Revenue from the EU ETS – Legal Requirements for the Use of Funds

1 BACKGROUND

The European Emissions Trading System for Industry and Shipping (ETS1) generates substantial annual revenue for the EU Member States by auctioning a significant part of the allowances that companies must purchase and surrender for their CO2 emissions. In 2024 alone, the Member States incurred EUR 24.4 billions of revenues through auctioning.[1]In addition, starting in 2027, revenues are expected from the early auctioning of allowances under the Emissions Trading System for Buildings and Transportation (ETS2).

This document analyzes the legal requirements of the ETS Directive regarding the use of revenues generated by Member States and puts forward compliance and policy recommendations for the Member States and the Commission.

2 EXECUTIVE SUMMARY

The ETS Directive sets rules on how Member State revenues from the auctioning of allowances may be used. Each Member State must plan and determine how it will use its revenues. To the extent that national budgetary law permits the earmarking of revenues, e.g. by sequestering into a special fund separate from the general budget, it follows from the purpose of the ETS Directive that the revenues themselves — and not merely their equivalent value — must be spent on the permissible purposes (3.1).

Revenues may only be used for specific, permissible purposes (3.2). The obligation to plan and determine the use of revenues is thus limited to choosing among the permissible purposes and the concrete measures to that end.

Art. 10(3) ETS Directive lists the permissible purposes for ETS1 revenues (3.2.1.1). They all serve the objectives of

- climate protection,
- adaptation to climate change,
- the protection or restoration of ecosystems,
- a socially just transition to a climate-neutral economy and society,
- or the financing of international climate protection measures or climate adaptation.

The decarbonization of the transportation, building, and heating sectors, for example, is specifically listed as permissible purpose. Measures for a socially just transition include reskilling and upskilling affected workers, as well as various types of financial support — including support for renewable electricity costs for low- and middle-income households, as well as climate dividend schemes.

[1] European Commission, 2025 Carbon Market report, COM(2025) 735 final, 03.12.2025, p. 22.

ETS1 revenues may also be used, to a limited extent, for financial aid for indirect CO2 emission costs in electricity-intensive industries (3.2.1.2). Member States must, applying their best efforts, strive to not spend more than 25% of their ETS1 revenues on such aid. This limit has been repeatedly exceeded by several Member States.

Art. 30d(6) ETS Directive specifies permissible purposes for the spending of ETS2 revenues (3.2.2). In particular, revenues may be used for socially effective measures in the building and transportation sectors, as well as for co-financing national Social Climate Plans (3.2.2.2). Additionally, all purposes permitted for ETS1 revenues are also permitted for ETS2, with the exception of financial aid for indirect CO2 emission costs (3.2.2.1). However, strict priority must be given to purposes that contribute to addressing the social aspects of ETS2, namely households affected by or risking energy and transport poverty, especially among low- and middle-income households (3.2.2.1.2). Only once these social aspects have been addressed may ETS2 revenues be used for the remaining purposes specified in Art. 10(3) ETS Directive.

The ETS Directive allows Member States to leverage (private) finance for the permissible purposes instead of spending the revenues (3.2.3). To that end, Member States must adopt financial or regulatory polices specifically with this objective in mind; the leveraged finances may not be double counted and they must be additional, meaning they would not have been generated otherwise.

Member States must report annually on the use of ETS revenues (4). The reporting must be sufficiently detailed to allow the Commission to verify compliance with the spending rules.

Several recommendations for Member States and the Commission (5) can be derived from the above, in particular:

- Sequestering ETS1 and ETS2 revenues into a separate fund or earmarking by other means, whenever national budgetary law allows;
- Using both ETS1 and ETS2 revenues for ETS2-compatible purposes, or, at the very least, clearly differentiate between ETS1 and ETS2 revenues;
- Taking up measures to sustainably lower costs for indirect CO2 emissions and more closely monitoring the 25% indicative limit;
- Submitting national Social Climate Plans;
- Various clarifications on the wording of the ETS Directive.

