Message 761

Communication from the Commission - TRIS/(2026) 0492

Procedure for the provision of information EC - United Kingdom in respect of Northern Ireland

Notification: 2025/7022/XI

Resending of UK/Northern Ireland's reply to the request for supplementary information/European Union comments

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2. UK/Northern Ireland

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4. 2025/7022/XI - X60M - Tobacco

5.

6. 17 February 2026

RE: UK RESPONSE TO THE DETAILED OPINIONS (2025/7022/XI (UK/NORTHERN IRELAND)

Introduction
1. In accordance with Directive (EU) 2015/1535 as applicable under the Windsor Framework, the UK Government, in respect of Northern Ireland, notified certain provisions in the Tobacco and Vapes Bill on 14 August 2025.

2. The notification process led to detailed opinions from four EU Member States—Romania, Slovakia, Italy, and Greece (the "Relevant States") — being received before the deadline of 18 November 2025. This resulted in an extension of the standstill period until 18 February 2026. In addition, comments were submitted by Czechia and Croatia. For transparency, those Member States that requested publication of their opinions and comments have had them made available on the notification page.

3. This response is made pursuant to Article 6(2) of Directive (EU) 2015/1535, by which the UK "shall report to the Commission on the action it proposes to take on such detailed opinions".

Summary
4. In summary, the main concern of the Relevant States is that the Smoke-free Generation Policy, in Clause 68 of the Bill, breaches the principles of free movement of goods, conflicts with harmonised EU law, and is disproportionate and unjustified. Concerns were also raised around the risk of market distortion and economic harm. By way of response, the UK proposes to proceed with the Smoke-free Generation Policy, notwithstanding these concerns, for the reasons set out below.

5. A further concern was that the restrictions on advertising in Part 6 of the Bill conflict with EU law and in particular Article 20.5 of Directive 2014/40/EU on the assumption that trade to trade advertising is not permitted for e-cigarettes. By way of response, clause 119 of the Bill provides an exception for trade-to-trade advertising.

6. Given the overlap and repetition in the arguments raised by the Relevant States, this response addresses their arguments collectively rather than responding to each State individually.

Articles 34 and 36 Treaty on the Functioning of the European Union ("TFEU")

7. Concerns were raised that the Smoke-free Generation Policy is not compatible with the principle of free movement of goods enshrined in Article 34 of the TFEU. Article 34 of the TFEU provides that 'quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States'.

8. The Smoke-free Generation Policy in the Bill is not a quantitative restriction on imports or a measure having equivalent effect but, rather, is an age-of-sale measure. Clauses 68, 69 and 72 set an age limitation for the sale of tobacco and related products such that these products cannot be sold to those born on or after 1 January 2009. It does not impose any prohibitions on the use or import of tobacco; the clauses regulate how these products are sold and who they can be sold to. Tobacco products will continue to be placed on the market in Northern Ireland.

9. The proposed legislation therefore only restricts the sale of tobacco products in the same way that any age-of-sale measure restricts the sale of a product to a particular group in society. It has been argued that the size of the market would be determined by age. But this is the case for any age-of-sale measure. Age-of-sale measures are not harmonised at the EU level. Moreover, there is precedent within the EU that measures to raise the age of sale within Member States, which has resulted in reductions in market size, have not been considered to be contrary to Article 34 of TFEU.

10. The UK therefore does not consider the Smoke-free Generation Policy to be a quantitative restriction on imports or a measure having equivalent effect which would fall under Article 34 of the TFEU.

11. In any event, even if the Smoke-free Generation Policy were considered to be a quantitative restriction or a measure having equivalent effect, it would nonetheless be clearly justified on grounds of protection of health as permitted by Article 36 of the TFEU. The measures are designed to protect the health of children and future generations, with strong UK public support for doing so. Notwithstanding the robust data that underpins the UK government position, we note the comments that adequate justification for the Smoke-free Generation Policy, analysis or data on alternative options to achieve the aims of the policy have not been set out. These concerns are therefore addressed in detail below at paragraphs 17 to 43. Therefore, the UK considers that these are grounds for legitimately restricting trade, should this be considered to be a quantitative restriction.

