

ESTONIA | TRIS notification 2017/29/EE

Draft Act amending the Alcohol Act and the Advertising Act

Notified on 30/01/2017 – Deadline for Detailed opinions and Comments to be logged 02/05/2017

KEY MESSAGES

1. The proposed Draft Act will impact the Internal Market negatively, and will have limited or no effect on alcohol related harm identified in Estonia.
2. The proposed alcohol advertising restrictions - equating in practice to a full ban by removing its very purpose - together with the requirement to conceal alcohol products from consumer sight through physical separation in stores will make it virtually impossible for any new entrant to gain a foothold in the market. This will impact foreign products disproportionately, as it will affect outlets with the widest assortment of foreign products.
3. The proposed Draft Act lacks clarity as regards: definitions on media banned (what are social media?) and the extent to which visibility and display are restricted; and it does not properly frame the liability of operators while at the same time making provision for increased fines.
4. Harm indicators in Estonia are going in the right direction already. The levels of underage drinking and binge drinking show the second greatest decline in the EU over the past 5 years. Targeted measures are needed to address those still engaging in risky behaviour, not broad brush advertising bans and retail restrictions.
5. The timeline for implementation is not realistic, given the profound structural changes required in retail outlets.
6. Estonian and European consumers, producers, retailers, and the advertising and media sectors will be negatively affected.

OVERVIEW

The proposed Draft Act aims to:

- Ensure alcohol beverages are not 'noticeably visible' from outside points of sale
- Separate alcohol products from other items, and ensure then cannot be seen from the rest of the sales area in retail outlets of more than 450m²
- Restrict the content of advertising to extreme levels and ensure ads 'do not leave the impression that alcohol consumption (...) is a normal part of life'; Allows advertising on TV but only from 22.00 to 7.00, the content of which would be restricted to an image of the bottle with a voice-over stating the name and provenance and mentioning the mandatory health warning. Similar restrictions are applied to radio ads.
- Cover print ads with a health warning of at least 20% of the advertising area.
- Ban outdoor advertising.
- Prohibit alcohol advertising *"on social media networks, except on the websites of alcohol retailers"* and *"sharing information on social media created by consumers or is intended to be shared by consumers"*, without providing definitions or clarifying the applicability of the measure, and would apply heavy fines for operators found in breach.

ISSUES FOR CONSIDERATION

DRAFT ACT AMENDING THE ADVERTISING ACT

(changing advertising content, placement and list of authorised media)

The proposed changes alter the order of the text and the extent of the restrictions on content and placement enforced. While not banning outright certain media outlets, the combined effect of the measure aims to make advertising void of sense.

'(1) Alcohol advertising may only include the product's:

- 1) name;*
- 2) type;*
- 3) name of producer;*
- 4) brand;*
- 5) country of origin;*
- 6) geographical area;*
- 7) ethanol content by volume;*
- 8) sales packaging design;*
- 9) features (colour, aroma, taste).*

(3) The information in alcohol advertising must not contain any descriptions of a positive atmosphere. Audio and visual design contained in advertising shall not:

- 1) include a person, a picture or image thereof in any way, except for a person's voice;*
- 2) contain any animated images of inanimate objects;*
- 3) link alcohol to driving or any holiday or event;*
- 4) emphasise high ethanol content as a positive feature of alcohol;*
- 5) otherwise leave the impression that alcohol has positive features, or that alcohol consumption increases success or is a natural part of life.*

The content restrictions go even further than what is prescribed in the Loi Evin in France. The additional requirements laid down further in the text result in:

- From 22.00 to 7.00, allowing on TV a still image of a bottle on a plain background with a voice over mentioning the product's name and origin and a warning message.

- Radio ads could only appear between 22.00 and 7.00, with a voice over mentioning the product's name and origin and a warning message.
- Print media are allowed but extremely restricted in content and the proposed changes add a 20% size requirement for the existing health warning for print advertising ['Warning! This is an alcoholic beverage. Alcohol may cause damage to your health.']. .