3 RULES FOR THE USE OF REVENUES

The ETS Directive sets out rules for the use of revenues that Member States generate from the auctioning of allowances. Essentially, the rules for the use of proceeds from ETS1 and ETS2 are the same, with some differences regarding the permissible purposes of revenue usage. The rules are therefore explained in general terms, with distinctions made between ETS1 and ETS2 where necessary.

3.1 Obligation to Plan and Determine

Member States have an obligation to plan and determine the use of the revenues from the auctioning of ETS allowances. For ETS1 allowances, this obligation arises from Art. 10(3), subpara. 1, sentence 1, in conjunction with Art. 10a(6) ETS Directive; for ETS2 allowances, it arises from Art. 30d(6), subpara. 1 of the ETS Directive. The provisions essentially state:

> *"Member States shall determine the use of revenues generated from the auctioning of allowances […]. Member States shall use those revenues […], or the equivalent in financial value of those*

revenues, for one or more of the following [purposes]"
(editorial omissions by the author for better readability)

The obligation to plan arises from the fact that Member States must choose one or more of the permissible purposes when making their determination and, in doing so, must take certain requirements into account and weigh various factors (see 3.2 below).

Furthermore, it follows from the intent of these provisions and the legislative history that the revenues must be used in kind — that is, immediately upon their generation — for the permissible purposes. The usage in kind can be ensured by e.g. earmarking the revenues for specific purposes or directing the revenues into separate, purpose-aligned state funds. This cannot be directly inferred from the wording of the provision, according to which it would suffice to use the "equivalent in financial value of those revenues" for the specific purposes. However, the legislative history indicates that this option was included solely to accommodate the national budgetary laws of the Member States.[2] This history also indicates that direct use takes precedence when it is permitted under national budgetary law.[3] Furthermore, the purpose of these provisions is to ensure that the revenues are used in their entirety and as directly and effectively as possible for climate protection and climate adaptation. This is easier to ensure when revenues are sequestered or otherwise earmarked. Thus, as long as the preconditions for sequestering or a different way of earmarking can be fulfilled, Member States are obliged to do so.

3.2 Permissible purposes

The ETS Directive provides an exhaustive list of purposes for which auctioning revenues may be used. The permissible purposes on the use of revenues from ETS1 and ETS2 are similar. The purposes permitted under ETS2 are partly based on the ETS1 revenue purposes and are subject to stricter requirements, as the priority lies on addressing the social aspects associated with ETS2.

3.2.1 Permissible purposes under ETS1

The revenues are to be used for climate protection and for adapting to the consequences of climate change. Art. 10(3), subpara. 1 of the ETS Directive lists the permissible purposes under letters a) through l). Another permissible purpose is mentioned separately, namely financial measures to support sectors at risk of carbon leakage due to indirect CO2 costs (see 3.2.1.2 below).

3.2.1.1 List of Measures under Article 10(3) of the ETS Directive

Art. 10(3), subparas. 1(a) through (l) ETS Directive list permissible measures for the use of funds. In addition to covering administrative costs (point. (i)), these permissible measures are all related to at least one of the following areas:

- Climate protection through the reduction of greenhouse gas emissions in various sectors:
    - Decarbonization of industry, particularly the ETS1 sectors, low-carbon technologies, CCUS, and energy efficiency in industrial sectors) (points a, b, g)
    - Energy supply, grids, and storage (renewable energy, self-consumers) (point b)
    - Transportation sector (shifting to forms of transport that contribute significantly to the sector's decarbonization: public transportation and mobility (rail, bus, subway, tram,

[2] Recital 22 of Directive 2008/101/EC of 19.11.2008 amending the ETS-Directive; Press release accompanying 2895th Council meeting, 9 and 10 October 2008, point 13.
[3] Recital 22 of Directive 2008/101/EC: „*revenues generated from the auctioning of allowances, or an equivalent amount where required by overriding budgetary principles of the Member States, such as unity and universality, should be used to reduce greenhouse gas emissions*".