12. Moreover, in accordance with Article 36 of the TFEU, the Smoke-free Generation Policy does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. The Smoke-free Generation Policy would not create discrimination in respect of goods originating in other Member States or use trade restrictions to protect UK products.

Directive 2014/40/EU (the "Tobacco Products Directive")

13. The Relevant States have suggested that the Smoke-free Generation Policy is not compatible with the Tobacco Products Directive, pointing to its Treaty basis and Article 24 of Tobacco Products Directive which prohibits Member States from banning tobacco products that comply with the requirements of the Directive.

14. The UK does not consider that the Smoke-free Generation Policy falls within the prohibition or restriction contained in Article 24(1). This is because a domestic selling arrangement of this sort – i.e. an age-of-sale measure – falls outside of the scope of the Tobacco Products Directive, as Recital 48 makes clear ('this Directive does not harmonise the rules on smoke-free environments or on domestic sales arrangements or domestic advertising (…) Member States are free to regulate such matters within the remit of their own jurisdiction and are encouraged to do so').

15. Moreover, and in any event, CJEU case law makes clear that the Tobacco Products Directive does not affect a Member State's ability to decide whether tobacco and related products may lawfully be sold at all in their domestic markets and is

not intended to interfere with the policies of Member States concerning the lawfulness of tobacco products as such. It is only those products that belong to a category of tobacco or related products which is lawful in the Member State in which they are marketed (and which comply with the requirements laid down by the Directive) that may move freely on the internal market. In other words, Member States have the right to protect the health of the public in their own State and the level, or extent, of protection of health a Member State may wish to achieve is a matter for that State alone. The competence of Member States to determine the appropriate public health measures for their State was not disturbed by the Tobacco Products Directive: Case C-547/14 Philip Morris ECLI:EU:C:2016:325, §§88-94.

16. In any event, should the Smoke-free Generation Policy be considered to fall within scope of the Tobacco Products Directive and Article 24, it would clearly be justified on public health grounds. The following paragraphs set out the UK's justification on public health grounds.

Public Health Justification

17. At the outset, the UK notes the following important principles relating to the proportionality of public health measures: (1) it is for the Member State to decide on the level of protection of human life and health which it proposes to provide; and, (2) the Member State must provide appropriate evidence from which it may reasonably be concluded that the means chosen are appropriate for the attainment of the objectives pursued and that it will not be possible to attain those same objectives by equally effective measures that are less restrictive of the free movement of goods: Case C-333/14 Scottish Whisky ECLI:EU:C:2015:845, §§52-59.

18. The objective of the Smoke-free Generation Policy is to improve public health by continuing the downward trajectory so that tobacco use eventually will fall to 0% over time. The UK considers that the Smoke-free Generation Policy is appropriate for the attainment of this objective and that other alternative measures, such as those suggested by the Relevant States, would not be equally effective at attaining that same objective.

19. The UK Government aims to protect and improve the health of its population and, like the rest of the UK, the Northern Ireland Executive wishes to do the same for its population. The Tobacco and Vapes Bill, and specifically the Smoke-free Generation Policy, is supported by the UK public as demonstrated through consultations undertaken by the UK Government. The EU itself has committed to reducing tobacco use to less than 5% of the population by 2040 through its Cancer Plan for Europe, noting that one in four of the adult population in the EU are smokers.

20. Tobacco is a uniquely harmful product. Globally, tobacco use is one of the leading causes of preventable death and disease. In the EU, tobacco is responsible for 700,000 deaths each year and is the largest avoidable health risk in the EU. In the UK, tobacco use kills around 80,000 people every year (England, Wales, Scotland, Northern Ireland). Up to two-thirds of deaths in current smokers can be attributed to smoking and those who start smoking as a young adult lose an average 10 years of life expectancy. It is the number one preventable cause of death, disability and ill health in the UK. It is well established that illnesses for which smoking is a major factor include cancer, coronary heart disease, strokes and other diseases of the respiratory and circulatory system, along with dementia and diabetes. The harm caused by tobacco smoke also extends to non-smokers through exposure to second hand smoke, with children and unborn babies being particularly vulnerable.

