



ROYAL NORWEGIAN MINISTRY  
OF HEALTH AND CARE SERVICES

EFTA Surveillance Authority  
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BELGIUM

Your ref  
92228-1468470

Our ref  
24/2244-

Date  
1 October 2024

## Response to request for information regarding the Norwegian prohibition on advertising of alcoholic beverages

### 1 Introduction

Reference is made to your letter dated 9 July 2024 with a request for information regarding the Norwegian prohibition on the advertising of alcoholic beverages. The EFTA Surveillance Authority has posed 10 questions and asked for any other additional information which the Norwegian Ministry of Health and Care Services deems relevant to the case, within 16 September 2024. Reference is also made to our email dated 14 August 2024 with a request for an extended deadline, and your reply the same day granting an extended deadline until 1 October 2024.

The background for the information request is that the Authority has received a complaint on the matter. The complainant refers to a previous legal process, which reached the EFTA Court for an advisory opinion in Case E-4/04 and was finally adjudicated by the Norwegian Supreme Court in 2009, cf. judgment in case no. 2009/43 of 24 June 2009 *Pedicef AS*. According to the complainant, legal and factual circumstances in Norway have changed in the years following the Supreme Court's judgment. They claim that a number of amendments in Norwegian alcohol policy following 2009 imply that the general prohibition on the advertising of alcoholic beverages, including the prohibition on advertisements in specialty magazines for foods and drinks, can no longer be justified.

The Ministry strongly disagrees with the complainant's claim. The overall level of protection of public health in relation to alcohol and the consistency of the alcohol policy, is not reduced.

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The Ministry would like to underline that Norway has a comprehensive and strict alcohol policy to protect public health. The national policy must be seen in the light of the national context. The Norwegian alcohol policy consists of a comprehensive package of different measures working together to prevent the harms caused by alcohol use. Not only are the chosen measures effective separately, but they also supplement and enhance each other. The strict prohibition on alcohol advertising is one of the most important among these measures. Norway has chosen a high level of protection of public health when it comes to the harmful effects of alcohol use. To meet the public health challenges and to uphold the public legitimacy of the alcohol policy as a whole and the measures as such, it is necessary and reasonable for the Government to over time make some adjustments to the policy and legislation.

For the record, the Ministry initially remarks that the EEA Agreement Articles 11 EEA and 36 do not apply to wine advertising, cf. EEA Article 8(3).<sup>1</sup>

In the following, the Ministry aims to answer all the questions put forward by the Authority. All translations in this document are unofficial. The Norwegian Alcohol Act and the Alcohol Regulations were both translated into English in 2020.<sup>2,3</sup>

## **2 Question 1: - Can the Government please provide an overview of all currently applicable exemptions from the prohibition on the advertising of alcoholic beverages?**

### **2.1 The advertising prohibition**

The Norwegian prohibition on the advertising of alcoholic beverages is structured as a comprehensive prohibition on all forms of marketing.

Advertising of alcoholic beverages, advertising for products with the same brand or trademark as alcoholic beverages, or the use of alcoholic beverages in advertisements for other products is prohibited under Section 9-2, first paragraph of the Alcohol Act.

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<sup>1</sup> Case E-4/04 Pedicel (1a and 1b)  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3AE2004J0004>

<sup>2</sup> **English: Act on the Sale of Alcoholic Beverages, etc. (Alcohol Act):**  
[https://www.helsedirektoratet.no/tema/alkohol/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages,%20etc.%20\(Alcohol%20Act\)%20-%20Unofficial%20version.pdf](https://www.helsedirektoratet.no/tema/alkohol/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages,%20etc.%20(Alcohol%20Act)%20-%20Unofficial%20version.pdf) /attachment/inline/cf610698-d822-4e67-9c64-803a2939971f:1aa4342cb2f3893cbb5b436fa29e18d25a161b7b/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages,%20etc.%20(Alcohol%20Act)%20-%20Unofficial%20version.pdf

**Norwegian: Lov om omsetning av alkohol (LOV-1989-06-02-27):** <https://lovdata.no/dokument/NL/lov/1989-06-02-27>

<sup>3</sup> **English: Regulations on the Sale of Alcoholic Beverages (Alcohol Regulations):**  
[https://www.helsedirektoratet.no/tema/alkohol/Regulations%20on%20the%20Sale%20of%20Alcoholic%20Beverages%20\(Alcohol%20Regulations\)%20-%20Unofficial%20version.pdf](https://www.helsedirektoratet.no/tema/alkohol/Regulations%20on%20the%20Sale%20of%20Alcoholic%20Beverages%20(Alcohol%20Regulations)%20-%20Unofficial%20version.pdf) /attachment/inline/2fd2b12a-5179-4f29-a63c-d0ba50e406bb:d42e95a2b4979dcb9f8b3046d4cfdc3e6ba409cd/Regulations%20on%20the%20Sale%20of%20Alcoholic%20Beverages%20(Alcohol%20Regulations)%20-%20Unofficial%20version.pdf

**Norwegian: Forskrift om omsetning av alkoholholdig drikke mv. (FOR-2005-06-08-538):**  
[https://lovdata.no/dokument/SF/forskrift/2005-06-08-538/KAPITTEL\\_14#KAPITTEL\\_14](https://lovdata.no/dokument/SF/forskrift/2005-06-08-538/KAPITTEL_14#KAPITTEL_14)

What constitutes alcohol advertising is defined in Section 14-2 of the Alcohol Regulations, which states:

*"Advertisement" shall mean 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.*

*There is a marketing purpose if an objective of the communication is to promote sales. On assessing whether there is a marketing purpose, emphasis must be placed on who is the sender of the information, who takes the initiative to provide the information, the content and design of the information and how the information is presented and disseminated."*

The prohibition is media-neutral and applies to all types of mass communication. New forms of mass communication used to advertise alcoholic beverages will therefore fall under the prohibition. Thus, even though the internet, mobile services and social media were not current communication forms when the advertising prohibition in the Alcohol Act was enacted, these communication forms are covered by the prohibition.

The advertising prohibition is comprehensive. A broad interpretation of what is considered advertising, i.e. mass communication for marketing purposes, has always been applied. This interpretation is rooted in the preparatory works to the Alcohol Act<sup>4</sup> and is also reflected in the regulatory framework. Consequently, this interpretation has also been upheld in decisions by the Marketing Council and the Supreme Court. If needed, the Ministry can provide the Authority with these decisions.

A specific assessment must always be made in each individual case to determine whether an activity is considered to constitute alcohol advertising, i.e., whether there is *"mass communication for marketing purposes"*. However, it is possible to outline some general guidelines that can serve as guidance for this assessment, including examples of activities that are normally considered advertising and clarification of relevant interpretative factors.<sup>5, 6</sup>

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<sup>4</sup> Ot.prp. nr. 86 (2003-2004) om lov om endringer i lov 2. juni 1989 nr. 27 om omsetning av alkoholholdig drikk mv. og enkelte andre lover, Chapter 5:

<https://www.regjeringen.no/no/dokumenter/otprp-nr-86-2003-2004-/id179041/>

Ot.prp. nr.48 (1972-73) om lov om endringer i lov av 5. april 1927 om innførsel og omsetning av brennevin, vin, fruktvin, mjød og øl (forbud mot reklame for alkohol): [https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1972-73&paid=4&wid=b&psid=DIVL313&pgid=b\\_0447](https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1972-73&paid=4&wid=b&psid=DIVL313&pgid=b_0447)

Ot.prp. nr. 31 (1988-89) om lov om omsetning av alkoholholdig drikk m.v. page 48:

[https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1988-89&paid=4&wid=b&psid=DIVL238&pgid=b\\_0011](https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1988-89&paid=4&wid=b&psid=DIVL238&pgid=b_0011)

Ot.prp. nr. 7 (1996-97) om lov om endringer i alkoholoven, Chapter 17:

<https://www.regjeringen.no/no/dokumenter/otprp-nr-7-1996-97-/id158386/>

<sup>5</sup> Guidelines - The Alcohol Act: <https://www.helsedirektoratet.no/rundskriv/alkoholoven>

<sup>6</sup> Guidelines - The alcohol regulations: <https://www.helsedirektoratet.no/rundskriv/alkoholforskriften-med-kommentarer>

## 2.2 The exemptions

The current applicable exemptions are listed in the Alcohol Regulations Section 14-3 no. 1 to 20. Exemptions no. 1 to 7 and no. 10 were applicable in 2009, but no. 3 was amended in 2015 and no. 10 was amended and renumbered in 2015 (previously no. 8). Exemption no. 11 came into force 1 January 2012, but was amended and renumbered in 2015 (previously no. 9). Exemptions no. 8, 9 and 12 to 20 came into force 1 November 2015. The 2015 amendments are based on the Ministry's consultation paper of 8 July 2014.<sup>7</sup>

The exemptions can be divided into four categories, based on the main reason behind the provision or their purpose:

1. Exemptions that are necessary to facilitate sales to the next part of the distribution chain: 2, 3, 10, 11, 15.
2. Exemptions that are necessary to meet the consumers' need to obtain information and navigate the market before purchasing alcoholic beverages: 8, 9, 12, 13, 14, 16.
3. Exemption that reflects the limits of national legislative authority: 7.
4. Exemptions that are necessary to address specific issues due to practical needs, primarily based on cases that have arisen in practice: 1, 5, 6, 17, 18, 19, 20.