bicycle, walking), maritime transport (including energy efficiency, infrastructure, and alternative fuels), and aviation (including the decarbonization of airports and alternative fuels) (point f)
    - Buildings and the heating sector, in particular energy efficiency, heating and cooling from renewable energy sources in buildings, district heating networks, thermal insulation, and building renovation in accordance with the Energy Performance of Buildings Directive (point h)
- Protection and restoration of ecosystems (such as peatlands, forests, and marine-protected areas) (point c)
- A socially just transition to a climate-neutral economy and society, through
    - Restructuring of the labor market and upskilling and reskilling for workers affected by the transition, including in maritime transport (point k)
    - Financial support to address social aspects in low- and middle-income households, including by reducing distortive taxes and targeted reductions of duties and charges for renewable electricity (point ha)
    - Financing national climate dividend schemes with proven positive environmental impacts (point hb)
- Climate adaptation (point a)
- International financing of climate-action in vulnerable third countries, technology transfers, and international climate adaptation (points j and c)
- Environmentally safe carbon capture and storage
    - through permanent removals, including DACCS (point e)
    - in the LULUCF sector, particularly forestry and in the Union's soil (point d)
- Addressing the residual risk of carbon leakage for sectors covered by the CBAM (point l)

Regarding point (j) (international climate finance), it should be noted that this refers to genuine climate finance under Article 9 of the Paris Agreement and not, for example, the purchase of internationally transferred mitigation outcomes under Article 6 of the Paris Agreement. Recital 13 of Directive (EU) 2018/410, which added this intended use, specifically refers to the UNFCCC Green Climate Fund. Art. 10(3), subpara. 2 of the ETS Directive further stipulates:

> *"When determining the use of revenues […], Member States shall take into account the need to continue scaling up international climate finance in vulnerable third countries referred to in the first subparagraph, point (j)."*
> (Omission is for readability)

Accordingly, Member States must consider the extent to which they can cover their pledged contributions to international climate finance from ETS revenues and top them up as necessary. The "necessity" referred to in the legal text stems from the EU's and the Member States' international law obligations pursuant to Art. 9 Paris Agreement to provide, together with other developed countries, climate finance that enables developing countries to perform climate adaptation as well as achieve their fair share in staying below the temperature limit of 1.5°C global warming.[4] Here, the EU's commitments and the financing targets adopted at the Conferences of the Parties — most recently, USD 300 billion per year from public sources and 1.3 trillion per year from all sources[5] — can serve as an indicator for the minimum baseline of that necessity.

[4] International Court of Justice, Obligations of States in Respect of Climate Change, Advisory Opinion 23.07.2025, para. 264-265.
[5] https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and (last retrieved: 30.06.2026).

3.2.1.2 Financial measures for indirect CO2-costs

Since 2013, the start of phase 3 of ETS1, free allowances were not allocated for electricity generation anymore.[6] This was intended to decarbonize electricity generation and to incentivize electricity generation from renewable sources. Installations generating electricity from fossil fuels were therefore required to purchase more CO2 allowances, but were able to pass on the costs to industry. Out of concern for "carbon leakage" — the relocation of electricity-intensive industries to non-EU countries with lower electricity prices but a more CO2-intensive electricity mix — subsidies were introduced for certain (sub)sectors to prevent such relocation.

According to Art. 10a(6) ETS Directive, Member States *should* adopt financial measures in favour of (sub)sectors that are exposed to an actual risk of carbon leakage due to the indirect CO2 costs included in the price of electricity. To ensure compatibility with EU state aid law (Artt. 107, 108 TFEU), the European Commission issued guidelines under which such measures are considered to be in compliance with state aid law. The adoption of financial measures in the sense of Art. 10a(6) is therefore not mandatory, but intended. Thus, the decision to forgo or abolish such measures must be justified. However, Art. 10a(6) ETS Directive does not stipulate that the measures *must* or *should* be paid from ETS revenues, but only that it *may* be paid from them.

