

Press briefing: ECJ Advocate General Opinion to be announced on Scotland's Alcohol Minimum Unit Price policy, 3rd September 2015

On 3rd September 2015, the Advocate General of the European Court of Justice (ECJ) Yves Bot will make public his opinion on the Scottish Government's legislation to introduce a Minimum Unit Price (MUP) for Alcohol. The Advocate General's Opinion precedes the full judgement of the ECJ on the case later this year. Following that, the case will be referred back to the Scottish court. The Advocate General's opinion will mark a significant stage in the Scottish Government's battle to introduce the legislation as a ground-breaking measure to protect public health, which is supported by Health bodies across Europe and several national governments.

The proposed Scottish legislation is important as it would be the first time a minimum unit price for alcohol has been introduced in Europe. The Scottish Government argues that it is a vital measure to protect public health, faced with a high and increasing number of alcohol-related deaths in Scotland, which puts a significant burden on health services and social services, as well as on families and society in general. Several other countries are keen for Scotland to introduce the policy and to emulate it to reduce alcohol harm. For this reason the alcohol industry is bringing legal challenges against the Scottish Government's policy – in order to prevent other governments from taking effective action against harmful alcohol use.

The legal process to date

[Legislation](#) to introduce a binding Minimum Price per unit of alcohol of 50p was passed unopposed by the Scottish Parliament in May 2012. The legislation was due to come into force in April 2013 but has been delayed by a legal challenge brought by a consortium of alcohol producers, led by the Scotch Whisky Association (SWA), Spirits Europe and the Comité Européen des Entreprises Vins (CEEV). The opponents of the Scottish legislation have sought inaccurately to frame this as a Bureaucracy v Industry issue, rather than as a vital life- saving measure. It is notable that the measure has had strong support from [other trade bodies](#) based in Scotland.

A first legal challenge by the alcohol trade bodies was [rejected by the Scottish Court of Session](#) in 2013. The alcohol industry consortium launched an appeal and as part of a second appeal hearing, the Scottish court [referred a number of questions](#) to the Luxembourg-based European Court of Justice (ECJ) in April 2014. The [questions](#) broadly referred to two particular issues:

1. Whether MUP legislation is compatible with the EU's common market organisation for wine; and the Treaty on the Functioning of the European Union's (TFEU) provisions of free movement of goods.
2. Whether, under EU law, it is permissible for a member state to implement a new measure like MUP in preference to using existing powers to raise alcohol taxation.

Article 34 of the Treaty on the Functioning of the European Union (TFEU) concerns the free movement of goods. Generally, Member States are not allowed to breach this Article. However, if they can show that there are valid public policy grounds, in this case: public health, to do so, they can refer to Article 36. This is the Treaty provision that lays down the exceptions and justifications for breaches of Article 34. In order to

do so they have to show that the measures do not discriminate against imported goods and respect the principle of proportionality – i.e. does the measure do just what is needed to accomplish its aims and does not go beyond.

EU and EFTA (European Free Trade Area: Norway, Iceland, Liechtenstein, Switzerland) member states have had the opportunity to offer their opinions to the ECJ about the Scottish policy. Written submissions were received in 2014, with five submissions (Finland, Ireland, Netherlands, UK, EFTA, Norway) in favour and three (Poland, Portugal, Bulgaria) opposing. Oral evidence was heard on 6th May 2015, with four statements (Ireland, Norway, Sweden, UK) in favour and four (Spain, Poland, Portugal, Bulgaria) against.

Scottish Policy to Reduce Harm from Alcohol

Twenty Scots die every week because of alcohol. In 2011, the alcohol-related death rate in Scotland was almost twice that of 1982. Hospital admissions for alcoholic liver disease have more than quadrupled in the past 30 years and Scotland now has one of the highest cirrhosis mortality rates in Western Europe.

The Scottish MUP policy sets a 'floor price' below which alcohol cannot be sold, based on the amount of alcohol contained in the product. In parts of Canada, where minimum price has been consistently and rigorously implemented, a 10% increase in average minimum price of alcohol has been associated with a 9% reduction alcohol-related hospital admissions and a 32% reduction in wholly alcohol related deaths.

MUP is particularly effective at in protecting those most at risk by reducing the amount of alcohol drunk by harmful drinkers who buy most of the cheap alcohol. Harmful drinkers on low incomes will benefit most in terms of improved health and wellbeing. MUP targets cheap, strong alcohol sold in supermarkets and off-licences. Drinks like own-brand vodka or gin, strong white cider and super strength lager, mostly produced in the United Kingdom, will be affected. The measure will not affect pubs, clubs and restaurants.

MUP works in combination with taxation to regulate alcohol price. The current EU excise duty structure for wine bans variation of taxes in relation to alcohol strength. EU rules currently dictate that a 15% wine must carry the same excise duty as an 11% wine. If the European Court of Justice rules in favour of the Scottish Government, MUP would allow governments to relate the price on shelf directly to the alcohol content to encourage consumers to opt for lower strength drinks.

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SHAAP (Scottish Health Action on Alcohol Problems) is an independent medical advocacy organisation, set up by the Scottish Medical Royal Colleges, to raise awareness of the nature and extent of harm linked to alcohol use in Scotland, and to campaign for evidence-based measures to reduce this harm: www.shaap.org.uk

The European Public Health Alliance, EPHA, is Europe's leading NGO advocating for better health. EPHA represents around 100 member organisations, including patient groups, health professionals and disease-specific groups working together to improve health, reduce health inequalities and strengthen the voice of public health in Europe.