## 2.3 Exemptions introduced after 2009

### *Exemption no. 11:*

The current exemption no. 11 came into force in 2012. The exemption was introduced in connection with an amendment to the Alcohol Act and the Vinmonopol Act to permit auctions by AS Vinmonopolet or auction houses assisting the company.<sup>8</sup> The exemption from the advertising ban allows for provision of information necessary for the execution of such sale, including price and product information. In 2015, the exemption was slightly modified to harmonize it with new exemptions regarding product information. Among other things, it was clarified that the exemption only allows for sober product information.

### *Exemptions no. 8, 9 and 12 to 20:*

In 2014, the Ministry, in collaboration with the Norwegian Directorate of Health, conducted a comprehensive review of the advertising prohibition, resulting in several new exemptions and some important clarifications, cf. the consultation paper of 8 July 2014. The purpose was to align the regulations with established practice, make it easier to comply with the regulations by providing clearer limits for the exemptions, adapt the regulations to the technological development, and provide exemptions that meet consumers' needs and expectations for factual information about alcoholic beverages. An important consideration was also "to

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<sup>7</sup> Consultation paper:

[https://www.regjeringen.no/contentassets/02b543bf65144847b63ede4979284b84/hoeringsnotat\\_reklamebestemmelser.pdf](https://www.regjeringen.no/contentassets/02b543bf65144847b63ede4979284b84/hoeringsnotat_reklamebestemmelser.pdf)

<sup>8</sup> Prop. 48 L (2010–2011) Endringer i lov 2. juni 1989 nr. 27 om omsetning av alkoholholdig drikk m.v. og lov 19. juni 1931 nr. 18 om Aktieselskapet Vinmonopolet:

<https://www.regjeringen.no/no/dokumenter/prop-48-l-20102011/id628952/?ch=6>

ensure equal treatment of similar actors and make it easier for them to comply with the regulations".

A particular consideration that justified new exemptions from the advertising prohibition was the increased need of modern consumers to navigate the market before purchasing alcoholic beverages. In 2014, the advertising prohibition entailed that consumers did not have access to product information on the internet. To find information about various products, consumers had to either visit a retail location or contact the alcohol seller with an individual request for information. The Ministry stated in the consultation paper page 8:

*"Furthermore, it has been necessary in the evaluations to consider whether the current regulations and their interpretation are properly balanced regarding consumers' need for information (the ability to assess the product's objective characteristics as a basis for purchase) against the objective of limiting sales. Consumers' desires and expectations for product information have increased over the years and with new communication methods. A proper balance is important for the legitimacy of the advertising ban. Surveys show that the advertising ban generally has strong support in the population today. To maintain this support, it is important that the ban appears understandable."*

At the same time, the Ministry emphasized that information about alcoholic beverages should not be allowed in such a way that it also reaches parts of the population who do not consciously seek this information (page 5):

*"A central premise underlying most of the proposed exemptions is that the information can only be provided in communication channels that must be actively sought out by those looking for this information. Another premise is that the information permitted must be sober, fact-based, and should not go beyond what is necessary for consumers to obtain information about the characteristics of the mentioned products."*

The most significant change introduced to meet consumer needs was the exemptions in no. 13, 14, and 16, which allowed alcohol sellers to provide information about specific products and their characteristics on their own websites and at alcohol-related events, such as fairs, courses, etc. The exemptions do not allow for such information in social media. Additionally, the exemptions are subject to strict limitations, including the requirement that only sober, fact-based information and sober images on a neutral background are permitted. On producers' and wholesalers' websites, it is also required that all products are presented equally, with information on allergens, net content, and alcohol content, and that each product is accompanied by a health warning.

Some of the new exemptions aimed to confirm already established practices while also helping to clarify the limits of the advertising prohibition. This includes exemptions no. 8, 9, 15, and 17 to 20.

These changes partly involved a tightening of existing practices, while in some cases they led to some relaxation.

Additionally, several of these exemptions were also assessed against the mentioned consumer needs. This included, for example, exemption no. 8 on non-product-specific information about alcohol, no. 9 on product packages, and no. 12 on product information inside the premises of sales and serving establishments.

Exemption no. 8 is an important example of this. Until 2014 the supervisory authority for the advertising prohibition, the Directorate of Health, considered that general, non-product-specific written information about alcohol from an alcohol seller was *not* covered by the definition of advertising, while corresponding images of alcohol *were* covered. After a renewed assessment, the Ministry found that both written descriptions and images of alcohol should normally be considered as "mass communication for marketing purposes". However, the Ministry believed that the consumers' need for information justified an exemption for such general information, for example, about the origins, taste, and uses of various product types. However, this exemption was limited to "*sober, fact-based information.*" Additionally, the exemption only applies to "*mass communication channels that the recipient must actively seek out to obtain this information from the sender*". In practice, this meant on the one hand a relaxation of the prohibition, as alcohol sellers could now share such information in more channels than before, such as on their own websites, at alcohol-related events, etc. On the other hand, it meant a tightening of the prohibition, as sellers could no longer provide such information in channels primarily dealing with topics other than alcohol, such as shopping centre magazines.

The Ministry's overall assessment of the revision was that the amendment was in line with the Alcohol Act's objective and at the same time meeting consumer needs, cf. the consultation paper page 45:

*"Consumers interested in information about alcoholic beverages will, with this regulatory proposal, have a much better opportunity to obtain this information. At the same time, the limitations included in the proposals will protect consumers who do not want this type of information, minimizing the impact on public health."*

### **3 Question 2: Please specify which of the current exemptions, if any, is the legal basis for allowing advertising of alcoholic beverages in printed and digital media published in other EEA countries.**

#### **3.1 Printed Media**

According to Section 14-3 no. 1 of the Alcohol Regulations, advertisements in foreign printed documents which are imported to Norway are exempted from the prohibition, unless the main purpose of the document or import is to advertise alcoholic beverages in Norway.

This exemption was incorporated into the Alcohol Regulations already in 1977. The purpose was to ensure that consumers had access to foreign publications such as newspapers, magazines, and other periodicals. It was deemed neither practical nor feasible to require

alcohol advertisements in foreign publications, which are primarily targeted at markets other than Norway and where alcohol advertising is permitted, to be removed or obscured before the publication could be offered to Norwegian consumers. Otherwise, the consequence could have been a reduction in the distribution of foreign publications in Norway, thereby limiting Norwegian consumers' ability to stay informed about international affairs.

In practice, the key consideration when assessing whether the exemption is applicable in a concrete case, is whether the publication primarily targets a market other than the Norwegian one. Relevant factors in this assessment include the language used in the publication, its distribution, and whether the content, for example through cultural and geographical references, can be said to be directed at a particular market.

### **3.2 Digital Media**

The above-mentioned exemption applies only to printed publications. There is no corresponding exemption for alcohol advertisements in digital media.

The scope of the Alcohol Act is "Norway," cf. Section 1-2 of the Alcohol Act. Digital advertising is generally accessible across borders, and the wording of the Alcohol Act does not clearly specify when digital advertising should be considered within the scope of the Alcohol Act.

The Norwegian Ministry of Justice addressed this issue in a letter to the Ministry of Health and Care Services dated 8 May 2008. Their interpretation forms the basis for current practice. The Ministry of Justice noted that violation of the prohibition on alcohol advertising is punishable under Section 10-1 of the Alcohol Act. The practical question concerning the scope of the advertising prohibition is therefore when it is permissible to prosecute a person or entity for violating the prohibition, i.e. the applicable scope of Norwegian criminal law.

The Ministry does not find it necessary to delve into all details regarding the scope of the advertising prohibition, but refers to the following main points:

- According to Section 4 of the Penal Code, criminal law, thus also the advertising prohibition, applies to actions committed "in Norway." Whether the action is considered to have been "committed in Norway" must be determined based on a concrete overall assessment of the specific case. For example, where a website with advertisements is produced in Norway by Norwegian market actors and then transferred to a foreign server, there is a strong argument that the action is considered to be committed in Norway, and therefore the alcohol advertising prohibition would apply. Furthermore, cases where the client is located in Norway and the product being advertised is intended for the Norwegian market, would also fall under the advertising prohibition.
- For actions committed outside of Norway, i.e. where the advertisement is produced by foreign nationals and sent from another country, with a client also located abroad,

the general rule is that the Penal Code does not apply. However, in cases where the criminality depends on or is influenced by a consequence that occurs or is intended to occur, it follows from Section 7 of the Penal Code that the action is considered committed "also where the consequence has occurred or is intended to be brought about." Alcohol advertising that is produced and published abroad may thus fall under the Norwegian advertising prohibition if the advertisement is directed at Norwegian consumers. For advertisements from abroad, it is not sufficient that the advertisement is merely available to Norwegian consumers; it must be specifically directed at them. Whether the advertisement is considered to be "directed at Norwegian consumers" will depend on an overall assessment where relevant factors may include the form and content of the advertisement, including the language used, whether it appeals to Norwegian culture, makes use of Norwegian celebrities, or other distinctly Norwegian aspects, and whether the product is distributed or intended to be launched in Norway.

