

Annex: Transposition Note

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Regulations 2019 transpose Directive 2018/410/EU, amending Directive 2003/87/EC. The present instrument contains amendments to SI 2012/3038 (the “2012 GHG Regulations”), that transposed Directive 2003/87/EC, establishing a system for greenhouse gas emission allowance trading within the Union (the “EU ETS Directive”). The table below illustrates how the revised Directive has been transposed.

In addition, this SI implements, by amending SI 2012/3038, the following EU Regulations, adopted in preparation for Phase IV of the EU ETS.

- Commission Implementing Regulation 2018/2067/EU (“the Verification Regulation 2018”):
Regulation 3(2)(l): definition provision;
Regulation 4(4): designation of the Environment Agency as the focal point for the purposes of Article 70(2) of the Verification Regulation 2018;
Regulation 31(1): saving provision.
- Commission Implementing Regulation 2018/2066/EU (“the Monitoring and Reporting Regulation 2018”):
Regulation 3(2)(h): definition provision;
Regulation 4(2): designation of the regulator as competent authority for the purposes of the Monitoring and Reporting Regulation 2018;
Regulations 7(3)(b); 13; 14; 15(2) and (3); 16; 17; 18(2)(a), (4)(c) and (6); 19(a); 28; 29(5)(d) and (e) contain updated references to the new Monitoring and Reporting Regulation 2018;
Regulation 31(2): saving provision.
- Commission Delegated Regulation 2019/331/EU (“the Free Allocation Regulation”) (only in part):
Regulation 3(2)(g): definition provision;
Regulation 3(2)(j): definition of sub-installation;
Regulation 4(5): designation of the regulator as competent authority for the purposes of the Free Allocation Regulation;
Regulation 29(8)(i): definition of measurable heat.

Directive 2018/410/EU Provision	Content/description of the provision	Transposition required (yes-no-n/a)	New SI provisions
Article 1	Amendments to Directive 2003/87/EC		
Article 1(1)	Throughout the Directive, the term ‘Community scheme’ is replaced by ‘EU ETS’ and any necessary grammatical changes are made.	no – the term is not used in SI 2012/3038.	n/a
Article 1(2)	Throughout the Directive, the word ‘scheme’ is replaced by ‘system’ and any necessary grammatical changes are made.	no – transposition not required. Linguistic adjustments.	n/a
Article 1(3)	Throughout the Directive, the word ‘Community’ is replaced by ‘Union’ and any necessary grammatical changes are made.”	no – the word is not used in SI 2012/3038 (except for EU legislation in the footnotes).	n/a
Article 1(4)	Throughout the Directive, the words ‘regulatory procedure referred to in Article 23(2)’ are replaced by ‘examination procedure referred to in Article 22a(2)’.	n/a	n/a
Article 1(5)	In the first subparagraph of Article 3c(2) and in Article 10(1a), the reference to ‘Article 13(1)’ is replaced by a reference to ‘Article 13.	n/a	n/a
Article 1(6)	In Article 3g, in point (d) of the first paragraph of Article 5, in point (c) of Article 6(2), in the second subparagraph of Article 10a(2), in Article 14(2), (3) and (4), in Article 19(1) and (4), in the first subparagraph of Article 24(3) and in Article 29a(4), the word ‘regulation’ is replaced by ‘acts’ and any necessary grammatical changes are made.	n/a	n/a
Article 1(7)	Article 3, point (h) is replaced by the following: ‘(h) “new entrant” means any installation carrying out one or more of the activities listed in Annex I, which has obtained a greenhouse gas emissions permit for the first time within the period starting from three months before the date for submission of the list under Article 11(1), and ending three months before the date for the submission of the subsequent list under that Article;’.	no – not included in the definitions transposed with SI 2012/3038.	n/a
Article 1(8)	This Article replaces paragraph 3 in Article 3d of the Directive. The Article confers to the Commission the power to adopt delegated acts to supplement the Directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances.	n/a	n/a
Article 1(9)	In Article 3f, paragraph 9 is deleted.	n/a	n/a