21. Almost every minute someone is admitted to hospital in England with a smoking-related disease, and up to 75,000 GP appointments could be attributed to smoking each month in England: equivalent to over 100 appointments every hour.

22. Smoking drives socioeconomic and geographic inequality in health outcomes. When tobacco expenditure is included in the assessment of poverty, Action on Smoking and Health (England) estimates that an additional 500,000 households are classified as in poverty in the UK. Almost a quarter of people with long term mental health conditions smoke - far higher than the general population. People with poor mental health die on average 10 to 20 years earlier than the general population, and smoking is contributing significantly to this.

Northern Ireland Statistics

23. In 2024, one in ten adults were smokers in Northern Ireland: Based on data from the Office for National Statistics (the "ONS"), Northern Ireland has an estimated 147,000 smokers aged 18 and over: 10.5% of the adult population.

24. Deaths: The Northern Ireland Public Health Agency reported that in 2022-23 smoking caused the death of over 2,200 people - a figure that remained the same for the previous 5 years. Smoking has been declared the single largest preventable cause of death in Northern Ireland.

25. The Northern Ireland Audit Office report published in January 2024 estimates that smoking is the primary cause of one in four of all cancer deaths. There are approximately more than 4,500 local cancer deaths each year, with lung cancer deaths accounting for around 24 per cent of these. Smoking is the main causal factor in 80 per cent of such lung cancer deaths. Smoking is also responsible for around 80 per cent of emphysema and bronchitis related fatalities, together with 14 per cent of heart disease deaths, and a recognised contributory risk factor to other illnesses including strokes and asthma. These smoking rates have a clear impact on health outcomes in Northern Ireland.

26. Hospital admissions: The level of disease is also illustrated by a high number of smoking-attributable hospital admissions in Northern Ireland. A report published by the Northern Ireland Audit office in 2024 referred to analysis showing that there were around 35,000 smoking attributable hospital admissions in 2022-23.

27. Health inequalities: The Northern Ireland Public Health Agency reported in its 2022-23 report, that adult smoking rates in the most deprived areas of Northern Ireland are more than three times the rate in the least deprived areas. The widening inequality gap in the prevalence of smoking is consistent with the picture when looking at the Standardised Mortality Rate for smoking-attributable causes. Comparing deaths in 2014-18 with 2018-22, while both the most and least deprived areas have improved their rates (the most deprived 363 down to 315, least deprived 186 to 157 per 100,000 population) the gap between them has widened. Those from the most deprived areas are twice as likely to die from smoking-attributable causes as those in the least deprived areas.

28. In addition, figures from 2024-25 from the Department of Health statistic on smoking cessation services show around a third (31%) of the 9,521 adults who set a quit date with Smoking Cessation Services in 2024-25 were from the most deprived quintile and around a quarter (24%) were from the second most deprived quintile. This compares with around 10% from the least deprived quintile. The 4-week success rate was 56% for those in the most deprived quintile, similar to 57% in the least deprived quintile.

29. Smoking in pregnancy: The proportion of mothers that reported smoking during pregnancy was 10.6% in 2022-23 according to a Northern Ireland Public Health Agency report. Smoking during pregnancy is a leading factor in poor birth outcomes, including stillbirth and infant (especially neonatal) deaths. Stopping smoking before or during pregnancy will reduce these risks to the child's health and development. In 2022-23, smoking during pregnancy in the most deprived areas is over five times the rate in the least deprived areas.