The proposed act would ban presenting alcohol products with a meal or for example suggesting a cocktail. It is also unclear how a product's taste, colour and aroma could be described without implying it has "positive features".

The draft act prohibits also to "leave the impression that alcohol (...) is a natural part of life".

1. Alcohol products have been around for centuries, are legal, and when consumed in moderation by healthy adult consumers not only do not harm health but are beneficial.
2. The existing 46 spirit categories like rum, whisky, vodka, etc and the +/- 240 geographical indications (GIs) registered in Europe, such as Cognac, Irish Whiskey, Polish Vodka, etc... are clear indications of a sector rooted in European culture and tradition – and therefore are a natural part of (adult) life.

The draft act prohibits alcohol advertising *"on social media networks, except on the websites of alcohol retailers."* The justification seems to be that "if Alcohol marketing is present on social media it will de facto expose minors to alcohol ads". This could not be less true. Due to the elaborate targeting possibilities, digital and social media are actually some of the safest places for alcohol producers to advertise, and be sure to do so to adults only. On Facebook, alcohol brand pages and content liked, shared or commented are simply invisible to minors. Alcohol related promotions are age-gated on Instagram using the same system. Twitter and other video sharing platforms have age-gating mechanisms in place too to ensure only registered adult users interact with the alcohol related content. The proposed Estonian measures are therefore neither justified nor proportionate.

The European Commission is currently reviewing the audiovisual media services directive. To this aim, it commissioned an in-depth study on the exposure of minors to alcohol advertising on TV and in online services ([read here](#)). The Commission did not recommend further restrictions or ban of alcohol advertising on TV or online as the regulatory and self-regulatory measures in place were deemed sufficient and effective.

"Online services' policy and measures to minimise exposure (full report p106)

Online services typically have policies and measures in place to help advertisers to advertise their products responsibly and in compliance with all applicable laws and regulations and thereby, to restrict, or even prevent, the exposure of minors to alcohol advertising. Facebook, Instagram, Twitter and YouTube, which are among the most used online services, all have age-gating and age verification mechanisms in place. These measures ensure that when users want to access age-gated content they have to declare their age, or this is inferred from the registered user database. In addition, all of these online services prohibit in their advertising policy the direct targeting of minors in terms of placement and content. Hence, online services have several measures in place that should help advertisers to ensure that minors are not exposed to alcohol advertising on these online services." [More information is available from p 108 to 110.](#)

Contrary to claims made by some, alcohol advertising does not necessarily increase the desire to drink more alcoholic beverages, therefore advertising restrictions/bans appear to be ineffective measures to reduce either per capita alcohol consumption or alcohol-related harm. For detailed information and scientific references, please see the spiritsEUROPE document "[getting the facts right on alcohol advertising & consumption](#)" & [biography](#)

Regarding item (8) 6, the Estonian government should provide clarifications:

(8) The following shall be deemed as prohibited advertising:

- 1) selling an alcohol-related item or giving alcohol-related printed matter to children;
- 2) the option to obtain alcohol for free or at a discounted price compared to the regular retail price upon offering goods or services for sale or selling them;
- 3) the option to obtain goods or services for free or at a discounted price compared to the regular retail price upon buying alcohol;
- 4) offering the same alcoholic beverage for sale and selling it at a different unit price at the same point of sale where the product is available both as a single unit and as part of a multipack packaged by the producer;
- 5) any consumer game, lottery or competition which – in its guidelines, descriptions or advertisements – is connected to, or associated in any other way with an alcoholic beverage brand;
- 6) the alcohol retailer sharing such information on social media, if it has been created by consumers or is intended to be shared by consumers.

1. Would this mean that the alcohol retailer could not share information about product pricing for consumer information purpose on social media, “if it has been created by consumers or is intended to be shared by consumers”?
2. Would that prohibit the use of testimonials/reviews, even on producer’s website?
3. Nowadays, any content can be to be shared by consumers even if the retailer did not intend to. What would be the guarantees provided by the Estonian authorities on limiting the liability of economic operators?