	The amendment removes the provision that allowed the Commission to establish detailed rules on the operation of the special reserve for certain aircraft operators.		
Article 1(10)	In Article 6(1), the third subparagraph is deleted. The amendment removes the requirement to review greenhouse gas emissions permits at least every five years.	yes	Regulation 7(2)
Article 1(11)	Article 8, concerning the coordination with Directive 2010/75/EU is replaced. The amendment only replaces references to outdated EU legislation.	no – article not transposed with SI 2012/3038.	n/a
Article 1(12)	Article 9 is amended. The provision establishes the linear factor applicable in Phase IV (2.2%).	n/a	n/a
Article 1(13)	This Article contains the following amendments to Article 10, concerning the auctioning of allowances.		
	(a) paragraph 1 is replaced. The provision determines the share of allowances to be auctioned from 2021 onwards and the quantity of allowances that shall be auctioned between 2021 and 2030 to establish the “Modernisation Fund”.	n/a	n/a
	(b) paragraph 2 is amended. The provision concerns the percentage of allowances that should be distributed for auction among Member States and defines the additional quantity of allowances to be auctioned being distributed amongst certain Member States for the purposes of solidarity, growth and interconnections within the Union.	n/a	n/a
	(c) paragraph 3 is amended, by replacing point (b), (h), and adding point (j) and (k). Member States determine the use of revenues generated from the auctioning of allowances. At least 50% of the revenues should be devoted to the reduction of greenhouse gas emissions by different means (i.e. development of renewable energies, implementation of measures intended to improve energy efficiency, financing climate actions in vulnerable third countries and promotion of skill formation).	n/a	n/a
	(d) in paragraph 4, the first, second and third subparagraphs are replaced. The provision empowers the Commission to adopt delegated act to supplement the Directive concerning the auctioning of allowances.	n/a	n/a
	(e) in paragraph 5, the second sentence is replaced. The provision imposes a reporting obligation on the Commission to the EU Parliament and to the Council on the functioning of the carbon market and on other	n/a	n/a

	relevant climate and energy policies, including the operation of auctions.		
Article 1(14)	This Article contains the following amendments to Article 10a, concerning transitional Union-wide rules for harmonised free allocation.		
	(a) in paragraph 1, the first and second subparagraphs are replaced. The provision empowers the Commission to adopt delegated act to supplement the Directive concerning the Union-wide and fully harmonised rules for the allocation of allowances.	n/a	n/a
	(b) in paragraph 2, subparagraphs are added. The Commission shall adopt implementing acts to determine revised benchmark values for free allocation.	n/a	n/a
	(c) paragraph 4 is replaced. The provision concerns free allocation for district heating and high efficiency cogeneration.	n/a	n/a
	(d) paragraph 5 is replaced. The provision contains arrangements to ensure the respect of the auctioning share of allowances set out in Article 10 of the Directive.	n/a	n/a
	(e) The provision inserts paragraphs 5(a) and 5(b). The provisions contain exceptions to paragraph 5 and further details on adjustments to the maximum amount of free allocations that respects the auctioning share.	n/a	n/a
	(f) paragraph 6 is replaced. The provision contains reporting and publishing obligations for Member States that adopt financial measures in favour of sectors exposed to a genuine risk of carbon leakage due to significant indirect costs.	yes	Regulation 25
	(g) paragraph 7 is amended. The provision concerns the amount of allowances to be allocated to the New Entrants Reserve.	n/a	n/a
	(h) in paragraph 8, the first, second and third subparagraphs are replaced. The provision establishes an Innovation Fund. 325 million allowances which could otherwise be allocated for free pursuant to this Article, and 75 million from those auctioned under Article 10 are made available to support innovation in low-carbon technologies and processes in sectors listed in Annex I and stimulate carbon capture projects and other technologies. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning rules on the operation of the innovation fund, including the selection procedure and criteria.	n/a	n/a

	(i) paragraph 9 is replaced. The provision allows Greece to claim allowances for the decarbonisation of the electricity supply of islands within its territory.	n/a to the UK	n/a
	(j) paragraph 10 is deleted.	n/a	n/a
	(k) in paragraph 11, the wording ‘with a view to reaching no free allocation in 2027’ is deleted. The amendment removes the reference to an ambition to reaching no free allocation by 2027.	n/a	n/a
	(l) paragraphs 12 to 18 are deleted.	yes - limited to the deletion of Article 10a(13).	Regulation 29(5)(c)
	(m) replacement of paragraph 20 by the following: ‘20.The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adjustments shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7 of this Article.’.	no – the Commission has exercised the power to adopt implementing regulation at EU level.	n/a
	(n) addition of paragraph 21, entrusting the Commission with the power to adopt implementing acts which define arrangements for the allocation adjustments.	n/a	n/a
Article 1(15)	Articles 10b and 10c are replaced by the following:	n/a	n/a
	‘Article 10b Transitional measures to support certain energy intensive industries in the event of carbon leakage’. New provision on transitional measure to support certain EII in the event of carbon leakage.	n/a	n/a
	‘Article 10c Option for transitional free allocation for the modernisation of the energy sector’. The Article provides that Member States which had in 2013 a GDP per capita at market prices (in euros) below 60 % of the Union average may give a transitional free allocation to installations for electricity generation for the modernisation, diversification and sustainable transformation of the energy sector. The Article details applicable procedural requirements.	n/a to the UK.	n/a
Article 1(16)	Article 10d ‘Modernisation Fund’ is inserted. The Article contains detailed provisions on the functioning of the Modernisation Fund. The Fund aims to support investments by Member States with a GDP per capita at market prices below 60% of the Union average in 2013.	n/a to the UK.	n/a