Due to the limits of Norwegian jurisdiction, Norway has limited capacity to enforce violations committed abroad by foreign persons or companies. However, the issue may have implications for third parties' ability to redistribute or make foreign advertisements available.

In addition, Directive 2010/13/EU on audiovisual media services, as amended by Directive (EU) 2018/1808, and its "country of origin-principle", as well as Directive 2000/31/EC on information society services and its "country of establishment-principle", also entail certain limitations on the applicability of the Norwegian advertising prohibition when it comes to digital marketing from other EEA states. These EU regulations are especially relevant as legal basis for exemptions no. 7 and 10.

#### **4 Question 3 and 4: Can the Government please provide an overview of amendments of Norwegian alcohol policy and of related legislation or other rules introduced after 2009?**

**Can the Government please indicate which of the amendments it has listed in its reply to question 3 have, in its view, made Norwegian alcohol policy more liberal, and which have made Norwegian alcohol policy, in the Government's view, stricter?**

The Ministry finds it appropriate to answer questions 3 and 4 together, by providing an overview of the most significant changes in the alcohol legislation and alcohol policy, along with an assessment of the amendments.

Regarding the example above concerning travellers' exchange of tax-free quotas for tobacco with tax-free quotas for alcoholic beverages, this was revised from 2022 and is no longer a possibility.

For amendments related to the advertising prohibition, please refer to the explanation provided in response to question 1.



#### **4.1 Repeal of the prohibition on private importation of alcoholic beverages**

In 2009, the prohibition on private importation of alcohol was repealed, allowing private individuals to import alcohol for personal use. At the same time, a requirement was introduced that businesses may only deliver such privately imported alcohol to consumers if the business is registered as a distributor of alcoholic beverages for private importation with the Directorate of Health, cf. the bill, Ot.prp.nr.53 (2008–2009).<sup>9</sup>

The background for this change was that, in 2004, the Authority expressed the opinion that the Norwegian import prohibition was, in its view, contrary to the EEA Agreement's provisions on free movement of goods. Norway did not agree with this assessment, and the matter was put on hold pending the European Court of Justice's (ECJ) decision in a case concerning the Swedish import prohibition, case C-170/04 *Rosengren*. In 2007, the ECJ concluded that the Swedish import prohibition was not compatible with the EC Treaty.

Following the ECJ's decision, the Authority resumed the matter with Norway and requested that Norway amended its regulations in this area. Norway decided to change the legislation, although it was uncertain whether the *Rosengren* case was directly relevant to Norway. It was emphasized that the potential negative consequences for alcohol policy of repealing the prohibition could be avoided if, instead, a robust alternative control system was implemented to ensure control over age, intoxication, and the payment of Norwegian alcohol duties.

For the sake of coherence in the regulations, the prohibition was also repealed for the importation of wine, even though wine is not covered by the EEA Agreement's provisions on free movement of goods.

The Ministry does not agree with the claim that this amendment is an example of regulatory liberalisation. Due to the strict private import system established in Norway concerning private import of alcoholic beverages, cf. the Alcohol Act Chapter 2 and the Alcohol Regulations Chapter 15, the consistency of Norwegian alcohol policy was not weakened by this amendment. In the Ministry's view, this change is an example of Norway adapting to the EEA Agreement and the principle of free movement of goods in a manner that best preserves Norway's unique alcohol policy and considerations for public health.

#### **4.2 Amendments to opening days for Vinmonopolet and grocery stores**

In 2015, the prohibition on the sale of alcohol on election days for parliamentary election and for county and municipal election, as well as referendum days, was repealed. Parliamentary election and county and municipal election is one day every fourth year. The last referendum

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<sup>9</sup> Ot.prp. nr. 53 (2008–2009) Om lov om endringer i lov 2. juni 1989 nr. 27 om omsetning av alkoholholdig drikk m.v. (opphøvelse av forbudet mot privat innførsel av alkoholholdig drikk): <https://www.regjeringen.no/contentassets/4eed4f7761ff4539b26edf01ffdf6f8d/no/pdfs/otp200820090053000dddpdfs.pdf>

in Norway was in 1994. This amendment applied to both Vinmonopolet and grocery stores, cf. Alcohol Act Section 3-4 third paragraph and Section 3-7 fourth paragraph, cf. the bill, Prop. 127 L (2013–2014).<sup>10</sup>

Additionally, the prohibition on the sale of alcohol at Vinmonopolet on the day before New Year's Eve, Easter Eve, and Pentecost Eve was repealed. Following this change, the rules for Vinmonopolet's opening days is largely aligned with those for grocery stores, with the exception of Christmas Eve, where Vinmonopolet is still prohibited from selling alcohol.

In the bill, chapter 6.2.2, the Ministry stated that the prohibition on the sale of alcohol on election days was outdated. It was originally intended to emphasize the solemnity of the electoral process and to prevent individuals from voting while intoxicated. It was further noted that the electoral system had changed, with many voters casting their votes on days other than the election day itself, and that establishments were permitted to serve alcohol on election days.

The repeal of the prohibition on the sale of alcohol at Vinmonopolet on the day before certain holidays (three days in total) was justified as a simplification for the public, which could, in turn, strengthen support for the Vinmonopol system, cf. chapter 6.2.3.

On an overarching level, the Ministry stated in the bill, chapter 6.2.1:

*"The Ministry will ensure an effective and sustainable alcohol policy. The main lines of the alcohol policy shall be maintained. Within these main lines, it must be assessed whether adjustments are necessary. When considering changes, they should not be evaluated in isolation, but the measures and their effects must be viewed in the context of other measures and changes in recent times. Many small changes could potentially lead to significant cumulative effects, as some consultation bodies have pointed out. At the same time, unnecessary and ineffective regulations must be removed, not least to ensure the legitimacy of the alcohol policy as a whole. The proposals to allow sales on election days and eves must be seen in this perspective. The Ministry believes that the alcohol policy effects of these proposals will be marginal and that the changes may contribute to increasing support for the monopoly system as such."*

The Ministry considers that these changes have not led to any significant increase in the availability of alcohol and would like to emphasize that the statement above is still valid.

### **4.3 Amendments in the opening hours for Vinmonopolet**

In 2020, a minor adjustment was made to Vinmonopolet's opening hours, from 08:30-15:00 on Saturdays and days before holidays (except Ascension Day) to 10:00-16:00, along with a

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<sup>10</sup> Prop. 127 L (2013–2014) Endringer i alkoholloven (åpningsdager for salg av alkoholholdig drikk): <https://www.regjeringen.no/no/dokumenter/Prop-127-L-20132014/id763803/>

corresponding adjustment for the time for the delivery of privately imported alcoholic beverages, cf. the bill, Prop. 88 L (2019–2020).<sup>11</sup>

The purpose of this change was to align the opening hours with consumer shopping patterns on Saturdays, which is important from a consumer perspective and to maintain support for the monopoly system. The Ministry stated in the bill chapter 2:

*"The purpose of the Alcohol Act is to limit the societal and individual harms that alcohol consumption can cause, including by limiting the consumption of alcoholic beverages, cf. Alcohol Act § 1-1. The Granavolden platform and the Public Health Report (Meld.St.19 (2018–2019)) indicate that the government will continue the main lines of current alcohol policy, including licensing systems, advertising bans, age limits, the monopoly system, and taxes. The proposal for adjustments in the Alcohol Act, in favour of consumers and producers with small premises, is not intended to change this."*

The amendments involve a minor adjustment to opening hours. The maximum opening time, however, was slightly reduced (from 6,5 to 6 hours). Overall, the change does not constitute a liberalisation of Norway's alcohol policy.

#### **4.4 Amendments related to the licensing period for municipal sales and serving licenses**

In 2016, several changes were introduced to the system for municipal licenses for the sale and serving of alcohol, related to the duration of a license, cf. Alcohol Act Section 1-6, cf. the bill, Prop. 141 L (2014–2015).<sup>12</sup> Prior to 2016, municipalities had the authority to grant such licenses for a maximum duration of four years.