The proposed changes would also prohibit the offer of a free tasting glass with a bottle.

There is also incoherence in the reference made to the amount of the fine in the original text published on the <https://www.riigiteataja.ee/en/eli/522082014006/consolide> website and mentioning a fine of €3,200 (not €10,000) which apparently should be replaced by a €50,000 fine in case of violations of the law.

Given the legal uncertainty on the application of the proposed amendments to the act, in particular as to what related to “*information on social media (...) created by consumers or is intended to be shared by consumers.*” We would invite the Estonian government to:

- clarify the fines applicable
- limit the liability of economic operators to content they are exclusively responsible for.

DRAFT ACT AMENDING THE ALCOHOL ACT

(Structural Separation)

3) § 40 ^(1³) *Alcoholic beverages must not be noticeably visible from outside of the point of sale. Alcoholic beverages must not be visible from the rest of the sales area in stores where the surface area of the sales area exceeds 450 m².*

The proposal requires that alcoholic beverages must not be noticeably visible from outside of the point of sale. As the list of points of sale covered by the ‘visibility’ restrictions include restaurants and catering establishments it is unclear whether the measure would also affect outdoor consumption areas and terraces.

Alcoholic beverages must also not be visible from the rest of the sales area in stores where the surface area of the sales area exceeds 450m². As a principle, and because the measure is neither justified not proportionate, we oppose this measure aiming to put bottles out of consumers’ sight. In addition, structural separation within retail outlets will disproportionately affect new entrants to the Estonian market because their products will not be on open display.

1. Visibility is not defined in the proposed act.

The draft act refers to products not “noticeably visible” for outside the points of sale and “visible from the rest of the sales area in stores” of more than 450m² without providing details and clarity as to how this measure should be implemented.

- How would this measure be applied for bars and restaurants with an outdoor consumption area?
- Would this require the construction of a separate retail area, or the display of products in covered shelves invisible from the rest of the retail outlet?

Stores need to be completely redesigned to meet these demands by the end of this year, and it is impossible to plan those changes with the demands being so vaguely worded.

2. The proposal creates a distortion in competition.

It is estimated that 25% of retail outlets in Estonia are over 450m². The measures of structural separation will have a huge impact in terms of costs incurred due to refit of outlets and also will create unfair competition situation.

1. Large retail stores provide a broader assortment of imported products than small local retail shops. The products hidden from consumer sight would therefore mostly be imported products.
2. Large retail stores tend to be foreign owned, compared to small retail shops not covered by the measure¹. One could question the goal and aim of the Estonian government to only hide products in 25% of retail outlets which will impact mostly European competitors. The public health motivation of the proposal can therefore be questioned when 75% of mostly local retail outlets are not covered.

In addition, the retail outlets covered by the measure will have to be redesigned, investments made in security systems (incl. cameras), ventilation and fire safety systems, evacuation and restocking routes, cold storage areas (if those need to be moved), possibly personnel costs (additional salespeople or security guards). The costs average was estimated to €500,000 to €2 million per store chain. The additional cost will have to be pass-on to consumers in those retail outlets, therefore also unfavorably affecting the products’ assortment in those and resulting in an indirect price competition burden for imported products.

DEADLINES AND ENTRY INTO FORCE

This Act shall enter into force on 1 January 2018. The TRIS notification period exhaustion is 2 May 2017. Providing other member states submit detailed opinion or comments, the Estonian government should address these by 2 August 2017.

Should the Estonian government press ahead with these requirements disregarding the TRIS procedure, the timeline for implementation is not realistic, given the profound structural changes required in retail outlets.

¹ The main retail chain in Estonia are COOP, Selver, Rimi, Maxima, and Prisma. COOP and Selver are based on Estonian capital. COOP has the biggest market share (around 21%), but most COOP’s stores are smaller than 450m² as located in rural areas.