30. Young people (11 to 18 year olds): A report published by the Public Health Agency in Northern Ireland in 2025, found that one-in-ten young people reported ever having smoked (9%) with 5% indicating that they currently smoke. However, the proportion who had ever smoked was nearly twice as high for those living in the most deprived areas (12%) as the least deprived areas (7%). For the vast majority of young people who reported ever having smoked, experimentations with cigarettes began in their teenage years. Of concern, 14% had tried their first cigarette at age 10 or below. 51% of young people in Northern Ireland indicated that a family member in their household smoke. Children with parents who smoke are about three times more likely to start smoking themselves. Children are also more likely to smoke if they have brothers, sisters or friends who smoke too.

31. Life expectancy: Life Expectancy figures published by the Department of Health in Northern Ireland show that in 2021-23, life expectancy in Northern Ireland was 78.8 years for males and 82.5 years for females. Since 1980-82, life expectancy has risen by 7.0 years for females and 9.6 years for males. However, life expectancy growth has slowed over the past decade for both males and females. On average in the UK, smokers lose ten years of life expectancy compared to non-smokers.

32. Economic impacts of smoking: The British Heart Foundation estimates that smoking costs Northern Ireland's society £400m annually. According to the Northern Ireland Department of Health, hospitals in Northern Ireland spend more than £200 million a year on treating illness that is attributed to tobacco, which presents a huge burden on hospitals and the public sector, creating an opportunity cost when budgets and capacity for healthcare are finite.

33. Tobacco Control reforms: Previous tobacco control measures taken across the UK have had some positive impacts but fallen short of achieving our objective of 0% smoking. This includes legislative reforms such as the implementation of provisions from the Tobacco Products Directive, increases in the age of sale of tobacco from 16 to 18 years, the establishment of smokefree places, the introduction of plain packaging for cigarettes, and comprehensive advertising bans. These legislative changes have been accompanied by public health campaigns and the provision of stop smoking service support.

34. These policies in Northern Ireland have helped towards a reduction in smoking attributable deaths, from 276 to 225 deaths per 100,000 population between 2009-13 and 2017-21. However, despite the measures in place, the rate of disease and mortality remains at a level that is unacceptable to the UK Government.

Necessity and proportionality of measures

35. The objective of the Smoke-free Generation Policy is to improve public health by continuing the downward trajectory and getting smoking rates to 0% over a long and gradual period of time. The Government's Impact Assessment (attached to the TRIS notification) demonstrates the potential effectiveness of the proposed measures. It is estimated that the Smoke-free Generation Policy will prevent over 150,000 deaths and 470,000 disease cases in England by 2100.

36. The Impact Assessment has modelled the likely outcomes of the Smoke-free Generation Policy. The evidence shows that raising the legal age of sale reduces accessibility to tobacco products and lowers smoking initiation rates. Continuing such measures over a sustained period of time should therefore move smoking rates towards the 0% target.

37. The concept of the Smoke-free Generation Policy and its origins are not new, and these proposals have been in the public domain since 2023. In 2022, the independent Khan review, commissioned by the UK Government, recommended the Smoke-free Generation Policy alongside other legislative and policy proposals, several of which are included in the Tobacco and Vapes Bill. This review considered other proposals such as increasing the age of sale of tobacco to 21 and 25, However, it concluded that, of all these measures, the Smoke-free Generation Policy would be the most effective measure in the long term. In October 2023, the previous UK Government published the Command Paper and introduced a Bill which included the Smoke-free Generation Policy.

38. The modelling in the current Impact Assessment for the Smoke-free Generation Policy estimates that consistently raising the age of sale will reduce smoking prevalence to effectively 0%. Based on this modelling, the benefits are expected to be greater than simply raising the age to 21 or implementing other age-based policies (see paragraph 134 of the Impact Assessment). The only alternative policies that could potentially achieve the UK Government and Northern Ireland Executive goal of 0% smoking is introducing a complete ban on tobacco, or to introduce measures that have the same effect as a ban in practice, such as prohibitively high excise duty. However, those alternative measures would be clearly more restrictive and less proportionate as they would not have the same phased nature of the Tobacco and Vapes Bill. They would also be less targeted on future generations. A phased, generational approach is a more effective and proportionate long-term approach to lowering smoking rates compared to a one-off fixed age increase, especially as the UK's public health objective is to achieve a 0% smoking rate.