3.2.1.2.1 Aid for indirect costs: indicative limit

When providing such aid, Member States shall seek to use no more than 25% of the national revenues generated by ETS1, Art. 10a(6) subpara. 2, sentence 1 ETS Directive. This obligation (as clarified by the use of the term "shall") contains a procedural, especially a reporting aspect as well as a material and substantive aspect.

On the procedural side, Art. 10a(6) ETS Directive stipulates increased reporting obligations. According to subpara. 2, sentence 2, the total amount of aid must be reported annually and separately from the use of revenues for other purposes (see section 4 below) and contain the amount of aid granted to the different (sub)sectors. The report must enclose related background data such as industrial electricity prices (subpara. 2, sentence 4). When Member States use more than 25% of ETS1 revenues for the aid, they must justify this by setting out the reasons in the report (subpara. 2, sentence 3), and whether other measures to sustainably reduce indirect costs of CO2 emissions have been duly taken into account (subpara. 2, sentence 5). Furthermore, a justification is also required if the total amount of the aid exceeds 25% of the financial equivalent of the ETS1 revenues (subpara. 1, sentence 3). This is relevant in cases where the aid is financed from sources other than the ETS1 revenues in kind, such as the national general budget.

From the obligation to justify spending above the 25% threshold and report on considerations given to other measures aimed at sustainably lowering indirect costs of CO2 emissions, follows the material and substantive obligation to *actually* give due consideration to such other measures. Read in conjunction with the phrasing in subpara. 2, sentence 1 ("shall seek to use no more"), this obligation must be read as an obligation of best-effort conduct. The overall reduction in electricity costs for renewable electricity (in this case also through an expansion and stabilization of supply, i.e., grid expansion and renewable storage capacity) can reduce the demand for fossil-fueled electricity and thus the indirect CO2 emission costs.

3.2.1.2.2 Exceeding the 25% limit: situation in the Member States

Since 2021, the overall percentage of auction revenues spent on indirect cost compensation has increased, considering only the Member States with compensation schemes in the relevant years: 10%

[6] Zenke/Telschow, in: Theobald/Kühling, Kommentar zum Energierecht (124. EL), EH 118 Rn. 68

in 2021,[7] 16% in 2022,[8] and 19% in 2023[9]. Certain Member States have recurringly spent more than 25% of their auction revenue on indirect costs. For the period 2017-2024, these Member States include Belgium, Finland, France, Germany, Luxembourg, Netherlands, and Romania.[10] Among these States, aid payments by Belgium, France, and Luxembourg have exceeded this threshold for most of the years of 2019-2024.[11] Since 2013, Germany has exceeded this threshold five times already: in 2013 (39,2%), 2016 (33,8%), 2020 (31,3%), 2023 (31,3%) and 2024 (50,3%); another overshoot is forecast for 2025 (around 74% with a forecasted compensation budget of €4 billion relative to auctioning revenues of €5,4 billion)[12]. The reasons given by these States seem to attest to systemic issues: Belgium and France attest these numbers to relatively low auction revenues due to the countries' high share of low-carbon electricity generation, compared to their share of electro-intensive industries; Luxembourg repeatedly reported a drop in auction volume caused by using ETS allowances for offsetting emissions in the sectors covered by the Effort Sharing Regulation.[13]

However, the Commission's reports do not mention whether the States have reported on their due considerations of other measures aimed at sustainably lowering indirect costs of CO2 emissions. For Belgium and France, measures could consist of further increasing the countries' share of zero-carbon electricity generation or measures incentivizing renewable energy self-consumption within the electro-intensive industry sectors. For Luxembourg, reducing emissions in the ESR-sectors could reduce the need to use ETS allowances for offsetting. As for Germany, although the German reports cite reasons as to why the limit was exceeded, they do not indicate whether other measures to reduce indirect CO2 emission costs were given due consideration. Germany is thus in violation of this specific reporting obligation under Art. 10a(6), subpara. 2, sentence 5 ETS Directive, and likely also of the obligation to make best efforts to comply with the 25% limit.

