Message 785

Communication from the Commission - TRIS/(2025) 3405

Directive (EU) 2015/1535

Notification: 2025/7022/XI

Forwarding of a detailed opinion received by a Member State (Portugal) (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 18-02-2026.

Detailed opinion - Avis circonstancié - Ausführliche Stellungnahme - Подробно становище - Podrobné stanovisko - Udførlig udtalelse - Εμπεριστατωμένη γνώμη - Dictamen circunstanciado - Üksikasjalik arvamus - Yksityiskohtainen lausunto - Detaljno mišljenje - Részletes vélemény - Parere circostanziato - Išsamiai išdėstyta nuomonė - Sīki izstrādāts atzinums - Opinjoni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Aviz detaliat - Podrobné stanovisko - Podrobno mnenje - Detaljerat yttrande

Extends the time limit of the status quo until 18-02-2026. - Prolonge le délai de statu quo jusqu'au 18-02-2026.- Die Laufzeit des Status quo wird verlängert bis 18-02-2026.- Удължаване на крайния срок на статуквото до 18-02-2026. - Prodlužuje lhůtu současného stavu do 18-02-2026. - Fristen for status quo forlænges til 18-02-2026. - Παρατείνει την προθεσμία του status quo 18-02-2026. - Amplía el plazo de statu quo hasta 18-02-2026. - Praeguse olukorra tähtaega pikendatakse kuni 18-02-2026. - Jatkaa status quon määräaikaa 18-02-2026 asti. - Produžuje se vremensko ograničenje statusa quo do 18-02-2026. - Meghosszabbítja a korábbi állapot határidejét 18-02-2026-ig. - Proroga il termine dello status quo fino al 18-02-2026. - Status quo terminas pratęsiamas iki 18-02-2026. - Pagarina “status quo” laika periodu līdz 18-02-2026. - Jestendi t-terminu tal-istatus quo sa 18-02-2026. - De status-quoperiode wordt verlengd tot 18-02-2026. - Przedłużenie status quo do 18-02-2026. - Prolonga o prazo do statu quo até 18-02-2026. - Prelungește termenul status quo-ului până la 18-02-2026. - Predlžuje sa lehota súčasného stavu do 18-02-2026. - Podaljša rok nespremenjenega stanja do 18-02-2026. - Förlänger tiden för status quo fram till 18-02-2026.

The Commission received this detailed opinion on the 28-11-2025. - La Commission a reçu cet avis circonstancié le 28-11-2025. - Die Kommission hat diese ausführliche Stellungnahme am 28-11-2025 empfangen. - Комисията получи настоящото подробно становище относно 28-11-2025. - Komise obdržela toto podrobné stanovisko dne 28-11-2025. - Kommissionen modtog denne udførlige udtalelse den 28-11-2025. - Η Επιτροπή έλαβε αυτή την εμπεριστατωμένη γνώμη στις 28-11-2025. - La Comisión recibió el dictamen circunstanciado el 28-11-2025. - Komisjon sai üksikasjaliku arvamuse 28-11-2025. - Komissio sai tämän yksityiskohtaisen lausunnon 28-11-2025. - Komisija je zaprimila ovo detaljno mišljenje dana 28-11-2025. - A Bizottság 28-11-2025-án/-én kapta meg ezt a részletes véleményt. - La Commissione ha ricevuto il parere circostanziato il 28-11-2025. - Komisija gavo šią išsamiai išdėstytą nuomonę 28-11-2025. - Komisija saņēma šo sīki izstrādāto atzinumu 28-11-2025. - Il-Kummissjoni rċeviet din l-opinjoni dettaljata dwar il-28-11-2025. - De Commissie heeft deze uitvoerig gemotiveerde mening op 28-11-2025 ontvangen. - Komisja otrzymała tę opinię szczegółową w dniu 28-11-2025. - A Comissão recebeu o presente parecer circunstanciado em 28-11-2025. - Comisia a primit avizul detaliat privind 28-11-2025. - Komisia dostala toto podrobné stanovisko dňa 28-11-2025. - Komisija je to podrobno mnenje prejela dne 28-11-2025. - Kommissionen mottog detta detaljerade yttrande om 28-11-2025. - Fuair an Coimisiún an tuairim mhionsonraithe sin maidir le 28-11-2025.