With the changes in 2016, municipalities were allowed to extend all licenses for the sale and serving of alcohol within the municipality for up to four years at a time, up to a total length of 12 years, provided that certain conditions were met. One of these conditions is that the municipality, following a municipal election, must review the alcohol policy in the municipality, including the licensing policy.

The purpose of the amendment was to simplify the regulations and ensure that they are not more complicated and resource-intensive than necessary to safeguard important alcohol policy considerations and public health. In the bill chapter 4.6.1, the Ministry stated that there was a need to assess

*"...whether it is appropriate to retain the four-year rule in its current form. An alternative arrangement that better addresses the concerns against the current limited licensing*

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<sup>11</sup> Prop. 88 L (2019–2020) Endringer i alkoholloven (justering av Vinmonopolets åpningstider mv.: <https://www.regjeringen.no/contentassets/2a5cbb783d43e98011f1148a18316e/no/pdfs/prp201920200088000ddpdfs.pdf>

<sup>12</sup> Prop. 141 L (2014–2015) Endringer i alkoholloven og strålevernloven (varigheten på bevilninger mv. og laserpekere), <https://www.regjeringen.no/no/dokumenter/prop.-141-l-2014-2015/id2423067/>

*period is desirable. At the same time, the concerns underlying the current arrangement must be adequately addressed. Therefore, the Ministry seeks to make adjustments to the four-year provision that reduce bureaucracy and unnecessary resource use while ensuring that local self-government, the need to weed out unserious actors, and the municipalities' responsibility and opportunity to pursue a sound public health policy are well maintained."*

The amendment does not affect how many licenses a municipality can grant, but provide municipalities with more flexibility in how they manage licenses, contributing to a simplification and streamlining of their work. The purpose of the amendment is from the Ministry's point of view not a liberalisation affecting Norway's high level of public health protection. The municipality is still obliged to do an assessment of their alcohol and licencing policy every fourth year before deciding if the alcohol sale and serving licences shall be granted for four more years.

#### **4.5 Farm sales**

In 2016, new rules on so-called farm sales came into force, see the Alcohol Act Section 3-1b and Section 1-7f. The changes allowed for direct sales from producers to consumers of products over 4.7% alcohol by volume that are not covered by the EEA Agreement, cf. the bill, Prop. 116 L (2015–2016).<sup>13</sup>

After the amendment, the municipalities may grant a sales license that includes production for sale on the premises to also cover certain products over 4.7% alcohol by volume (previously such licences could only be granted for products below 4.7%). These are products that Vinmonopolet previously had the exclusive right to sell. It is a condition that production takes place on the sales premises and that the sales are part of the overall character and sales offer of the site. Further requirements include that at least one-third of the raw materials are self-produced, and that a maximum of 15,000 litres can be sold per year per producer.

The purpose of the amendment was to enable small producers to engage in sales of these products as a supplementary business. The arrangement concerns products not covered by the EEA Agreement, and it was assumed that the arrangement would not have consequences for Norwegian alcohol policy and would not affect the position of Vinmonopolet.

This issue was thoroughly examined during the consultation process, and the following was stated in the Ministry's consultation paper<sup>14</sup> of 22 June 2015:

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<sup>13</sup> Prop. 116 L (2015–2016) Endringer i alkoholoven mv. (retten til begrenset salg av alkoholholdig drikk mv.): <https://www.regjeringen.no/no/dokumenter/prop.-116-l-20152016/id2498317/?ch=6>

<sup>14</sup> Consultation paper 2015: <https://www.regjeringen.no/contentassets/d9176c44b5c44d4387c6ceffc49fd1d4/horingsnotat-salg-av-alkoholholdig-drikk-l911005.pdf>

*"The Ministry refers to consultation bodies that point to the statement from Professor Arnesen and Professor Sejersted that it cannot be entirely ruled out that extended niche sales in a future lawsuit concerning the sales monopoly may be highlighted as one of several developments that together weaken the consistency of the fundamentally restrictive Norwegian alcohol policy. In the Ministry's assessment, the adjustments made in recent years to the Alcohol Act have not resulted in significant changes to the consistency of Norwegian alcohol policy. Measures to limit consumption and harm caused by consumption, such as the monopoly system, licensing system, advertising ban, age limit provisions, and opening hours regulations, are important and remain in place. Adjustments to Vinmonopolet's opening days and the advertising regulations are adjustments that take into account societal developments in recent years. The Ministry notes that during the same period, regulations have been introduced to tighten municipal control over sales and serving licenses. In the Ministry's opinion, a limited arrangement for sales does not have particular alcohol policy consequences. However, the Ministry supports the consultation bodies' assessment that the arrangement should be limited to ensure that the restrictive Norwegian alcohol policy is not challenged. The Ministry agrees that the risk that the arrangement will have an impact on the assessment of the consistency of the general alcohol policy will be lower the more limited the arrangement is made. To ensure the consistency of the restrictive Norwegian alcohol policy and the maintenance of the monopoly system, the Ministry therefore proposes that certain adjustments be made to the proposal that was sent for consultation. The Ministry's proposals for adjustments are set out in Chapter 6.2 following. By making these adjustments, the Ministry believes that the proposal clearly does not challenge the consistency of the restrictive Norwegian alcohol policy."*

The farm sales arrangement is of very limited scope due to the strict conditions imposed. Although the arrangement technically can be perceived as a liberalisation related to the sale of alcohol over 4.7% alcohol by volume, it does not in practice represent a significant change in Norwegian alcohol policy.

#### **4.6 The demerit point system**

In 2015, new standardized rules for the revocation of municipal licenses for the sale and serving of alcohol were introduced, requiring municipalities to implement a demerit point system for violations of the Alcohol Act, cf. Section 1-8 third paragraph of the Alcohol Act and Chapter 10 of the Alcohol Regulations, see also the bill, Prop. 58 L (2014–2015).<sup>15</sup>

Under the new rules, various violations were categorized according to the severity of the offense, with each category carrying a predetermined number of points. Accumulation of a specified number of points within a two-year period will result in the license being revoked for at least one week.

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<sup>15</sup> Prop. 58 L (2014-2015) Endringer i alkoholloven (normerte regler for inndragning av bevilling): <https://www.regjeringen.no/no/dokumenter/prop.-58-l-2014-2015/id2395791/>

The purpose of these changes was to clarify the municipalities' responsibility to respond to breaches of license conditions and to ensure equal treatment of license holders. It was the Ministry's view that the system would further contribute to reducing problems related to alcohol use.

The background for these changes was a review of the alcohol policy and licensing system in a parliamentary report, Meld. St. 30 (2011–2012).<sup>16</sup> The report highlighted documented challenges related to over-serving and the sale and serving of alcohol to minors, while noting that the enforcement of sanctions against sales and serving establishments was low. The Ministry stated in the bill chapter 4.2.3:

*"Predictable sanctions for breaches of the serving regulations will, in the Ministry's opinion, be an important element in preventing violations of the alcohol regulations. Standardized rules for revocation will lead to more equal competition conditions for license holders across municipal borders. The system will be ineffective if it is not made mandatory."*

The changes represent a clear tightening of the municipalities' autonomy regarding the follow-up of violations related to sales and serving operations.

#### **4.7 Reduced tax rate for small-scale producers of fermented alcoholic beverages**

In 2019, the Norwegian Parliament approved a reduction in the excise tax rates for fermented alcoholic beverages produced by small breweries, including beer, cider, and mead., cf. the Regulation on excise taxes Section 3-2-3.<sup>17</sup>

"Small scale producers" refers to businesses that are economically and legally independent of other breweries and that annually produce less than 500,000 litres of fermented alcoholic beverages with an alcohol content exceeding 0.7% by volume. The tax rates differ with the volume of alcoholic beverages produced by the producer. The reduced tax rates apply to fermented alcoholic beverages with an alcohol content of more than 3.7% and up to 4.7% by volume. The system and the rates for 2024 are described more in detail on the Tax Administration's web site.<sup>18</sup>

The aim of the tax reduction was to improve the operating conditions for small scale producers of alcoholic beverages in Norway and to stimulate the establishment of new businesses and local small-scale production of fermented alcoholic beverages. The tax reduction applied to such beverages produced by both Norwegian and foreign small-scale producers.

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<sup>16</sup> Meld. St. 30 (2011–2012) Se meg! En helhetlig rusmiddelpolitikk:

<https://www.regjeringen.no/no/dokumenter/meld-st-30-20112012/id686014/>

<sup>17</sup> Regulation on excise taxes: <https://lovdata.no/dokument/SF/forskrift/2001-12-11-1451?q=s%C3%A6ravgift>

<sup>18</sup> <https://www.skatteetaten.no/en/business-and-organisation/vat-and-duties/excise-duties/about-the-excise-duties/alcoholic-beverage-tax/>



The Norwegian Tax Administration stated the following regarding the relationship to alcohol policy in their consultation paper dated 9 November 2017 point 6<sup>19</sup>:

*"An important purpose of the alcohol tax is to limit the social and health problems caused by alcohol consumption, and the tax rates are directly linked to the alcohol content of the beverage. A reduction in the tax rate for beer produced by small-scale breweries would result in a tax differential between producers of the same type of beverage, based on the producer's production volume. The tax reduction thus contradicts the logic behind the determination of the alcohol tax rate in other cases."*

In this matter, the Norwegian Parliament's decision is primarily justified by economic considerations related to small producers. It was not assumed that the measure would have significant consequences for alcohol consumption or the consistency of alcohol policy. The reduced tax rate for fermented alcoholic beverages produced by small breweries does not make the Norwegian alcohol policy more liberal.

