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Industry's capture of political leadership: how can advocacy for alcohol control breakthrough?

Abstract

Nation-states grapple with developing and implementing effective alcohol control policies. A coherent global action to reduce alcohol related harms has been led by the WHO and signposted within its 2010 strategy. It proposed options over 10 action areas to reduce harms and promote better health and wellbeing. In Europe, where the highest levels of alcohol consumption persist, WHO Europe endorsed their 2012-2020 action plan. Throughout this period, Member States have experienced a policy reform and implementation process stymied by transnational alcohol industry tactics. Momentum for the establishment of a Framework Convention for Alcohol Control (FCAC), similar to that established for tobacco (2003), has partly dissipated. National governments and their political actors, ideologically committed to economics of international trading have sought industry led quasi-judicial, self-regulatory, voluntary procedures to abate a growing alcohol related public health crisis. Exploring the development of alcohol policy in Ireland over this period, this research aims to highlight how corrosive an alliance of the alcohol industry and political interests was in hindering meaningful progress. It will examine many futile consensus initiatives and how statutory based control measures were ultimately achieved. From this appraisal, the paper will explore important understandings that could inform the leadership needed to establish a FCAC. Progress will continue to be slow so long as nation-states can be delayed and frustrated by transnational alcohol corporations. As tobacco control has demonstrated a multilateral, values based, framework is necessary if public health and human life is to be afforded legal right over private economic interests.

In October 2018, after many years of advocacy and consideration, and over 1000 days debate before the Houses of the Oireachtas (*National Parliament*¹), the legislature of Ireland enacted a legislative framework, the Public Health (Alcohol) Act, which for the first time in its history, aimed to address Ireland's harmful relationship with alcohol as a public health concern.

In that year 2018, as the Bill completed all stages, the House of

Representatives (*Dáil Éireann*) sat – in session - for only 108 days, so here's a question I'd like you to consider:

How many times do you think the alcohol industry and/or its representatives gained access to the elected 158 Members as well as the principals of the political system throughout just that one year?

We will return to this question, and its answer, a little later.

¹ The National Parliament (**Oireachtas**) consists of the President and two **Houses**: *Dáil Éireann* (**House** of Representatives) and *Seanad Éireann* (the Senate) whose functions and powers derive

from the Constitution of Ireland enacted by the people on 1 July 1937.
<https://www.oireachtas.ie>

But first, let's address more broadly what can be viewed as a corrosive alliance of the alcohol industry and political leadership in Ireland and how the alcohol industry - mutually aligned with a pro-transnational business, political system - affected delay and obstructed meaningful progress on the enactment of statutory alcohol controls.

This alliance is not unique to Ireland, as over the decades we have witnessed initiatives of national alcohol policy being persistently stymied by transnational business and economic actors.

In Australia/New Zealand measures to introduce a mandatory warning on the risk of alcohol during pregnancy to all alcohol products have been obstructed by the industry who deride both the evidence and science.

In South Korea, a proposed cancer warning on alcohol products was delayed through lengthy, on-going dispute resolution mechanisms at the WTO, where alcohol exporting countries have led the tactical assault on a valid public health measure.²

Scotland, who sought to introduce Minimum Unit Pricing of alcohol products in 2012 had to sustain a five-year legal wrangle with the alcohol industry before finally getting, in what was a most elegant judgement,

approval from the UK Supreme Court.³

In Ireland, there has been an unhealthy alliance between the state and the alcohol industry since Ireland's emergence in the latter half of the twentieth century from economic isolationism, and its ascension to the European Economic Community in 1972.

From the early 1970's the Irish state, eager for economic growth yet indifferent to the unintended consequences, liberalised the controls on alcohol over the proceeding decades, and this transformation, coupled with the adoption by alcohol marketers of innovative brand development, and selling, techniques, saw Ireland double its alcohol consumption in a generation, from 7.7 litres per capita in 1972 to 14.3 in 2001.⁴

By the beginning of this century, Ireland's crisis with alcohol was finally recognised as deeply damaging to the economic and social fabric of Irish society and political discussion began about actions needed to reduce spiralling consumption and associated harms.