THE ESTONIAN CONTEXT

The Estonian government justifies the proposed measures as follows:

“Estonia is in line with the European average in terms of alcohol consumption; however, alcohol-related harm is considerably higher than average. The consumption of alcohol by minors and young people plays a significant role in the occurrence of alcohol-related harm, since consuming alcohol as a minor greatly increases the risk of developing alcohol addiction. Alcohol is also directly related to the three most common reasons for youth mortality: traffic accidents, unintentional harm and murders. Nearly 85 % of 15-year-old Estonians have consumed alcohol, and almost half of them have been drunk.”

This statement is at odds with publicly available statistics on alcohol related harm.

ALCOHOL CONSUMPTION

Alcohol consumption has been steadily declining since 2012.

At the end of 2015, the per capita consumption was 8.7 litres. The Estonian government has set a goal to reach 8 litres of per capita consumption in its green book of alcohol policy, which is the basis for this new and drastic proposal. It is likely that this target was reached naturally by the end of 2016. The 2016 figures will be published in April 2017.

In 2015 compared to 2014, consumption of light alcoholic beverages and strong alcohol decreased the most (–14.7% and –12.3% accordingly). Consumption of beer and wine declined too, but a lesser degree (–3.3% and –1.7% accordingly).

UNDERAGE DRINKING

The HSBC & ESPAD studies published in 2016 show that underage consumption declined steadily in the EU as well as in Estonia. Many indicators place Estonia below the European average regarding the underage consumption of alcohol. Overall:

- 37.6% of 15-16 year olds had consumed alcohol in the last 30 days compared to 51.5% for the EU average (ESPAD 2016)
- The percentage of the 15-16 year olds **not consuming any alcohol** in the last 30 days considerably increased in Estonia in 2015. This rate is higher than the EU average. (ESPAD 2016)

The frequency of drunkenness on a 30 days basis was low among the 15-16 year olds in Estonia compared to EU average. 92.5% did not get drunk in the last 30 days compared to 86% in the EU. Estonian rate is one of the best of the EU on this point. (ESPAD 2016)

However:

- The amount drunk was on average 6.2cl of pure alcohol compared to 5cl for the EU average (ESPAD 2016)
- 49% of 15 year olds Estonians had a drink for the first time at age 13 or younger in 2014. This rate is one of the highest of the EU. (HBSC 2016)
- 30% of the 11, 13 and 15 year olds reported drunkenness at least twice over their lifetime whereas it is about 25% for the EU average. ((HBSC 2016)
- In 2014, 19% of Estonians have been drunk for the first time at age 13 or younger. (HBSC 2016)

CONCLUSION

Alcohol initiation in Estonia happens at a younger age (age 13 or younger). At this age:

- Buying alcohol is prohibited (adolescents list their parents as primary source of alcohol)
- Owning a social media account is not legal below 13. Social media users would anyway not see any alcohol related commercial content below 18 years old.
- The proposal to ban all advertising on social media to address this issue is therefore misguided
- Harm indicators suggest that **targeted education initiatives involving parents and teachers** are required instead.

The rate of young Estonians not drinking alcohol is the second fastest growing across the EU.

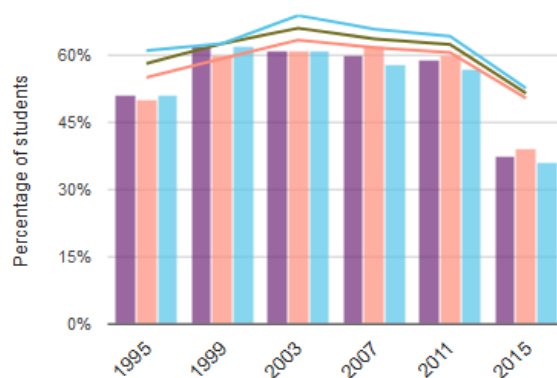
- The levels of alcohol abstinence are high and the frequency of consumption much lower. However, those engaging in drinking do so to get drunk and in much higher quantities than their European counterparts. **This again indicates the need for targeted interventions with youth engaging with extreme drinking.**

