Directive – 2023/959

Information Note from the Department

1. Directive Title

Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system.

2. Transposition Deadline

The deadline for transposition is 31 December 2023 for ETS I. Chapter IVa, on Buildings and Road Transport has two transposition dates- Article 30(f)4 is required by 31 December 2023, all other articles in Chapter IVa have a transposition date of 30 June 2024.

3. Anticipated Transposition date

It is currently the intention to transpose all articles in one SI by 31 December 2023.

4. COM number of original Commission proposal

COM/2021/551

5. Department with primary responsibility

Department of the Environment, Climate and Communications.

6. Other Departments involved

Department of Transport
Department of Public Expenditure, National Development Plan Delivery and Reform
Department of Finance

7. Background to, short summary and aim of the directive

Presented by the European Commission on 14 July 2021, the revision of the EU Emissions Trading System (EU ETS) was part of the Fit for 55' package which will enable the European Union to reduce its net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels and to achieve climate neutrality in 2050. The existing EU ETS is reformed to increase the overall ambition of emissions reductions by 2030 in the sectors covered to 62% (previously 43%) and emissions trading is extended to new sectors.

For the existing EU ETS the annual cap on allowances is further reduced and the Market Stability Reserve is strengthened. These measures will reduce the number of allowances available and incentivise emissions reductions. Free allocation rules are changed to be better targeted for addressing risks of carbon leakage. Installations that benefit will need to comply with additional requirements including energy audits and free allocation for sectors covered by the Carbon Border Adjustment Mechanism will be phased out in line with the implementation of that Regulation. Additional allowances will be allocated to the Innovation and Modernisation funds to support the development of low-carbon technologies and lower income Member States respectively.

Emission trading is extended to include new sectors. The EU ETS (ETS I) is extended to the maritime sector with a gradual introduction of obligations for shipping companies to surrender allowances: 40% for verified emissions from 2024, 70% for 2025 and 100% for 2026.

A new and separate Emissions Trading System (ETS II) for the Buildings, Road Transport and Additional Sectors (primarily small industry currently excluded from ETS I) is established. The ambition of the new ETS, in terms of emission reductions and considering the inclusion of additional sectors (notably industrial process heating in the segment of the industry sector not in ETS I), is a 43% emission reduction by 2030 - compared to 2005 levels.

8. Legal basis of the Directive

The legal basis for this proposal is Article 192 TFEU. In accordance with Article 191 and 192(1) TFEU, the European Union shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

9. Category of Directive

Some significance. The Directive amends Directive 2003/87/EC with respect to the current ETS system and introduces a new parallel ETS for Buildings and Road Transport

10. Implications for Ireland

While supporting the increased ambition for the EU ETS, the Directive extends emissions trading to sectors of the economy that are currently covered by Ireland's domestic carbon tax. Ireland will therefore apply for a derogation under the Directive, which allows for a Member State with a carbon tax equivalent or higher than the average ETS II auction rate from the obligation on regulated entities to surrender ETS II allowances. This derogation requires a successful notification to the European Commission by 31 December 2023- and periodically thereafter. However, availing of the derogation does still require the Monitoring and Reporting elements of ETS II to be implemented in respect of regulated entities.

11. Impact on the public

The increased ambition of emissions reductions will likely result in the price of EU ETS allowances remaining high and increasing during current EU ETS phase (2021-2030). Average prices have increased to around €85 in 2023. These costs arise in the sectors covered such as electricity, cement, and metals production which will have direct and indirect price impacts for the public.

It is not expected that the ETS II (for Buildings, Road Transport and additional Sectors) will have direct impact on the public as end-users of the fuels. ETS II is envisaged to be regulated at the point where the relevant fuels are released for consumption onto the Irish market- i.e., the fuel suppliers, not the end users, i.e., individual consumers such as householders and private car drivers will not be the point of regulation in ETS II. In the event of application of the derogation, regulated entities will not be obliged to hold and surrender allowances and will not be expected to incur any significant additional costs that may be passed on to consumers.

12. Estimated cost to the Exchequer

Administrative costs can be recovered from the portion of allowances allocated to Member States. In order to address the social impacts on vulnerable households resulting from the introduction of an emission trading scheme for buildings and road transport a Social Climate Fund is to be established. The fund is to be financed via the auctioning of 50 million allowances of the existing EU ETS and 150 million allowances from emissions trading in the buildings, road transport and additional sectors, amounting to €65 billion altogether, with an additional 25% covered by national resources (bringing the total to €86.7 billion). Ireland's contribution to the Social Climate Fund will have an impact upon the Exchequer, with further analysis required on this area

13. Consequences and possible costs, arising from non-transposition

Not Applicable

14. Have consultations taken place with stakeholders or are there any plans to do so?

The European Commission's open public consultation on the legislative initiative was open until 5 February 2021. Public consultation in Ireland is not currently expected on implementation and transposition of the directive. However, details of support available from the European Commission for outreach activities for the benefit of ETS II regulated entities are awaited.

15. Are there areas of the Directive where Member States have discretion on implementation?

Member states have discretion for the various aspects of the implementation. This includes compliance and enforcement. For example, SI 490/2012 and amendments assign the EPA as the competent authority and enables it to issue fines for failures to comply with the Directive.
ETS II, specifically Article 30j, allows the Member State to opt-in additional sectors not currently covered by the Directive, provided that the European Commission agrees to the extension. This would allow the Member state to opt-in the small number of sectors not currently covered by either ETS I, or ETS II.

16. Does Ireland intend to seek any derogations from the provisions of the Directive?

Ireland intends to seek a derogation from the obligation on regulated entities to surrender allowances under the ETS II system, based on the current national carbon tax system- as laid out in Article 30(e)3 of the directive.

17. Offences or penalties (if any) to be created by the transposition of the Directive

The offences under this Directive are currently intended to match SI 490/2012- which along with amendments is the current transposition.

18. Competent authorities or market surveillance authorities (if any) to be designated by the transposition of the Directive

The Environmental Protection Agency has been designated Competent Authority for ETS proposals contained in Directive 2023/959. This will include a continuation of their current role as well as new roles regarding ETS II and ETS 1 extension to Maritime.

19. Consequences for national legislation?

Legislative changes are required at national level to implement the revised EU ETS Directive. The EU ETS Directive is transposed using and S.I. No. 490/2012 - European Communities (Greenhouse Gas Emissions Trading), and S.I. No. 261/2010 - European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010.

20. Are there any parts of the Directive which are planned to be transposed by primary legislation, and if so, which parts?

No parts of the Directive are planned to be transposed by primary legislation.

21. When is it anticipated that the draft statutory instrument(s) transposing this Directive will be available?

The Statutory instrument transposing this Directive is currently undergoing legal drafting and will be available after that process is completed.

21. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Date 12/09/2023