In conclusion, regarding the 25% limit for aid for indirect costs, the Commission could and should increase its compliance monitoring efforts. This would not only serve to optimize revenue use for the climate-neutral industry transformation as intended by Art. 10(3) ETS Directive, but also be in line with Commission intentions communicated in the Carbon Market Reports[14].

3.2.2 Permissible purposes under ETS2

Pursuant to Art. 30d(6), subpara. 1 ETS Directive, auction revenues from ETS2 may be used only for the purposes specified in Art. 10(3) ETS Directive, with priority given to activities that can contribute to addressing the social aspects of ETS2, or for the other purposes listed in Art. 30d(6), subpara. 1 ETS Directive. Thus, the reference to Art. 10(3) means that, in principle, all purposes permitted under ETS1 are allowed under ETS2 as well. However, this precludes the use of any ETS2 revenues for financial aid measures for indirect CO2 costs, as Art. 30d(6) does not refer to Art. 10a(6) ETS Directive.

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[7] European Commission, 2024 Carbon Market Report, COM(2024) 538 final, 19.11.2024, p. 27.
[8] European Commission, 2024 Carbon Market Report, COM(2024) 538 final, 19.11.2024, p. 27.
[9] European Commission, 2025 Carbon Market Report, COM(2025) 735 final, 03.12.2025, p. 27.
[10] ERCST, 2026 State of the EU ETS Report, p. 44, figure 9.
[11] European Commission, 2025 Carbon Market Report, COM(2025) 735 final, 03.12.2025, p. 27.
[12] Deutsche Emissionshandelsstelle, SPK-Bericht 2024, figure 9, p. 29; Deutsche Emissionshandelsstelle, press release No. 01/2026, 07.01.2026 (last retrieved: 02.07.2026).
[13] European Commission, 2024 Carbon Market Report, COM(2024) 538 final, 19.11.2024, p. 28, 29; 2025 Carbon Market Report, COM(2025) 735 final, 03.12.2025, p. 27, 28.
[14] European Commission, 2024 Carbon Market Report, COM(2024) 538 final, 19.11.2024, p. 23; 2025 Carbon Market Report, COM(2025) 735 final, 03.12.2025, p. 23.

3.2.2.1 Permissible ETS1-purposes with priority regarding social aspects

Pursuant to Art. 30d(6), subpara. 1 ETS Directive, when choosing to use ETS2 auction revenues for the purposes specified in Article 10(3) of the ETS Directive, priority must be given "*to activities that can contribute to addressing the social aspects of the emissions trading under this Chapter*". Since said Article falls under Chapter IVa, which introduces and regulates ETS2, it refers only to the social aspects of ETS2. Any social aspects of ETS1, such as changes of the labor market in certain sectors, are therefore not covered by this priority-clause.

Possible social impacts of ETS2 lie in a greater burden for financially vulnerable households that are affected by or at risk of energy or transportation poverty, since ETS2 primarily targets the buildings and road transport sectors. While Recital 84 of the Directive introducing ETS2[15] specifically mentions energy poverty, the Recital and Art. 30d(6) need to be understood as encompassing and addressing transportation poverty as well. Rising fuel prices will also disproportionately impact low-income households relying on fossil-fuelled cars, such as people with disabilities or people living in rural areas and areas with insufficient public transport or electric charging options.