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1. MSG 785 IND 2025 7022 XI EN 18-02-2026 28-11-2025 PT DO 6.2(2) 18-02-2026

2. Portugal

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4. 2025/7022/XI - X60M - Tobacco

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. DETAILED OPINION OF PORTUGAL ON TRIS NOTIFICATION 2025/7022/XI

On 14 August 2025, the United Kingdom (UK) notified the European Union (EU) of its Tobacco and Vapes Bill, which will implement a ban on the sale and marketing of tobacco products to all citizens born on or after 1 January 2009.

Although Portugal shares concerns about the health consequences of tobacco consumption among young people and the urgent need for improved legislation to regulate its consumption, it is clear that the UK's legislative proposal is in clear breach of the principles of the Treaties, as well as the Windsor Framework, by which Northern Ireland is bound and obliged.

Portugal emphasises that, pursuant to Article 26 of the Treaty on the Functioning of the European Union (TFEU), the Union adopts measures aimed at establishing the internal market, which comprises an area without internal frontiers and in which the free movement of goods is ensured in accordance with the provisions of the Treaties. This enshrines the principle of the free movement of goods, one of the cornerstones of the EU internal market, under which unjustified restrictions on trade between the Member States (and, through the Windsor Framework, with Northern Ireland) are not permitted. This principle is given effect through the prohibition of quantitative restrictions on imports and exports and through the elimination of non-tariff barriers by harmonising divergent national legislation, by agreeing common rules with the aim of ensuring the free movement of goods.

The application of the exception under Article 36 TFEU presupposes, in accordance with the case-law of the Court of Justice of the European Union (CJEU), that it may be invoked only in strictly defined situations for the protection of public health. It is up to the Member State (and, through the Windsor Framework, applicable to Northern Ireland) invoking the exception, to demonstrate, on a case-by-case basis, that the proposed restrictions are justified, i.e. necessary to achieve that objective, and proportionate, meaning no less restrictive measures exist to attain the objectives in question and that the measures do not exceed what is strictly necessary to achieve them.

The CJEU recognises that measures constituting quantitative restrictions on the free movement of goods may be regarded as justified on grounds of the protection of human health and life, insofar as the restriction is justified, necessary and proportionate for the effective protection of the legal interest at stake. The control of the proportionality and necessity of the proposed measures involves an analysis of the factual and legal circumstances so that health concerns can justify a measure having an effect equivalent to a quantitative restriction within the meaning of Article 34 TFEU. It is necessary that such a measure does not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States (and, through the Windsor Framework, applicable to Northern Ireland), as required by Article 36 TFEU.

The application of Article 36 TFEU by the Member States must be based on respect for the principle of proportionality of the measures adopted. Even if the measure is justifiable under one of the derogations in Article 36, it must not constitute a means of arbitrary or disguised discrimination in trade between the Member States. Therefore, a measure to be considered justified under Article 36 TFEU requires that the means chosen be limited to what is

strictly necessary to ensure that the objective pursued is achieved and must be proportionate to that objective. Thus, the

application of the principle of proportionality will consist in the application of alternative measures that pose fewer barriers to trade. The Member State is obliged to choose the least restrictive alternative, and failure to do so constitutes a breach of the principle of proportionality. The Member State is likewise required to pursue the objectives it invokes in a coherent and systematic manner and to avoid inconsistencies between the measures that are chosen and those that are not.

The Member States (and, through the Windsor Framework, applicable to Northern Ireland) may derogate from the fundamental provisions of Articles 30, 34 and 35 TFEU only under Article 36 TFEU (or in exceptional cases). They are, however, constrained by strict principles of non-discrimination, necessity, proportionality (including suitability), and consistency. Thus, a non-discriminatory measure is one that affects, equally, legally and in fact, both domestic products and those from other Member States.

Article 34 TFEU provides that quantitative restrictions on imports, and all measures having equivalent effect, are prohibited between the Member States. At its origin lies a right of defence that may be invoked against national measures which create unjustified obstacles to cross-border trade. Examples of such measures are a total ban or a quota system. Thus, even a system of disguised quotas falls within the scope of Article 34 TFEU. Indeed, in the Dassonville process, confirmed in the Cassis de Dijon case, the CJEU underlines that the most important element in determining whether a national measure falls under Article 34 TFEU is its effect "(…) capable of hindering directly or indirectly, actually or potentially (…)", and considers that it is not only overtly discriminatory measures that create barriers to trade between Member States.