#### **4.8 Infringement fee**

In September 2024, provisions on infringement fees in the Alcohol Act Section 10-5 came into force. The fee is e.g. applicable for infringements of the alcohol advertising prohibition. This means that anyone who breaches the advertising prohibition can be charged with an infringement fee by the Directorate of Health. The purpose of introducing this new sanction is to contribute to better compliance with the Alcohol Act and Alcohol Regulations, including the advertising prohibition. The amendment is described more in detail in the bill, Prop 60 L (2017-2018).<sup>20</sup>

#### **4.9 Other changes to the State monopoly system**

In 1996, the board of Vinmonopolet (the state-run alcohol monopoly in Norway) provided recommendations to the Government to establish more sales outlets, extend opening hours, and experiment with so-called "self-service" (i.e. allowing customers to pick alcoholic products from the shelves instead of receiving them over the counter). The background for these recommendations was growing public and political dissatisfaction with Vinmonopolet, driven in part by the limited number of sales outlets and the long distances many customers had to travel to a sales outlet.

Additionally, the monopoly was viewed as outdated and old-fashioned, characterized by over-the-counter service, long queues – often lasting for hours, and a relatively poor selection of goods. Moreover, illegal production and smuggling of spirits were significant

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<sup>19</sup> Consultation paper 2017: Forslag om redusert alkoholavgift på øl produsert av småskalabryggerier:

<https://www.skatteetaten.no/contentassets/66b6c5fd5ae6461da616ed0bd2dd9f45/horingsnotat-pdf.pdf>

<sup>20</sup> Prop. 60 L (2017–2018) Endringer i alkoholloven, atomenergiloven, folkehelseloven, legemiddeloven, lov om medisinsk utstyr, strålevernloven og tobakksskadeloven mv. (overtredelsesgebyr mv.)

<https://www.regjeringen.no/no/dokumenter/prop.-60-l-20172018/id2595851/?ch=17>

challenges. It was estimated that Vinmonopolet accounted for less than half of the Norwegian consumption of spirits.

The Government gave the green light to open 50 new sales outlets, and in 14 locations, a pilot program was initiated with open shelves. The evaluation showed that these new measures did not lead to an increase in overall alcohol consumption and that they contributed to increased legitimacy for the state-run monopoly system.

On this basis, numerous modernization measures for Vinmonopolet were implemented over the next decades, including self-service in all sales outlets, an increased focus on customer service and product knowledge, and an increase in the number of sales outlets to ensure more equal access to Vinmonopolet, regardless of where in Norway the customer lives. Today, there is broad consensus that these changes are the primary reason why the state-run monopoly system now enjoys strong public support.

The Ministry would like to underline that the increase in the number of Vinmonopolet's sales outlets, does not equal an increase in accessibility, but rather an adaptation to Norway's geographical design and settlement pattern. It is crucial that a state-run monopoly provides as equal access as possible to everyone in the country. It must also be taken into consideration that Norway's population has increased by 751,000 since 2009.

The modernisation of Vinmonopolet has contributed to the preservation of key aspects of the monopoly system, including fewer points of sale and reduced sale hours for alcoholic beverages with an alcohol content above 4.7% by volume, with a particular emphasis on what is referred to as "responsible sales". This includes preventing the sale of alcoholic beverages to minors, preventing proxy purchases for minors, and refusing all purchase attempts if the customer appears visibly intoxicated. The state-run monopoly continues to be a key measure in Norwegian alcohol policy.

**5 Question 5 and 6: Can the Government please provide its view on whether the prominent display of beer in shops is currently a common market practice in Norway?**

**Can the Government please explain the extent to which such prominent displays of beer in shops fall within the prohibition of advertising of alcoholic beverages?**

Questions 5 and 6 both concern the display of alcoholic beverages inside a retail location. The Ministry finds it appropriate to answer these questions together. We will first go through the relevant regulations, followed by our knowledge of current practices.



## 5.1 Applicable law

If a business has a municipal license to sell alcohol, it generally has the right to sell such alcoholic products covered by the license, similar to other products in the store's inventory.<sup>21</sup> The store is generally free to place its goods as it sees fit to facilitate sales. This is not considered marketing and is therefore not covered by the advertising prohibition.

However, based on long-standing practice and interpretation, the prohibition on the advertising of alcohol prohibits so-called "special displays" of alcohol in stores or any special highlighting of alcoholic products. This means placing products in a particularly prominent or eye-catching way, which, after a specific assessment, is considered to be intended to increase the sale of these products over other products.

A similar interpretation is reflected in Section 14-3 no. 12 of the Alcohol Regulations, which provides an exemption from the advertising prohibition for information about alcoholic products inside the retail location, such as shelf labels and signs in the store. The exemption states that "information about the alcoholic beverage must not highlight the drink compared to other products sold on the premises".

Typical examples of special displays that, after specific assessment, may be considered to be violations of the advertising prohibition include:

- Stacked towers or pyramids of alcoholic products
- So-called shock sellers, i.e. special shelves, baskets etc., with design, colour choices, or placement that clearly distinguishes them from the regular presentation of products in the store
- Placement of the alcohol selection in such a way that all or most customers are led through or past the alcohol selection, making it difficult to avoid exposure to alcohol

Normally, however, it will not be considered advertising if the placement of alcoholic products aligns with the placement of other products in the same store. For example, it will generally not be considered a "special display" if a store that extensively uses pallets for product placement also places alcoholic products on the same type of pallets. The condition is that the placement appears to be motivated by practical considerations.

Placing alcohol in refrigerators is also usually considered justified by practical purposes and therefore not in violation of the advertising prohibition. However, it may be evaluated differently if the refrigerator has a prominent placement or if it is reserved for a single alcohol brand, which then gains prominence over other products.

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<sup>21</sup> The same regulations apply to all holders of sales licenses, cf. Chapter 3 of the Alcohol Act, including Vinmonopolet, specialty beer shops, and duty-free stores.

## 5.2 Enforcement and oversight

The municipalities are responsible for ensuring that municipal license holders comply with the alcohol regulations, including the advertising prohibition. With regard to identified violations related to sales licenses in 2022, 221 cases concerned inadequate internal control, 109 cases concerned violations of rules regarding the placement of alcoholic beverages, 93 cases concerned violations of advertising regulations, and 44 cases concerned violations of the rules on managers and deputies.<sup>22</sup> The Ministry does not, however, have an overview of the number of violations related to the specific type of product display referred to in this question, but to our knowledge, there are no indications that this is widespread.

The Ministry is aware that the Directorate of Health, which is responsible for interpreting the Alcohol Act and its regulations, occasionally receives questions from municipalities about the detailed interpretation of the prohibition in relation to specific examples and images. However, the Directorate of Health states that it has no basis to claim that such violations occur frequently or that violations are not normally followed up by the municipalities.

If documentation were to emerge indicating that the use of illegal displays of alcoholic beverages is widespread or increasing, it may be appropriate to address it at the national level, for example, through increased guidance to municipalities, retail chains, and alcohol suppliers.

At the national level, the Directorate of Health is responsible for guiding municipalities and alcohol operators. Guidance is provided through:

- The Directorate of Health's comprehensive guides to the Alcohol Act<sup>23</sup> and Alcohol Regulations<sup>24</sup>
- Its responses to specific inquiries
- Its guidance to the County Governor, who is responsible for guiding the municipalities.
- Biannual national regulatory conferences for municipalities and County Governors

## 6 Question 7: Can the Government please explain the legal framework which is applicable to the communication activities of Vinmonopolet?

### 6.1 Legal Basis

The alcohol advertising prohibition is also applicable to Vinmonopolet, and their activity must comply with the legislation on alcohol advertising.