	The Commission must adopt implementing acts concerning detailed rules on the operation of the Modernisation Fund.		
Article 1(17)	Article 11(1), concerning national implementation measures is amended. The amendment requires Member States to provide lists of installations (and other data) by 30 September 2019 and every subsequent 5 years thereafter, failure to do so will prevent distribution of free allocations.	no – the Free Allocation Regulation, which is directly applicable, contains the same requirement.	n/a
Article 1(18)	In Article 11a, paragraphs 8 and 9 are deleted. The amendments remove references to the use of project credits during Phase III.	n/a	n/a
Article 1(19)	In Article 11b, paragraph 7 is deleted. The amendment removes the requirement on the Commission to adopt provisions for the implementation under Article 11(3), (4) and (5).	n/a	n/a
Article 1(20)	Article 12(4) is amended. The provision allows Member States to cancel allowances from the total quantity of allowances to be auctioned by them in the event of closure of electricity generation capacity in their territory. The Member State concerned shall inform the Commission of such intended cancellation.	n/a	n/a
Article 1(21)	Article 13 is replaced by ‘Article 13 Validity of allowances’. The provision concerns the validity of allowances.	n/a	n/a
Article 1(22)	Article 14, paragraph 1 is replaced. The amendment concerns the Commission’s obligation to adopt implementing acts containing detailed arrangements for the monitoring and reporting of emissions, and the procedure applicable for the adoption of those acts.	n/a	n/a
Article 1(23)	In Article 15, the third, fourth and fifth paragraphs are replaced. The amendments provide that the Commission must adopt implementing acts concerning the verification of emission reports. The Commission may also adopt implementing acts for the verification of reports submitted by aircraft operators.	n/a	n/a
Article 1(24)	Article 16, paragraph 12 is replaced. The provision entrusts the Commission with the adoption of implementing acts containing detailed rules in respect of procedures on penalties.	n/a	n/a
Article 1(25)	Article 19, paragraph 3 is replaced. The provision empowers the Commission to adopt delegated acts in accordance with Article 23 to supplement the Directive by laying down all	n/a	n/a

	necessary requirements concerning the Union Registry.		
Article 1(26)	Article 21, concerning reporting by Member States is amended. The provision specifies that the report shall be drawn up on the basis of a questionnaire adopted by the Commission, and that every three years the report shall pay particular attention to the equivalent measures adopted for small installations excluded from the EU ETS	no – not transposed with SI 2012/3038. Administrative arrangements are in place to ensure required data is collected.	n/a
Article 1(27)	Article 22 is replaced by ‘Article 22 Amendments to the Annexes’. The provision empowers the Commission to adopt delegated acts in accordance with Article 23 to amend the Annexes to the Directive, with some exceptions.	n/a	n/a
Article 1(28)	The Article inserts ‘Article 22a Committee procedure’. The Article provides that the Commission is assisted by the Climate Change Committee established by Article 26 of Regulation (EU) No 525/2013 of the European Parliament and of the Council.	n/a	n/a
Article 1(29)	Article 23 is replaced by ‘Article 23 Exercise of the delegation’. The Article details the condition for the exercise of the Commission’s power to adopt delegated acts.	n/a	n/a
Article 1(30)	Article 24 is amended. The new paragraph 1 provides that Member States may apply emission allowance trading to activities and to greenhouse gases which are not listed in Annex I of the Directive. Such inclusion is approved by the Commission adopting delegated acts in accordance with Article 23 of the Directive.	n/a	n/a
Article 1(31)	Article 24a is amended, by replacing its first and second subparagraphs. The provision empowers the Commission to adopt measures for issuing allowances or credits in respects of projects administered by member States that reduce greenhouse gas emissions not covered by the ETS.	n/a	n/a
Article 1(32)	Article 25, paragraph 2 is deleted. The provision omits a paragraph concerning a requirement for the Commission to adopt provisions relating to mutual recognition of allowances under agreements concluded with third countries.	n/a	n/a
Article 1(33)	Article 25a(1), first and second subparagraphs are replaced. Where a third country adopts measures for reducing the climate change impact of flights departing from	n/a	n/a

