voluntary approaches regarding the labelling of alcohol products (e.g. if they are produced locally)? (Yes or No)
- a. If yes, please provide details.
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6. If labelling requirements exist, do labels take the form of a message, a pictogram and/or a photograph? (check all that apply)
- a. Message ☐
- b. Pictogram ☐
- c. Photograph ☐
-
7. If labelling requirements exist, are there any specifications regarding their size, font, colour, rotation or others? (Yes or No)
- a. If yes, please provide details.
-
8. What quality control exists regarding production and distribution of alcoholic beverages? (check all that apply)
- a. Restrictions on ingredients ☐
- b. Production processes ☐
- c. Upper limits on alcohol by volume ☐
- d. Other sanitary measures ☐
- Please elaborate:
-

Annex 2: Approaches to restricting the acceptability, availability and affordability of alcoholic beverages

Approaches to marketing and labelling to address the acceptability of alcohol:

- Introduce comprehensive marketing bans or restrictions:
 - Introduce a comprehensive marketing ban for alcoholic beverages applying to all direct and indirect advertising, promotion and sponsorship activities and all beverage categories.
 - In the absence of a comprehensive ban, introduce partial marketing bans/restrictions for alcoholic beverages, such as prohibiting some forms of advertising, promotion or sponsorship; prohibiting marketing to which children are exposed; restricting the content of marketing; and/or prohibiting marketing of designated beverage categories.
 - Include all media, including digital media, in any marketing ban or restriction adopted.
- Regulate the labelling of alcoholic beverages:
 - Define in the law those elements that must be included on the label of alcoholic beverages, such as the ingredients list, nutrient information, alcohol content and/or number of servings (standard drinks).
 - Require health warning messages and/or pictograms on the label of alcoholic beverages.
 - Ban or restrict nutrition and health claims on alcohol labels.
 - For any label required by law, specify the size, font, colour, rotation, placement and any other formal specifications.

Approaches to legislating on the availability of alcohol:

- Regulate product characteristics (what form products in the market may take), including:
 - regulating the composition of alcoholic beverages, including their alcohol content and food safety standards;
 - regulating the packaging of alcoholic beverages, including the size(s) of the containers allowed and the categories of containers allowed; and
 - regulating the production and consumption of unrecorded alcohol, including:
 - whether any exemptions to the general regime for regulating the availability of alcohol apply to unrecorded alcohol; and
 - whether any additional restrictions apply to unrecorded alcohol.

- Establish a monopoly or a licensing system at all or some stages of the supply chain (production, import, export, retail) and, if licensing,
 - attach strict conditions to the granting and renewal of licences; and
 - use licensing to support implementation of other interventions.
- Establish restrictions on the sale and service of alcoholic beverages, including:
 - opening times of retail outlets and venues;
 - location and density of retail outlets and venues; and
 - restrictions on the modes of retail, including online retail.
- Require retailers of alcoholic beverages and venues to undertake mandatory training on responsible service and sale of alcoholic beverages.
- Establish a minimum age for the purchase and/or consumption of alcohol.
- Ban sales to intoxicated persons.
- Restrict or regulating the secondary supply of alcoholic beverages to people under the legal age and/or intoxicated persons.
- Require venues to adopt measures to reduce harms in alcohol consumption environments, such as:
 - making food and non-alcoholic beverages available where alcohol is served;
 - having comprehensive information on means of transport from the premises; and
 - adopting measures to prevent violent or disorderly conduct on the premises.

Approaches to reducing the affordability of alcohol:

- Increase excise duties or other taxes on alcoholic beverages.
- Ban price promotions for alcoholic beverages.
- Introduce a minimum price for alcoholic beverages.
- Regularly update any tax and/or pricing measures in relation to inflation and increased population income.
- Use increased revenue from alcohol taxes for public health purposes by establishing, where necessary, a public health foundation or similar structure.
- Ensure that no subsidies or other forms of economic incentives are provided to actors in the alcohol supply chain.