This is the starting point for the journey to enactment in 2018 of the Public Health (Alcohol) Act.⁵

² O'BRIEN, Paula; MITCHELL, Andrew D. On the Bottle: Health Information, Alcohol Labelling and the WTO Technical Barriers to Trade Agreement. QUT Law Review, [S.l.], v. 18, n. 1, p. 124-155, Nov. 2018. ISSN 2201-7275

³ <http://www.bailii.org/uk/cases/UKSC/2017/76.html>

⁴ <https://alcoholireland.ie/how-much-are-we-really-drinking/>

⁵ The Minister for Health and Children established the Strategic Task Force on Alcohol (STFA) in January 2002, as recommended in the first report of the Commission on Liquor Licensing.

In the intervening period, the political system when commissioning numerous consultations and reports, always sought the advice of the alcohol industry. This gave industry an insight into how policymakers were thinking, and planning, and afforded them time to develop tactics to delay meaningful action.

So, in 2004-5, instead of establishing statutory controls on alcohol advertising and marketing - voluntary, self-regulatory codes were validated by the political system.⁶

In 2008, rather than commencing enacted statutory controls on availability, voluntary, self-regulatory codes on the retailing of alcohol were validated by the political system.⁷

Finally, in 2013, after yet another strategic report from 2012⁸ (also undermined by further minority reporting by the alcohol industry⁹) a series of alcohol controls, reflecting the 'best buys' of WHO Global (2010) and European (2012) Action plans - a national government, formed in the midst of the deepest economic crisis¹⁰, gathered a consensus to draft a

legislative framework to reduce Ireland's alcohol consumption.

An international trade, the nerve system of a neo-liberal global economic model, is supported by supranational codified structures crafted to 'ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade'.¹¹

In the instance of action by a national government to establish a framework convention for alcohol control, institutions such as the EU Commission¹² or WTO¹³, or global influencers such as the Office of the US Trade Representative¹⁴, affords a transnational alcohol industry, adequate opportunity to bring their commercial influence to bear.

If it is claimed that controls are a barrier-to-trade, then sovereign actions can be delayed for many years as numerous barriers of notice, negotiation and scrutiny are navigated.

In the case of Ireland's proposed legislative framework, both 2017 and

⁶ Hope, A. The Influence of the Alcohol Industry on Alcohol Policy in Ireland, Nordic Studies on alcohol and drugs, Vol.23, 2006.

⁷ <http://www.justice.ie/en/JELR/Pages/Commencement%20of%20the%20Intoxicating%20Liquor%20Act%202008>

⁸ <https://www.askaboutalcohol.ie/alcohol-in-ireland/policy/evidence-based-alcohol-policies/national-substance-misuse-strategy-.html>

⁹ The National Substance Misuse Strategy. Minority report by the Alcohol Beverage Federation of Ireland.

<https://www.drugsandalcohol.ie/16913/>

¹⁰ <https://www.oireachtas.ie/en/debates/debate/dail/2011-03-15/9/>

¹¹ https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

¹² <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2018&num=22>

¹³ TBT Committee, Minutes of the meeting of 10-11 NOVEMBER 2016, WTO Doc G/TBT/M/70 (17 February 2017)

¹⁴ 2018 National Trade Estimate Report on FOREIGN TRADE BARRIERS (p.163) Ambassador Robert E. Lighthizer
Office of the United States Trade Representative
<https://ustr.gov/sites/default/files/files/Press/Reports/2018%20National%20Trade%20Estimate%20Report.pdf>

2018, proved to be pivotal in combating such external challenges. Specifically, Ireland's proposed action on implementing health/pregnancy and cancer risk warnings on all alcohol product labelling, minimum pricing of alcohol products and a broadcast watershed on alcohol advertising, amongst others, attracted significant global attention as the eyes of the alcohol industry were trained on Ireland.

Having withstood a two-year delay throughout 2016-2017 in the Upper House – where Senators, many aligned with alcohol interests, conducted extensive filibustering - the pre-eminent Lower House finally took all stages of the proposed legislation, throughout much of 2018.