39. The public health benefits of the Smoke-free Generation Policy are significant, as the measure will gradually reduce smoking rates culminating in effectively zero smoking prevalence for adults aged 18 and over by 2100. This will prevent significant disease and death. As an example, the modelling estimates that in England the policy could prevent over 150,000 deaths and 470,000 disease cases (e.g. lung cancer, strokes) over time by 2100. We estimate that UK wide, over the first 30 years of the policy, monetising these benefits in Quality Adjusted Life Years, yields an expected benefit of almost £420 million (2024 prices), in addition to wider societal benefits such as productivity gains of over £27.3 billion

(2024 prices) and reduced social care usage of nearly £2 billion (2024 prices).

40. These estimates are relative to a continuation of the status quo on tobacco control, including the level of health protection provided under the Tobacco Products Directive. The measures in the Bill which introduce the Smoke-free Generation Policy would therefore achieve significant positive health and other societal outcomes in Northern Ireland relative to that baseline produced by the Tobacco Products Directive. In other words, the Smoke-free Generation Policy is expected to go further in substantially reducing instances of smoking-related illnesses and significantly reducing the numbers of preventable deaths in Northern Ireland.

41. Support for the Tobacco and Vapes Bill and the Smoke-free Generation Policy in NI: The Northern Ireland Executive has supported the development of the Tobacco and Vapes Bill, agreeing that the UK Government legislate on the Executive's behalf. As part of this they have agreed to be part of the Smoke-free Generation Policy. The Northern Ireland Assembly has supported the passage of the legislation, including the Smoke-free Generation Policy, by providing its Legislative Consent Motion (LCM) for all relevant provisions in the Bill on 10 February 2025.

42. A UK-wide consultation saw an overwhelmingly positive response to the initiative particularly in Northern Ireland, where 79% of individuals approved the Smoke-free Generation Policy (compared with 62.5% across the UK) demonstrating the high level of support in Northern Ireland for the Smoke-free Generation Policy and the Bill.

43. Alignment with international commitments: The measures set out in the UK's Bill support the World Health Organisation Framework Convention on Tobacco Control ("FCTC"), to which both the UK and EU are parties. The FCTC is a global treaty aimed at reducing tobacco-related harm, with the UK's approach supporting the FCTC's focus on restricting youth access to tobacco products, in protecting future generations and aiming for smoking prevalence to reach near-zero, with signatories taking action based on the scientific evidence of public health harms. The UK's approach is therefore aligned with international approaches and treaties which the EU has also signed up to.

Other matters raised

44. Part 6: Ban on advertising of electronic cigarettes: We note the concern raised that the ban on advertising of electronic cigarettes and refill containers in Part 6 of the Bill is not compatible with the provisions in the Tobacco Products Directive in allowing trade-to-trade advertising. We have already provided for an exception for trade-to-trade advertising under clause 119 of the Bill.

45. Breach of the World Trade Organisation Trade-Related Aspects of Intellectual Property Rights Agreement (WTO TRIPS) and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union: We note one comment that the notified provisions of the Bill violate both the WTO TRIPS Agreement and Articles 16 and 17 of the Charter of Fundamental Rights. No explanation was provided as to why this would be the case, and in the case of the WTO TRIPS Agreement there was no reference to which specific provisions of that Agreement would allegedly be breached. In any event, to the extent that these provisions would even be engaged, they would not add anything to the arguments already made regarding the TFEU and Tobacco Products Directive. For the same reasons, any interference with those rights would be justified.

Conclusion

46. It is the UK's view that the Smoke-free Generation Policy and the measures being adopted to put it into effect are not quantitative restrictions or measures having equivalent effect under Article 34 of the TFEU, nor are they a ban under Article 24 of the Tobacco Products Directive. However, in the alternative, they are fully justified on public health grounds.

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