A prohibition on the marketing of a product is the most restrictive measure that a Member State may adopt from the point of view of the free movement of goods. The justification for these strict measures invoked by the Member State (and, through the Windsor Framework, applicable to Northern Ireland) as aiming to protect health under Article 36 TFEU, which imposes a national ban on a product or substance, requires that Member State to demonstrate unequivocally that the measure is necessary and that the marketing of the products in question constitutes a serious risk to public health, and that the restriction must comply with the principles of proportionality and necessity (Case C-270/02, Commission v Italy).

The elimination of quantitative restrictions and measures having equivalent effect is one of the cornerstones of the free movement of goods, and the Court of Justice of the European Union, in the Cassis de Dijon ruling, affirmed the Principle of Mutual Recognition of legislation even in the non-harmonised field. In the area of harmonisation, Member States may only derogate from the provisions of Articles 30, 34 and 35 TFEU, in accordance with Article 36 TFEU, and are therefore bound by and limited to the principles of non-discrimination, necessity, proportionality (including suitability) and unity.

Portugal points out that tobacco products are subject to an exhaustive harmonised regime in the EU by means of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014, therefore a total ban on the consumption and marketing of tobacco to citizens born

on or after 1 January 2009 in Northern Ireland, prevents the marketing of goods legally produced and marketed in other EU Member States, creating legal uncertainty for producers and distributors.

Portugal points out that Annex 2 to the Windsor Framework, entitled 'Provisions of Union law referred to in Article 5(4)', states in point 47 (Others), Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/ 37/EC, it is considered that the current UK legislative proposal with direct application in Northern Ireland for a total ban on the consumption and sale of tobacco products to citizens born after 2009 is not possible under the current framework of the Tobacco Products Directive, which is fully harmonised on the basis of Article 114 TFEU. Furthermore, Article 24(1) of this Directive contains a free-trade clause according to which Member States, and, by their extensive interpretation, Northern Ireland, may not, on grounds relating to aspects covered by the Directive, prohibit or restrict the marketing of tobacco products or related products which comply with the Directive.

Portugal stresses that any limitation to the fundamental freedoms of the EU must respect the principle of proportionality as set out in Article 5(4) of the Treaty on European Union (TEU). Restrictions must be appropriate to achieve their objectives, limited to what is necessary and proportionate in the strict sense, demonstrating that the positive effects of the measure outweigh its negative impacts.

Portugal emphasises that the burden of proof regarding the proportionality of the measure lies with its proponent, in line with the CJEU judgment in case C-456/10, which states that the justifications presented must include a concrete analysis of suitability and proportionality.

Portugal considers that the draft legislation of the UK, and applicable to Northern Ireland, fails to demonstrate that the generational ban is the only effective means to safeguard public health, in particular by failing to assess less restrictive alternatives, such as intensified awareness-raising campaigns, targeted tax increases or smoking cessation programmes, and consequently in breach of the principle of proportionality.

Portugal submits that the choice to apply the measure to citizens born on or after 1 January 2009 lacks objective and substantiated criteria, considering that this is an arbitrary distinction between individuals based on the year of birth, which could raise issues of discrimination, with a potential violation of Article 20 of the EU Charter of Fundamental Rights.

Portugal would like to highlight that the measure risks creating cross-border trade distortions, with consumers in Northern Ireland potentially purchasing tobacco products in the Republic of Ireland and consequently fuelling illicit trade.

Portugal would like to recall that the Tobacco Products Directive establishes a harmonised framework for the regulation of tobacco and nicotine products. It is considered that the total

ban ignores this harmonisation, creating an unnecessary barrier to the free movement of commercial services and information between the EU and Northern Ireland.

Consequently, Portugal reiterates that the notified draft violates the Windsor Framework, given the direct applicability of the Tobacco Products Directive in Northern Ireland.

Portugal would like to highlight that national measures intended to implement national rules in breach of EU law are part of the provisions that violate EU rules.

Therefore, Portugal concludes that the United Kingdom has not provided adequate justification for the proportionality of the proposed obligations and has not demonstrated that the objective of protecting young people's health cannot be achieved through measures that are less restrictive of intra-Community trade.

Moreover, Article 114 TFEU, which constitutes the legal basis for the internal market, further limits the UK’s discretion as regards the imposition of a generational sales ban.

Portugal presents its detailed opinion and invites the UK authorities to take it into account in order to ensure that national legislation is adopted and applied in accordance with applicable EU law, as it considers that the principles of the Treaties and the Windsor Framework are not being respected and that quantitative restrictions and equivalent measures are in place.

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