3.2.2.1.1 Suitable ETS1-measures

The purposes covered by the priority clause must be capable of addressing these social aspects. The Directive does not specify in detail the requirements regarding the suitability of measures to address these social aspects. However, it follows from the relevant recital[16] that the measures additionally listed in Art. 30d(6), subpara. 1 ETS Directive (see below 3.2.2.2) were specifically added to address these social aspects, including related policy measures under Directive 2012/27/EU (Energy Efficiency Directive). It can therefore be concluded that — if ETS2 revenues are to be used for purposes listed under Art. 10(3) ETS Directive — the measures financed thereby must be at least equally suitable for addressing social issues and serve to achieve effective social and distributional compensation. The following provisions of Art. 10(3), subpara. 1 ETS Directive are relevant here:

- (f), to the extent that the measures relate to passenger transport (by public transit and by road);
- (h) for measures in the heating and building sectors;
- (ha) for financial support to address social aspects in lower- and middle-income households, including by reducing distortive taxes, and targeted reductions in duties and charges for renewable electricity; and
- (hb) for financing national climate dividend schemes with a proven positive environmental impact.

Various socially effective measures have already been funded in different countries using ETS1-revenues and have been highlighted by the Commission as "best practices": e.g., subsidies for energy-renovations of social housing in Belgium, supporting energy efficiency retrofitting of homes for low-income households in France, or mobility vouchers in Italy.[17] Taxes, duties and charges that have a distorting effect include, using Germany as an example, the renewable energies surcharge ("EEG-Umlage") borne by electricity consumers up until 2022 and, potentially, grid fees when they are primarily used to finance grid expansion for renewable electricity[18].

Although measures under subpara. (k) (reskilling and upskilling of workers) also address social aspects of the transition to a climate-neutral economy, they are linked to changes in the labor market due to

[15] Recital 84, Directive (EU) 2023/959 of 10.05.2023 amending the ETS Directive.
[16] Recital 84, Directive (EU) 2023/959 of 10.05.2023 amending the ETS Directive.
[17] European Commission, Use of EU ETS auctioning revenues in the Member States – Good Practices, June 2023.
[18] Zukunft KlimaSozial, Die Transformation der Stromnetze klimaneutral und sozial gerecht gestalten – Herausforderungen und Lösungsansätze (2025), S. 18, 21.

ETS1. They do not address social aspects related to the introduction of the ETS2 (energy or transport poverty) and are therefore unsuitable for ETS2 revenues.

3.2.2.1.2 Priority for revenue use

When considering the measures listed in Art. 10(3) ETS Directive while determining the use of ETS2 revenues, priority must be given to the measures above. This priority can be interpreted in various ways.

On one hand, the principle of priority could be understood as a limiting principle for Member State discretion. As a consequence, revenues would, as a general rule, have to be used for the priority purposes. Only in atypical and justified cases might they be used to finance other permissible measures listed in Art. 10(3). For a justification, the other purposes and their underlying concerns must, in each individual case, be of such significance that they outweigh the EU legislature's decision in favour of measures to address social aspects and ensure acceptance of the ETS2.

On the other hand, the principle of priority could also be understood as the order in which purposes have to be selected and measures have to be covered and financed. Only once the underlying objectives of the priority measures have been sufficiently achieved, may ETS2 revenues be used for other purposes listed in Art. 10(3) that do not contribute to addressing ETS2-related social aspects. This would require that existing and adequately funded measures have ensured that no households are suffering from or at risk of energy or transportation poverty anymore.

The historical context surrounding the introduction of ETS2 supports the latter and stricter interpretation of the priority clause, namely as the order of purpose selection. Starting with the first conceptualizations of the European Green Deal and the "Fit for 55" legislative package, a socially just transition toward climate neutrality has always been a core concern of the legislative framework.[19] The introduction of ETS2 has always been linked with the precondition to limit social impacts through the targeted use of the resulting revenues and through accompanying legislation.[20] This objective was recognized by the EU's legislative bodies and was ultimately reflected in the legal text, especially in recital 84 (see above). Viewed through the lense of systemic context, the scope and purpose of the Social Climate Fund (SCF) demonstrates that substantial investments on top of the SCF are necessary to ensure effective social mitigation. The SCF, and the Social Climate Plans financed by the fund, are intended to only support the most affected vulnerable groups across Europe, particular households already in energy poverty or transport poverty, Art. 1, para. 3 of Regulation (EU) 2023/955.[21] Since the funds from the SCF are not distributed evenly among Member States but rather on the principle of solidarity, and since Member States must in any case contribute an additional 25% to the funds used, it is clear that Member States must spend their own and additional resources to address social issues. Art. 24(3)(b) of Directive (EU) 2023/1791 (the revised Energy Efficiency Directive) also stipulates that Member States must primarily use their ETS2 revenues for social purposes:

> *„To support people affected by energy poverty, vulnerable customers, people in low-income households and, where applicable, people living in social housing, Member States shall, where applicable, make the best possible use of public funding available at Union and national level, including, where applicable, the financial contribution that Member States receive from the Social Climate Fund […], and revenues from allowance*

[19] European Council conclusions of 10./11.12.2020, 24./25.05.2021, 24./25.06.2021; European Commission, Communication of 14.07.2021, COM(2021) 550 final, p. 5 f.; European Commission, Factsheets on EU Green Deal and on a Socially Fair Transition, July 2021.
[20] European Commission, Communication of 14.07.2021, COM(2021) 550 final, p. 8.
[21] See also Recital 84, Directive (EU) 2023/959 of 10.05.2023 amending the ETS Directive.

auctions from emissions trading pursuant to the EU ETS […], for investments into energy efficiency improvement measures as priority actions."

Member States thus still retain considerable discretion, as they are free to choose the types of measures to achieve the goal of effective social and distributional compensation from amongst the priority measures listed in Art. 10(3) and the additional measures listed in Art. 30d(6) ETS Directive.

3.2.2.2 Measures with a presumed social impact

To address social challenges that could arise from the introduction of ETS2, Art. 30d(6) subpara. 1 ETS Directive lists measures specifically introduced for this purpose.

3.2.2.2.1 Socially effective measures in buildings sector, Art. 30d(6) subpara. 1 (a)

This point pertains to

„measures intended to contribute to the decarbonisation of heating and cooling of buildings or to the reduction of the energy needs of buildings, including the integration of renewable energies and related measures in accordance with Art. 7(11) and Artt. 12 and 20 of Directive 2012/27/EU, as well as measures to provide financial support for low-income households in worst-performing buildings."

These include, for example, funding for heat pumps or energy-efficiency refurbishments and insulation of flats and houses. Targeted direct payments as a form of financial support for the most vulnerable households – that is, low-income households in worst-performing buildings – are also possible here. However, general direct payments to the public without regard to their needs are not allowed.

3.2.2.2.2 Socially effective measures in transport sector, Art. 30d(6) subpara. 1 (b)

For the transport sector, the Directive sets out measures aimed at accelerating the uptake of zero-emission vehicles, or providing financial support for the deployment of fully interoperable refuelling and recharging infrastructure for zero-emission vehicles, or measures to encourage a shift to public transport and improve multimodality, or to provide financial support in order to address social aspects concerning low- and middle-income road users.

3.2.2.2.3 Financing the Social Climate Plan, Art. 30d(6) subpara. 1 (c)

The financing of the national Social Climate Plans is another permissible use of ETS2 revenues. Under this scheme, Member States must bear at least 25% of the costs of their Social Climate Plans themselves. They may use their revenues from ETS2 for this co-financing.

Under Art. 4, read in conjunction with Recital 17 of Regulation (EU) 2023/955, Member States were required to submit their Social Climate Plans to the Commission by 30 June 2025. Even though more than one year has passed since this deadline, only 8 Member States have submitted a plan, 7 other Member States have published first drafts.[22]

3.2.2.2.4 Compensation for double pricing, Art. 30d(6) subpara. 1 (d)

Finally, Art. 30d(6) subpara. 1 (d) lists compensation for double pricing under ETS1 and ETS2 as a permissible use of ETS2 revenue. This refers to cases in which, due to the upstream approach of ETS2 and the often multi-stage supply chains, unavoidable double counting has occurred, leading to

[22] Zukunft KlimaSozial – Institute for Social Climate Policy, Analysis of National Social Climate Plans of EU Member States, 29.06.2026 (last retrieved: 07.07.2026).

unintended costs. As an example, this can occur when ETS2 costs have been passed on via the fuel price to an ETS1 installation which also has to surrender ETS1 allowances for the resulting emissions.