31. How has 15/16 year olds' use of any alcohol evolved in selected countries?

For the previous 30 days

— EU average - Have consumed any alcohol — EU female - Have consumed any alcohol — EU male - Have consumed any alcohol
 ■ average - Have consumed any alcohol ■ female - Have consumed any alcohol ■ male - Have consumed any alcohol

ESTONIA

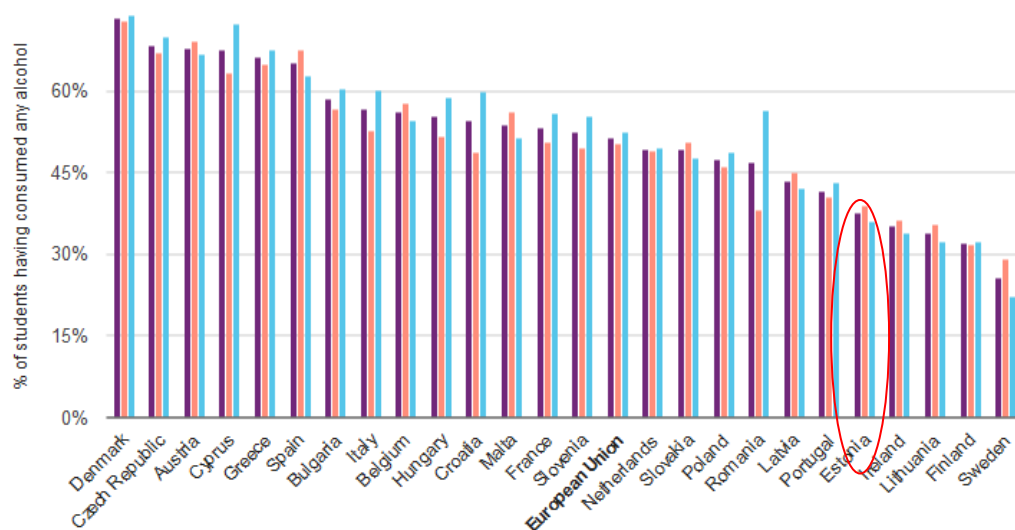


(ESPAD 2016)

32. How does 15/16 year olds' use of any alcohol compare across all countries?

For the previous 30 days in 2015

■ average - Have consumed any alcohol ■ female - Have consumed any alcohol ■ male - Have consumed any alcohol



(ESPAD 2016)

Use of any alcoholic beverages: % change between 2011 and 2015

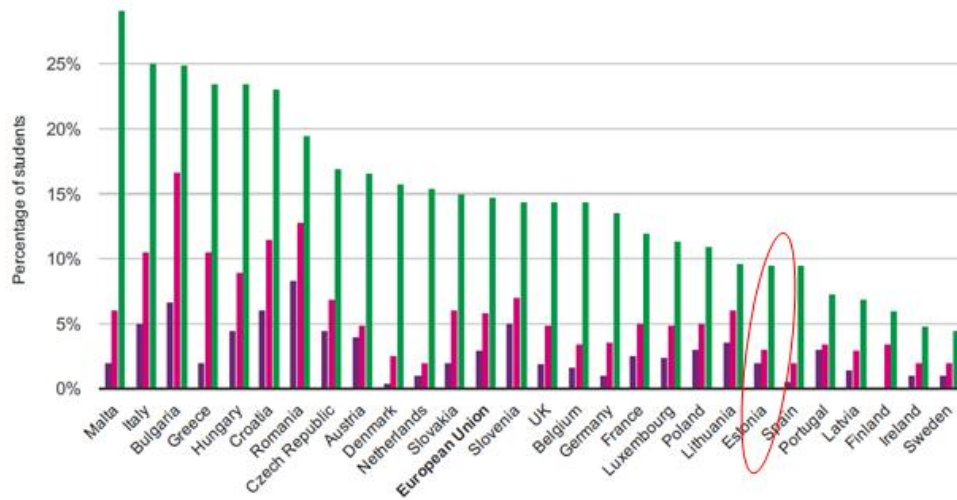


(ESPAD 2016)