The primary rule in the Alcohol Act is that all advertising for alcoholic beverages is prohibited. This prohibition is stipulated in Section 9-2 first paragraph of the Alcohol Act, which reads as follows:

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<sup>22</sup> Kommunenes forvaltning av alkoholoven, <https://www.fhi.no/le/alkohol/alkoholinorge/forebyggende-tiltak/salgs-og-skjenkebevillinger-kommunenes-forvaltning-av-alkoholoven/?term=#kontroll-med-salgs-og-skjenkebevillinger>

<sup>23</sup> Alkoholoven med kommentarer, [Alkoholoven med kommentarer - Helsedirektoratet](#)

<sup>24</sup> Alkoholforskriften med kommentarer, [Alkoholforskriften med kommentarer - Helsedirektoratet](#)

*"Advertising for alcoholic beverages is prohibited. The prohibition also applies to advertising for other goods bearing the same brand or trademark as alcoholic beverages. Such goods must also not be included in advertising for other goods or services."*

The advertising ban is media-neutral, meaning that marketing in all communication channels is generally covered, including the internet and social media. As previously mentioned, the advertising ban, with certain limitations, also applies inside sales premises.

The term "advertising" is defined in Section 14-2 of the Alcohol Regulations as *"any form of mass communication for marketing purposes."*

For the condition of "marketing purposes" to be met, it is sufficient that one of several purposes of the communication is to promote the sale of alcohol or other goods/services. In assessing this, consideration should be given to factors such as who is the sender of the information, who initiates the provision of the information, the content and format of the information, and how the information is presented and communicated, cf. Section 14-2 second paragraph of the Alcohol Regulations.

The prohibition on the advertising of alcohol is interpreted very broadly. The general rule is that all forms of alcohol marketing are covered, including sober information about products. In Case 2011/962-963<sup>25</sup>, the Marketing Council stated the following on this issue:

*"It follows from the history of the law and regulations that the advertising ban is intended to have a wide scope. As argued by the Directorate of Health, there is much to suggest that the legal concept of advertising encompasses more than what most people understand by the term."*

The Marketing Council has further stated that it is "presumed" that an actor's mention of their own products is intended to promote sales, see case MR-2004-14.<sup>26</sup>

A specific assessment must always be made in each case to determine whether an activity is considered alcohol advertising, i.e. whether there is "mass communication for marketing purposes". However, it is possible to derive some general guidelines that are instructive for the assessment, including examples of activities that would typically be considered advertising and clarifying relevant interpretative factors.

Given the extensive nature of the advertising prohibition, it has been deemed necessary to establish certain exemptions to the prohibition. As previously mentioned, the Alcohol Regulations currently contains 20 exemptions, set out in Section 14-3.

When assessing whether a communication measure falls under the advertising prohibition, the process is as follows:

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<sup>25</sup> Market Council decision MR-2011/962-963: <https://lovdata.no/pro/#document/MR/avgjorelse/mr-2011-962>

<sup>26</sup> Market Council decision MR-2004-14: <https://lovdata.no/pro/#document/MR/avgjorelse/mr-2004-14>

1. First, it must be determined, through a specific assessment, whether the communication is considered advertising under the Alcohol Act, i.e. whether it falls within the definition of "mass communication for marketing purposes".
2. Second, if the communication is deemed to be advertising, it must then be assessed whether it falls within one of the exemptions in Section 14-3 of the Alcohol Regulations.

Exemptions no. 3, 8, 10, 12 and 13 are relevant to the Authority's question.

## **6.2 Vinmonopolet's communication activities**

In the Ministry's view, it does not fall within the scope of this response to conduct a specific assessment of the communication activities of Vinmonopolet. However, it is possible to provide some general considerations regarding the relevant assessments and whether these differ from those applied to other actors.

First, it can be stated, in general terms, that communication activities such as postings on social media, podcasts and specialty magazines will normally be considered "mass communication," as it involves static information that reaches or may reach multiple consumers.

Whether the activity has a "marketing purpose" may differ somewhat for Vinmonopolet compared to other alcohol actors. Vinmonopolet's primary objective is not to promote sales, as it is for actors with private economic interests, but rather to act as a policy tool to counteract the harmful effects of alcohol, including through reduced availability and responsible sales. Nevertheless, all actors in the alcohol market should, to the greatest extent possible, be assessed similarly concerning the advertising ban. It is therefore assumed in the regulations and the Directorate of Health's supervisory practice that Vinmonopolet's activities are subject to the same restrictions as those that apply to other alcohol actors.

There are, however, certain areas where the differences between Vinmonopolet and other alcohol actors must be taken into account. For example, Vinmonopolet's information campaigns related to age limits and preventing the supply of alcohol to minors have not been considered to violate the advertising ban, referring to Vinmonopolet's societal mission and lack of profit motive. This type of information activity would typically be considered a violation of the advertising prohibition if conducted by a regular, commercial alcohol actor, as it would usually be seen as reputation and brand-building with significant economic advertising value. When Vinmonopolet is assessed differently, it is based on the view that this type of information activity supports Vinmonopolet's societal mission and the legitimacy of the monopoly arrangement in the population.

However, if a communication from Vinmonopolet is deemed to be "mass communication for marketing purposes", the measure will be assessed against the exemptions on the same basis as for other alcohol actors.

As regards Vinmonopolet's podcast and specialty magazine *Vinbladet*, they only provide generic information that the public must actively seek out, in accordance with the exemption in the Alcohol Regulations Section 14-3 no. 8. It should also be noted that this does not represent any liberalising change since 2009, as *Vinbladet* existed before 2009 and was considered in accordance with the prevailing interpretative practice at the time. The podcast is merely a different type of platform for the same communication.

Regarding communication on social media, the Ministry emphasizes that no exemptions apply specifically for such channels. Exemptions that apply to information about alcohol on websites<sup>27</sup> or in channels that "the recipient must actively seek out in order to get this information from the sender"<sup>28</sup> do not apply to communication on social media. However, some exemptions apply regardless of the channel and therefore also to social media. An example of this is exception no. 3, which allows for promoting the sales outlet itself with sober information and images. It is also established in practice that alcohol actors can convey non-alcohol-related information on social media.

Vinmonopolet does not engage in any communication about alcoholic beverages on social media platforms such as Facebook, LinkedIn, and Instagram. Vinmonopolet's activities on these platforms are either related to the organization's operations or pertain to its alcohol policy mission, such as age verification campaigns or campaigns against proxy purchasing.

## **7 Question 8 to 10: Assessment of the prohibition on advertising of alcoholic beverages**

**8. What evidence can the Norwegian Government provide to substantiate an assumption that the prohibition on advertising of alcoholic beverages in speciality magazines for food and drinks published in Norway, is likely to have more than marginal impacts on the population's consumption of alcohol?**

**9. In the light of the replies provided to the questions above, can the Norwegian Government please explain why the prohibition of advertising of alcoholic beverages in speciality magazines published in Norway should be considered consistent with the current overall Norwegian alcohol policy?**

**10. According to the complainant, several alternative measures could be envisaged. The Norwegian Government is kindly invited to provide its views, substantiated by scientific or other evidence to the greatest extent possible, on whether any of the**

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<sup>27</sup> Cf. the Alcohol Regulations Section 14-3 no. 13

<sup>28</sup> Cf. the Alcohol Regulations Section 14-3 no. 8

**following measures could ensure the objectives of Norwegian alcohol policy as effectively as the current prohibition on advertising of alcoholic beverages in speciality magazines: ...**

## **7.1 Introduction**

The Ministry interprets questions 8 to 10 in effect as a question about the proportionality of the prohibition on advertising of alcoholic beverages. The complainant claims that legal and factual circumstances in Norway have changed since the *Pedice* case in 2009, and that these changes suggest that the Norwegian advertising prohibition as such is no longer necessary and appropriate for the purpose of public health. The Ministry's strongly disagrees and refers to the responses to questions 1 to 7 above and the descriptions of the Norwegian alcohol policy in large. The degree of public health protection against alcohol harms, is not reduced as a consequence of the adjustments described. In the Ministry's opinion, there have been no significant changes in the factual or legal situation since 2009 that would suggest that the advertising ban is no longer necessary and appropriate for the purpose. On the contrary, the Ministry would argue that the opposite is the case.

The alcohol advertising prohibition is an important part of the package of alcohol policy measures to prevent and reduce harms caused by alcohol use. The prohibition has a dual purpose and effect. The first is to reduce the demand for alcoholic beverages. The second, and equally important, is to influence norms and make the public aware that alcohol is no ordinary commodity but a commodity that can have harmful consequence. This signal is important to uphold the public's acceptance and understanding of the rationale behind the other alcohol policy measures. Any exemption from the prohibition that have no other purpose than allowing the industry to advertise their products, will undermine this. Such an exemption is not in line with the existing exemptions to the prohibition and not in line with the existing alcohol policy in Norway which is strict and comprehensive.

In the following, an assessment is included of whether the prohibition on advertising of alcoholic beverage constitutes a proportionate measure within the meaning of the EEA Agreement Articles 11 and 36, cf. Articles 13 and 33.