By then the ire of the alcohol industry was full blown and lobbying activity to stop, or delay, the legislation was being crafted by many interested parties including a range of public affairs consultancies, drinks and allied business representative groups as well as the domestic and global alcohol producers.

So, returning to my opening question to you:

In 2018, when this legislation finally completed all stages through the Lower House (*Dáil Éireann*), which sat – in session -for only 108 days, how many times do you think industry gained access to the 158 elected Members and the principals of the political system? The answer is 361 times.

So briefly, let's look at who secured these meetings, and here one must acknowledge the invaluable source of transparent public records, and the establishment of Ireland's lobbying register¹⁵ :

- There were 8 alcohol producers including four of the top 10 global alcohol businesses,
- 4 Public Affairs consultancies including one international firm, and
- 14 were the Drinks, and Allied Businesses, representative groups including Retailers, Advertisers, Vintners and Tourism interests

Together they registered 96 lobbying returns for 2018. In examining the granular detail of these filings, the intimate capacity of the alcohol industry to lobby the principals of the political system, is truly remarkable and demonstrates the continuing 'unhealthy alliance' between an indifferent state and an ever-cunning industry, who simply left no stone uncovered to hinder the Bill.

In that one parliamentary year, the alcohol industry and its surrogates, gained intimate timeⁱ with:

- 8 Cabinet Ministers (there are only 14 Members the Cabinet)
- Had 'one-to-one' discussions with the Taoiseach's (Prime Minister) Chief of Staff, the country's top civil servant - the Head of Government, as well as the Government's Chief Whip and Assistant Chief Whip.

¹⁵ <https://www.lobbying.ie/>

- Held 36 separate engagements with Ministers of State, across all portfolios,
- and had 12 meetings with ministerial Special Advisors across eight portfolios including Health,
- Met with individual Members (TDs) of the Lower House (Dáil Éireann) on 309 occasions, and to top all that
- On 17 separate occasions – practically once a week - corresponded with each of the 158 Members of Parliament either through posted letter or email.

The onslaught of pressure on Irish parliamentarians to stall and/or amend the alcohol legislation was incessant and unrelenting.

This was been the principal source of delay to enacting a framework for alcohol control and probably the reason, currently, for the further delay in its implementation; over 500 days on (*March 2020*), Ireland still does not have a Minimum Price for alcohol products, it still is not informing its citizens through accurate labelling of the known risk between alcohol and fatal cancers, and it still is allowing alcohol brands pitch their chat-up lines to the nation's children¹⁶.

In conclusion, and mindful that work to renew the 2010 WHO Global Action plan on reducing harmful use of alcohol is largely just beginning¹⁷, it

is regrettable that the opportunity to establish an international Framework Convention on Alcohol Control has been so quickly abandoned. The earlier consultative process that culminated in acknowledging a possible contribution from the alcohol industry to a new Action Plan remains counterintuitive.

To accept such a conflict of interest, is to facilitate a 'Trojan horse' - armed with commercial mercenaries willing to sabotage any initiative that prioritises the needs of public health ahead of wealth creation and shareholder returns.

It is vital, that as a community leading and influencing public alcohol policy, we too understand these two objectives are incompatible.

In Ireland our lesson, after many difficult years of endless debate, is that the endeavour to find compatible consensus cannot, and will not, be found until the alcohol industry agrees that less product sold is best.

By allowing well resourced, highly connected - many headed, industry into the alcohol policy 'room', and unfettered access to the corridors of power, we facilitate delay and place enormous pressure on the capacity of our democratically elected institutions to stand by the principles of public health and the health and wellbeing of all human life.

¹⁶ There is no timeframe from the Irish authorities as to when these Orders will be made: Sections 11 (Minimum Price), 12 (Labelling), 13 (Content of Advertisements), 18 (Advertisements in publications) and 19 (Broadcast watershed), Public Health (Alcohol) Act, 2018

¹⁷ WHO Executive Board, Feb 2020. Accelerating action to reduce the harmful use of alcohol: http://apps.who.int/gb/ebwha/pdf_files/EB146/B146_CONF1Rev1-en.pdf

ⁱ While the Lobbying register records the interaction between both parties and a broad

subject topic, it does not record or report the content, or length, of engagement.