82. How does 11, 13, and 15 year olds' weekly consumption compare across all countries?

Any alcohol consumed every week in 2014

■ Percentage of 11 year old participants ■ Percentage of 13 year old participants ■ Percentage of 15 year old participants



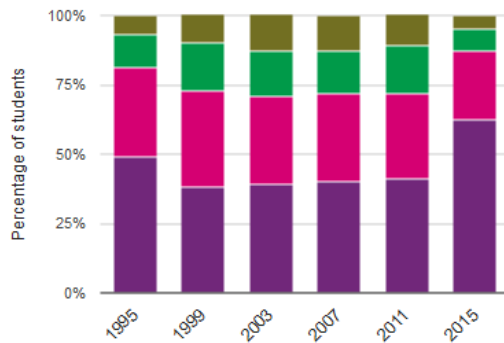
(HBSC 2016)

79. How has the frequency of alcohol consumption evolved for 15/16 year olds in selected countries?

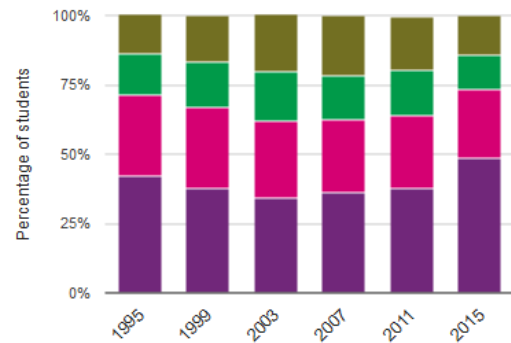
For the previous 30 days

■ No - Have consumed any alcohol ■ 1 to 2 - Occasion(s) of alcohol consumption ■ 3 to 5 - Occasion(s) of alcohol consumption ■ 6+ times

ESTONIA

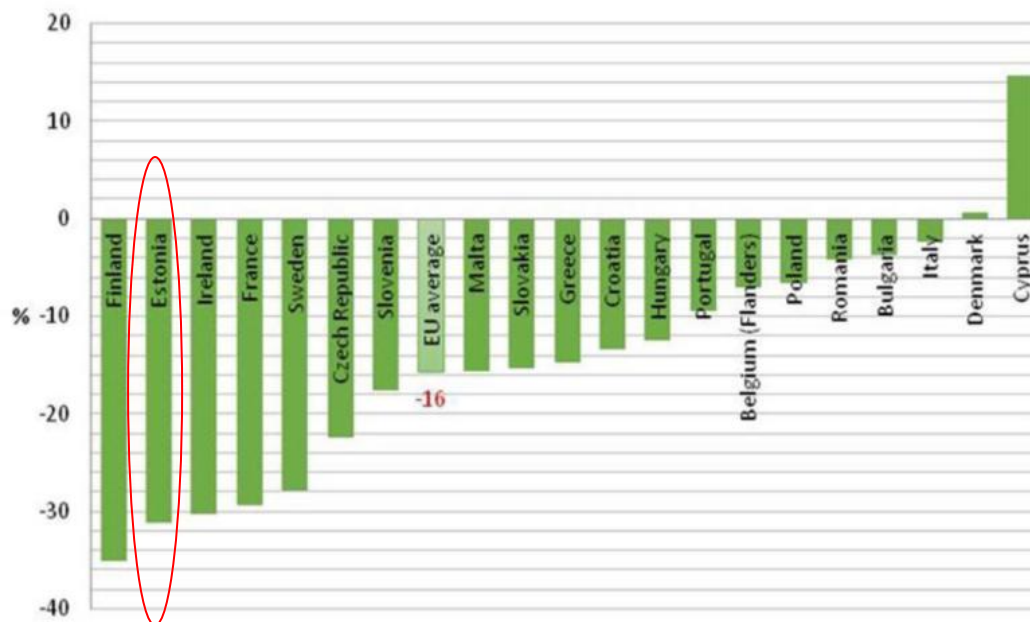


EUROPEAN UNION



(ESPAD 2016)