The EEA Agreement Article 11 prohibits quantitative restrictions on imports of goods and all measures having equivalent effect, whereas Article 36 prohibits restrictions on the freedom to provide services, unless these are justified for one of the public-interest requirements enshrined in respectively Article 13 and 33, in this case for the protection of public health. In case E-4/04 *Pedice*, the EFTA Court held that a general prohibition on the advertising of alcoholic beverages such as that laid down in Section 9-2 of the Norwegian Alcohol Act constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of EEA Article 11 and a restriction within the meaning of EEA Article 36, as regards alcoholic beverages falling within the scope of the EEA Agreement.<sup>29</sup> The Court, therefore, considered whether the prohibition could be justified on grounds of public health.<sup>30</sup>

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<sup>29</sup> Case E-4/04 *Pedice* para. 50

<sup>30</sup> *Ibid* para. 51

In this respect the Court held that the protection of public health is recognized in both Articles 13 and 33 EEA as possible basis for exemption from the principles of free movement of goods and services. The Court had no reason to doubt that there are serious social and health considerations behind the Norwegian alcohol policy in general and the prohibition against alcohol advertisement in particular.<sup>31</sup>

## 7.2 General remarks

The overriding question is whether the prohibition on advertising of alcoholic beverages is proportionate. This entails that the prohibition must be suitable for attaining the objective pursued and must not go beyond what is necessary to attain that objective.

As stated by the EFTA Court in Case E-16/10 *Philip Morris* para. 77, the protection of public health is one of the most important interests protected by EEA law, and it is for the EEA States to decide what degree of protection they wish to assure. Norway has a long history of aiming for a very high degree of protection when it comes to harms from alcohol. The prohibition on advertising of alcoholic beverages aims at limiting the consumption of alcoholic beverages in the population in order to limit the overall harms caused by alcohol use, and in this way attain the objective of protecting public health.

The European Court of Justice and the EFTA Court have underlined that it is up to the EEA States to decide upon the level of health protection and how to achieve this. The EEA States thus have a margin of appreciation, though within the frame of the proportionality principle. According to Case E-4/04 *Pedicef* para. 56, this means that the measures in question must be "suited to achieve the objective sought, and that the same objective may not be as effectively achieved by measures which are less restrictive of intra-EEA trade".

The Ministry admits that the prohibition on advertising of alcoholic beverages is a restriction under the EEA Agreement Articles 11 and 36. The Ministry is however of the opinion that the measure is suitable and necessary, and thus justified pursuant to the EEA Agreement Articles 13 and 33.

## 7.3 Suitability

The suitability test requires that it must be "reasonable to assume" that the measures will be able to contribute to the protection of public health, cf. Case E-16/10 *Philip Morris* para. 83. This applies even where there is some scientific uncertainty and where the effects may appear over some time. Furthermore, the suitability test requires that the measure in question actually pursues the end of protecting public health in a coherent and systematic

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<sup>31</sup> Ibid para. 54, with reference to case E-6/96 *Wilhelmsen* para. 85

manner.<sup>32</sup> The Ministry would like to point out that prohibition on advertising of alcoholic beverages is part of a strict and consistent Norwegian alcohol policy.

The question is whether the prohibition on advertising of alcoholic beverages is a suitable measure to attain the objective of protecting public health, more specifically whether the measure is suitable to protect public health from harms caused by alcohol use. As stated above, the purpose of the prohibition is to reduce the demand for and use of alcohol and to contribute to the public's acceptance of the necessity of the other alcohol policy measures.

In the *Pedicef* judgment, the Norwegian Supreme Court concluded that the Norwegian advertising prohibition was suitable to achieve the objective sought. The Court noted that it was relevant to consider both the direct and indirect effects of an advertising prohibition, including the possible signalling effect of accepting advertising of alcohol. The Supreme Court stated that such indirect effects must be taken into account both in the assessment of suitability of the measure and in the assessment of necessity and whether alternative measures would achieve the objective as effectively as the advertising prohibition.<sup>33</sup>

In the regards of assessing suitability, the Ministry finds it important to point to the increased scientific evidence and broader societal understanding of the adverse health effects of alcohol – such as links to chronic diseases, mental health issues, and social harm – which reinforces the grounds for strict advertising regulation to protect public health.

The objective of Norwegian alcohol policy and the Alcohol Act is to reduce the societal and individual harms of alcohol. Since 2009, the knowledge base for such harms has been significantly strengthened. In the Ministry's view, this growing body of evidence provides a solid foundation to introduce and maintain restrictions on alcohol sales and advertising. A study led by scientists from the International Agency for Research on Cancer (IARC), published in 2023, provides the latest data on the global cancer burden associated with alcohol consumption.<sup>34</sup> According to the study, alcohol use is causally linked to multiple cancers. Globally, an estimated 741,300 or 4.1% of all new cases of cancer in 2020 were attributable to alcohol consumption. Risky and heavy drinking contributed most to the burden of alcohol-attributable cancers; however, moderate drinking still contributed to 1 in 7 alcohol-attributable cases and more than 100,000 cancer cases worldwide.<sup>35</sup>

Recently, the WHO stated that "no safe level of alcohol consumption for cancers and health can be established". According to the WHO, more than 10% of alcohol-attributable cancer

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<sup>32</sup> This entails that "...the national legislation as a whole and the various relevant rules are appropriate for ensuring attainment of the objective relied upon only if they *genuinely reflect* a concern to attain that objective in a consistent and systematic manner...", as the requirement is laid down in the case law of the ECJ, cf. case C-539/11 *Ottica New Line*, para. 47 with further references. (Our italics).

<sup>33</sup> HR-2009-1319-A para. 34-39

<sup>34</sup> Runggay H, Shield K, Charvat H, Ferrari P, Sornpaisarn B, Obot I, et al. Global burden of cancer in 2020 attributable to alcohol consumption: a population-based study. *Lancet Oncol*. Published online 14 July 2021. [https://doi.org/10.1016/S1470-2045\(21\)00279-5](https://doi.org/10.1016/S1470-2045(21)00279-5)

<sup>35</sup> Anderson, Benjamin O et al. Health and cancer risks associated with low levels of alcohol consumption. *The Lancet Public Health*, Volume 8, Issue 1, e6 - e7: [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(22\)00317-6/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(22)00317-6/fulltext)



cases in the European region arise from drinking just one bottle of beer (500 ml) or two small glasses of wine (100 ml each) every day. For breast cancer, this is even higher: 1 in 4 alcohol-attributable breast cancer cases in the region is caused by this amount.<sup>36</sup>

The Ministry's view in this matter is that the increased knowledge of the harmful effects of alcohol enhances the justification for a comprehensive advertising prohibition, to reduce alcohol-related harm.

Increased knowledge of such harm is also the reason why the EU is working on measures to reduce alcohol consumption, including the Europe's Beating Cancer Plan, where it is proposed to introduce health warnings on alcoholic beverages.<sup>37</sup>

Also the WHO European Action Plan to Reduce the Harmful Use of Alcohol 2012–2020 underscores the harmful impact of alcohol on health, including its role in non-communicable diseases and recommends both advertising restrictions and health warnings as crucial measures to reduce alcohol consumption and its harmful effects.

The WHO has further, through the action plan for the prevention and control of non-communicable diseases, adopted a global goal to reduce harmful alcohol use by at least 10% by 2025 compared to 2010.

In 2018, the WHO launched the SAFER initiative to reduce death, disease and injuries caused by the harmful use of alcohol using high-impact, evidence-based, cost-effective interventions. It recommended five measures of which one was to "*enforce bans or comprehensive restrictions on alcohol advertising, sponsorship, and promotion*" in order to prevent young people from being exposed and thereby influenced to start consuming alcohol and to increase alcohol use; to reduce the presence of alcohol cues that can induce reactivity and craving in alcohol-dependent persons; and to prevent industry influence on social norms relating to consumption in general, given the negative public health, economic and social consequences of alcohol use.

In light of the responses to questions 1-7, the Ministry is of the opinion that it is well-documented that there have been no significant changes in the Norwegian alcohol policy generally, or in respect of the prohibition on alcohol advertising specifically, that would justify a renewed or different assessment of the issues raised in the *Pedicef* case.

The complainant argues that alcohol advertising in a specialty magazine will not increase alcohol consumption to a significant degree. The Ministry would like to underline that it is the comprehensiveness of the advertising prohibition that makes it the most effective. As mentioned above, the minor adjustments and amendments that have been made to the

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<sup>36</sup> WHO media release, Alcohol is one of the biggest risk factors for breast cancer, 2021; <https://www.who.int/europe/news/item/20-10-2021-alcohol-is-one-of-the-biggest-risk-factors-for-breast-cancer>

<sup>37</sup> Europe's Beating Cancer Plan, Communication from the commission to the European Parliament and the Council: [https://health.ec.europa.eu/system/files/2022-02/eu\\_cancer-plan\\_en\\_0.pdf](https://health.ec.europa.eu/system/files/2022-02/eu_cancer-plan_en_0.pdf)

advertising regulations since 2009, have not intended to liberalize or weaken the advertising prohibition as such, and the objective of these amendments have been to adjust to technological and consumer behaviour developments. None of the adjustments were meant to accommodate the industry's wish to be able to advertise to consumers in order to promote sales of alcoholic beverages. The purpose of advertising is inherently to increase the demand for a product, and thus consumption.