	that third country which land in the Union, the Commission must consider options available in order to provide for optimal interaction between the EU ETS and that country's measures and empowered to adopt delegated acts to that effect.		
Article 1(34)	In Article 27(3), the second subparagraph is replaced by the following: ‘Any such installation shall stay in the EU ETS for the rest of the period referred to in Article 11(1) during which it was reintroduced.’	yes	Regulation 29(10)(b)
Article 1(35)	<p>The provision inserts Article 27a ‘Optional exclusion of installations emitting less than 2500 tonnes:</p> <p>1. Member States may exclude from the EU ETS installations that have reported to the competent authority of the Member State concerned emissions of less than 2 500 tonnes of carbon dioxide equivalent, disregarding emissions from biomass, in each of the three years preceding the notification under point (a), provided that the Member State concerned:</p> <p>(a) notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) is to be submitted or at the latest when that list is submitted to the Commission;</p> <p>(b) confirms that simplified monitoring arrangements are in place to assess whether any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year;</p> <p>(c) confirms that if any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year, the installation will be reintroduced into the EU ETS; and</p> <p>(d) makes the information referred to in points (a), (b) and (c) available to the public.</p> <p>2. When an installation is reintroduced into the EU ETS pursuant to point (c) of paragraph 1 of this Article, any allowances allocated pursuant to Article 10a shall be granted starting from the year of the reintroduction. Allowances allocated to such an installation shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.</p> <p>3. Member States may also exclude from the EU ETS reserve or backup units which did not operate more than 300 hours per year in each of the three years preceding the notification under point (a) of paragraph 1, under the same conditions as set out in paragraphs 1 and 2.’</p>	yes – with the exception of Article 27a(3) concerning the optional exclusion of reserve or backup units, that the UK has decided not to implement.	Regulation 3(2)(b), (c), and (e) Regulation 3(3)(a) and (b) Regulation 5(3) Regulation 10 Regulation 12 Regulation 22 Regulation 30 Schedule “Excluded installations: Article 27a installations”

Article 1(36)	Article 28c is replaced by ‘Article 28c Provisions for monitoring, reporting and verification for the purpose of the global market-based measure’. The provision empowers the Commission to adopt delegated acts to supplement the Directive concerning the appropriate monitoring, reporting and verification of emissions for the purpose of implementing the ICAO's global market-based measure.	n/a	n/a
Article 1(37)	Article 30 is replaced by ‘Article 30 Review in the light of the implementation of the Paris Agreement and the development of carbon markets in other major economies.’ The provision provides for the review of the Directive in light of the long-term objectives of the Paris Agreement and climate policy measures in other major economies. The Commission must report to the European Parliament and to the Council in the context of each stocktake agreed under the Paris Agreement and may make proposals to amend the Directive where appropriate.	n/a	n/a
Article 1(38)	In Annex IIa to Directive 2003/87/EC, the entries for Belgium, Italy, Luxembourg and Sweden are deleted.	n/a	n/a
Article 1(39)	Annex IIb to Directive 2003/87/EC is replaced by the text appearing in Annex I to this Directive.	n/a	n/a
Article 1(40)	Annex IV to Directive 2003/87/EC is amended in accordance with Annex II to this Directive.	n/a	n/a
Article 2	Amendments to Decision (EU) 2015/1814 Article 1 of Decision (EU) 2015/1814, concerning the establishment and operation of the market stability reserve is amended. The amendments concern the percentages and number of allowances constituting the reserve up until 31 December 2023	n/a	n/a
Article 3	Transposition provision.	n/a	n/a
Article 4	Transitional provision.	n/a	n/a
Article 5	Entry into force provision.	n/a	n/a
Article 6	Addressees.	n/a	n/a
Annex I	Annex I replaces Annex IIb to the Directive 2003/87/EC (Distribution of funds from the Modernisation Fund until 31 December 2030).	n/a	n/a
Annex II	Annex II amends Part A of Annex IV to Directive 2003/87/EC.	n/a	n/a