5+ drinks once during last 30 days: % change between 2011 and 2015

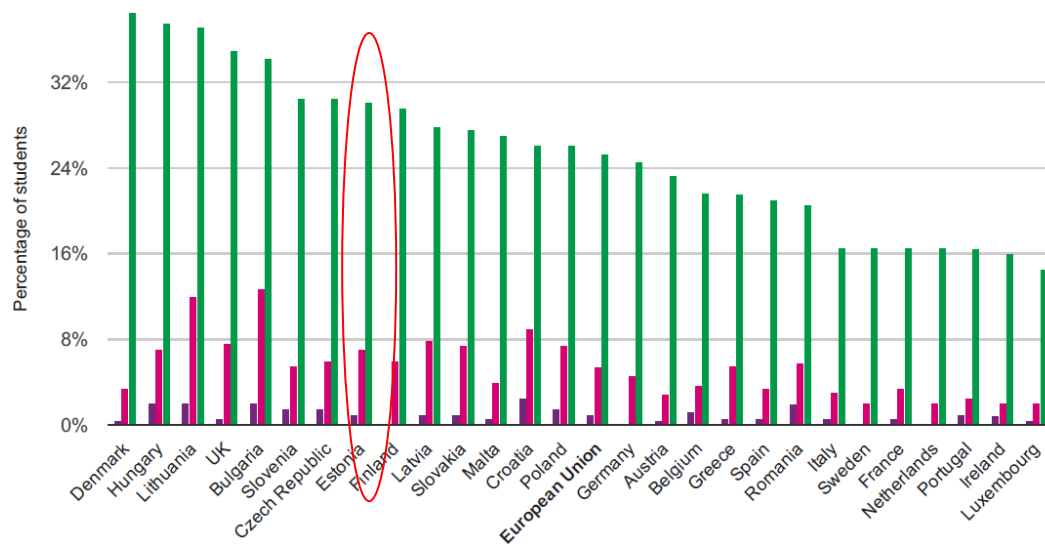


(ESPAD 2016)

115. How does 11, 13, and 15 year olds' reported drunkenness compare across all countries?

Drunk at least twice over lifetime in 2014

■ Percentage of 11 year old participants ■ Percentage of 13 year old participants ■ Percentage of 15 year old participants

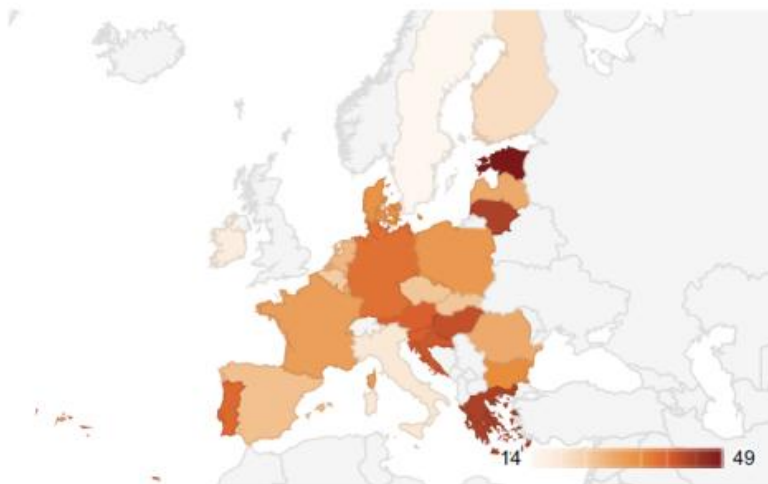


(HBSC 2016)

119. How does 15 year olds' drinking initiation age compare across all countries?

Had a drink for the first time at age 13 or younger in 2014

Percentage of 15 year old participants



(HBSC 2016)