The regulatory changes that have been implemented are primarily adjustments deemed necessary to ensure that the regulations are in line with developments in society. They also include important tightening measures, such as the introduction of the demerit point system and rules on administrative fines. The overview further demonstrates that, in all instances of regulatory changes, a thorough assessment has been conducted to determine whether the changes impact or threaten the consistency of the regulations, and the legislator has placed significant emphasis on safeguarding this consideration in all amendments. At the same time, there has been a clear objective to ensure public support and legitimacy for all measures and the general alcohol policy.

This approach is likely to be one of the main reasons why the Norwegian alcohol policy continues to enjoy broad public support. For example, there is good reason to believe that public support for Vinmonopolet and the restricted sales hours for alcohol is, at least partly, attributable to the fact that there are no longer significant geographic differences in access to sales outlets as there were previously. The same might possibly be said of the most significant changes to the advertising prohibition that were introduced in 2015, which provided consumers with increased opportunities to seek out information on alcoholic products themselves.

In this regard, it must also be noted that total consumption has not increased since 2009, which indicates that the regulatory changes from 2009 to the present have not led to a net increase in consumption.<sup>38</sup>

A liberalisation of the advertising prohibition will presumably lead to increased demand and consumption. It is therefore important that the advertising prohibition is maintained as comprehensive as possible. According to the WHO, the more complete a prohibition, the more effective:

*"In general, the more complete the regulation on marketing activities, the easier it will be to implement the regulation and the more effective it will be in reducing alcohol-related harm. That is why a comprehensive ban or set of restrictions is preferred. Such frameworks should ideally incorporate all forms of new and emerging media as well as existing media and other promotional channels."*

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<sup>38</sup> 2023: 6.37 liters of pure alcohol per person, <https://www.ssb.no/varehandel-og-tjenesteyting/varehandel/statistikk/alkoholomsetning>

2009: 6.68 liters per person, <https://www.fhi.no/le/alkohol/alkoholinorge/omsetning-og-bruk/alkoholomsetningen-i-norge/?term=>

Since 2009, Norway has also committed to following up on the WHO's goal of reducing harmful alcohol consumption, as last stated in the government's 2023 White Paper on Public Health, Meld. St. 15 (2022–2023) point 4.5.2.<sup>39</sup>

In 2021, the previous Government adopted a new alcohol strategy<sup>40</sup> for 2021-2025, which in the 2023 White Paper on Public Health was extended to 2030 by the current Government. The strategy continues the main lines of alcohol policy. It also proposes several new measures to ensure that the goal of reducing harmful alcohol consumption is achieved.

One of the new measures proposed for investigation in the strategy is the requirement for warning labels on alcoholic beverages to increase awareness of the harmful effects of alcohol, thereby providing a better basis for making informed health choices. In a 2022 assessment, the Directorate of Health concluded that such a measure could be implemented within the framework of national and international regulations. The Directorate also assessed that public knowledge about the harmful effects of alcohol is low in Norway, particularly regarding the link between alcohol and cancer. On this basis, the Directorate of Health has been tasked with developing a proposal for new regulations on health warnings on alcoholic products. This task is ongoing and is expected to be completed by the fall of 2024.

The Ministry considers that any changes to the advertising ban should be evaluated in light of the above. The Ministry believes that great caution should also be exercised in making minor changes to the advertising ban, even if the change itself is not expected to have a clear effect on overall consumption. Any relaxation could potentially send a signal that contradicts the message behind the broader alcohol policy. Minor changes could also trigger pressure from other stakeholders who might argue for similar needs, claiming that it cannot be demonstrated that the change will impact overall consumption, and demand equal treatment on this basis. The cumulative effect of many such changes should not be underestimated.

Based on the above, the Ministry is convinced that the measure in question is suitable for attaining the objective of protecting public health from the harms caused by alcohol use. Furthermore, the measure is part of a consistent and coherent national alcohol policy. On this basis, the Ministry argues that the measure is suitable.

## 7.4 Necessity

The second part of the proportionality principle, the necessity test, requires an assessment of whether the measure goes beyond what is necessary to protect public health.

The EFTA Court has ruled that the requirement of necessity entails an assessment of whether the chosen measure is "... functionally needed in order to achieve the legitimate

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<sup>39</sup> Meld. St. 15 (2022–2023) Folkehelsemeldingen:  
<https://www.regjeringen.no/contentassets/918eb71926fc44c8802fe3c2e0b9a75a/nn-no/pdfs/stm202220230015000dddpdfs.pdf>

<sup>40</sup> Nasjonal alkoholstrategi (2021–2025). En helsefremmende og solidarisk alkoholpolitikk:  
<https://www.regjeringen.no/no/dokumenter/nasjonal-alkoholstrategi-20212025/id2838096/>

objectives of the legislation at the level of protection chosen by the Contracting Party...".<sup>41</sup> Thus, there cannot exist other, less trade restrictive measures having the effect of fully achieving the objectives at the level of protection chosen.

The societal harms and health risks connected with alcohol use are well documented and the Norwegian authorities have chosen a particularly high level of protection. To achieve this, Norway has continuously pursued a strict alcohol policy, including a comprehensive prohibition on advertising of alcoholic beverages.

The question is whether the prohibition on advertising of alcoholic beverages is necessary to attain the objective of protecting public health. As stated above, the purpose of the prohibition is to reduce the demand for and use of alcohol and to contribute to the public's acceptance of the necessity of the other alcohol policy measures.

The complainant has argued that alternative measures to the strict advertising prohibition of today, could be to allow sober advertising in speciality magazines (printed and digital), to liberalise the advertising prohibition for beverages with less than 22 % alcohol by volume combined with health warnings and to allow general alcohol advertising in combination with further sales restrictions.

The Ministry emphasizes that it is for Norway itself to determine the level of protection of public health from the harms of alcohol and how this is to be achieved, cf. case E-16/10 *Phillip Morris*, para. 77.

Furthermore, the Ministry fails to see that any of the mentioned "alternative measures" could have the effect of fully achieving the objectives of the current alcohol advertising prohibition. In the Ministry's view, all the proposals will lead to a significantly weaker protection of public health.

The Ministry notes that the first two proposals for alternative measures would entail a substantial exemption for paid advertising. Allowing an exemption for this type of advertising would represent a clear deviation from the principles underpinning the advertising ban. It would also be difficult to limit the exemption to the intended scenario and difficult to justify from an equal treatment perspective. It could potentially be argued that readers of food and wine magazines "seek out" these publications to obtain information about alcohol, and that an exception therefore serves the same purpose as the exemption for product information on alcohol producers' websites. However, it would be challenging to defend why paid advertising should be prohibited in other contexts where the consumer can be said to seek out alcohol or information about alcohol, such as within retail premises, at licensed establishments, or at food and wine fairs. In the Ministry's view, such an exception would therefore threaten the consistency of the regulatory framework. Furthermore, consumers' need for sober information is adequately addressed by the exemptions introduced in 2015.

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<sup>41</sup> Case E-3/06 *Ladbroke's*, para. 58.

As for the other two proposals, these measures would constitute a significant alteration and erosion of the advertising ban. The signalling effect of such a change could also be substantial, potentially creating the impression that alcohol with lower alcohol content is less harmful to health.

Most importantly, Norway must have the discretion to design and develop its alcohol policy tailored to its own cultural and societal context, political conditions, and challenges. The prohibition is, as described above, an important part of the package of alcohol policy measures. Most of the other measures in this package reduces the availability of alcohol, while the core of the advertising prohibition is to reduce the demand for alcohol, and by that reduce the alcohol consumption and alcohol related harms, and to have a signalling effect.

The strict and comprehensive prohibition on advertising of alcoholic beverages is necessary in order to obtain a functional strict and coherent alcohol policy and in this way achieve the objective of protecting public health at the particularly high level of protection chosen by Norway. The Ministry considers that the current prohibition on advertising of alcoholic beverages does not go beyond what is necessary to protect public health.

On these grounds, the Ministry is of the view that the prohibition on advertising of alcoholic beverages is suitable and necessary to protect public health, i.e. a proportionate measure in line with the EEA Agreement Article 11 and 36, cf. Article 13 and 33.

## **8 Conclusion**

In accordance with the Ministry's elaborations above, the alcohol advertising prohibition related to advertising in specialised food and wine magazines is in the Ministry's view a measure that is suitable and necessary to achieve Norway's high level of public health protection against harms caused by alcohol.

The Norwegian Ministry of Health and Care Services has above attempted to reply to your questions as thoroughly as possible. Please let us know if there are any aspects where you would like us to elaborate further.

Yours sincerely

Line Vold  
Director General

*This document is signed electronically and has therefore no handwritten signature*