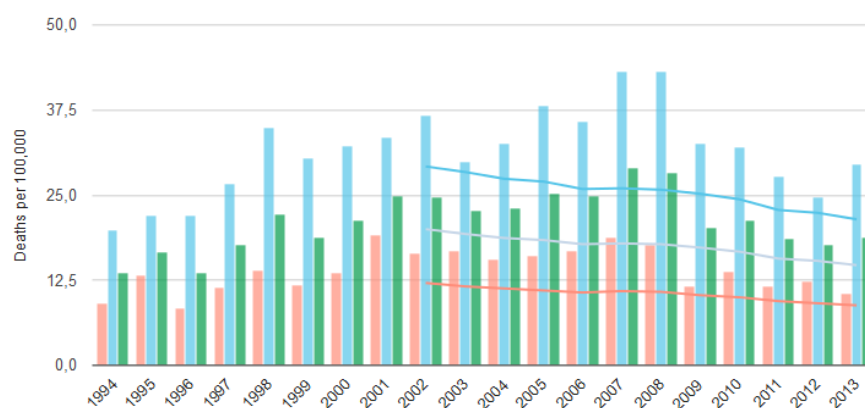
LONG TERM HARM INDICATORS

Chronic liver disease deaths are the result of sustained and long term heavy drinking (10 years +). These values indicate the death rate due to chronic liver disease².

7. How have chronic liver disease deaths evolved in selected countries compared to the EU average?

Deaths per 100,000 females-EU Deaths per 100,000 males-EU Deaths per 100,000 population-EU
Deaths per 100,000 females Deaths per 100,000 males Deaths per 100,000 population

ESTONIA



(EUROSTAT 2011)

² (K70_K73_K74) for the Eurostat indicators hlth_cd_asdr and hlth_cd_asdr2.

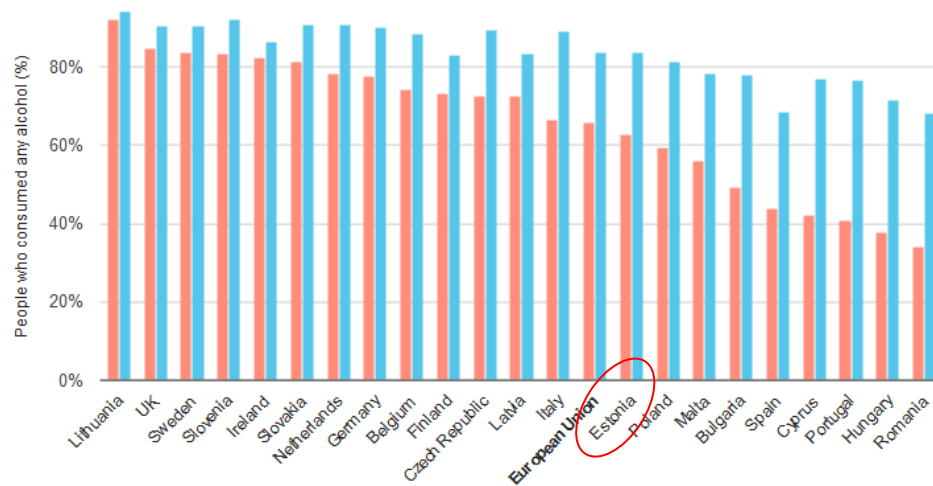
Between 2002 and 2013 chronic liver disease deaths in Estonia dropped 24.8 to 18.9 per 100.000 on average. Meanwhile the EU average dropped from 20 to 14.7 per 100.000. **This indicates a downward trend of long term heavy drinking.**

According to the latest Eurostat data from 2011, 83.7% of the male population drank alcohol, which is the same as the EU average and 62.7% of female (slightly lower)

59. How does the drinking population, by gender, compare across all EU Member States?

For people aged 15+ in the previous 12 months (2011) in 2011

■ female ■ male



(EUROSTAT 2011)