3.2.3 Leveraging of financial support

Art. 10(3), subpara. 1, and Art. 30d(6), subpara. 1 ETS Directive stipulate that auctioning revenues must be spent on the permissible purposes outlined above. Art. 10(3), subpara. 3 (for ETS1 revenues) and Art. 30d(6), subpara. 2 ETS Directive (for ETS2 revenues) contain, as an alternative to the spending of these revenues, a legal presumption of compliance (or "deemed fulfillment") when Member States leverage financial support for the permissible purposes instead. To that end, the legal text states the following:

> *„Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies[, including in particular in developing countries,][23] or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to the revenues referred to in the first subparagraph."*

Neither the recitals nor other legislative documents provide additional guidance on the motivation or purpose of this subparagraph.[24] Consequently, this legal presumption of compliance fulfillment must be interpreted in accordance with the principle of "*effet utile*."[25] This principle requires that EU legislation must be given optimal — that is, the most useful — effect in light of the objective they are intended to achieve.[26] Thus, the presumption of compliance must be interpreted in a way that achieves the objective of the rules on revenue use by the Member States as effectively as possible – which is to ensure that Member States use *all* auctioning revenues for climate protection and adaptation, and to enable the Commission to monitor compliance with these rules.

On this basis, further requirements for the legal presumption of compliance can be derived. Fiscal or financial support policies, or domestic regulatory policies, must have been established specifically for the permissible purposes mentioned above, with the aim of leveraging corresponding financing. The leveraging of financing must not be a mere side effect, but must be stated objective of the policies. Furthermore, genuine leveraging of finances through Member State measures requires that the leveraged finances are additional and have not been double-counted.[27] Additionality means that the financing of the projects would not have occurred without the national policy measures introduced for this purpose. Finally, the leveraged finances must be quantifiable while precluding double-counting so that the Commission can assess whether they are of equivalent value to the ETS revenues.

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[23] The addition in square brackets appears only in Art. 10(3), subpara. 3 ETS Directive and applies only to the use of ETS1 revenues.

[24] This subparagraph was inserted by Directive 2009/29/EC. It was not included in the Commission's legislative proposal (COM(2008) 16 final of 23 January 2008). It first appeared in the Parliament's version of 17.12.2008 (EP-PE_TC1-COD(2008)0013) and was presumably inserted during the preceding trilogue procedure (see remarks by MEP Markus Pieper, PPE-DE, prior to the vote on 17.12.2008 (CRE 17/12/2008 – 5.2) and by MEP Daniel Caspary, PPE-DE, during the vote on 17.12.2008.

[25] *Calliess/Ruffert*, EUV/AEUV, 6th Edition 2022, Art. 19 EUV para. 32.

[26] Established ECJ case law, see judgements C-41/74 (van Duyn), 04.12.1974, para. 12; C-31/87 (Beentjes), 20.09.1988, para. 11; C-190/87 (Borken/Moormann), 20.09.1988, para. 27.

[27] Additionality and the preclusion of double-counting are recognized concepts in measuring the impact of financing. See, for example, Directorate-General for External Policies, Policy Department, Study – The use of development funds for de-risiking private investment: how effective is it in delivering development results?, PE 603.486, May 2020, p. 19; Institute for European Environmental Policy, Leveraging private finance for the transition to sustainable agriculture, 2025, p. 7; Friends of the Earth, Issue Brief – Additionality an Leveraging Private Finance (last retrieved: 08.07.2026).

4 REPORTING

Art. 10(3) subparas. 4 and 5, and Art. 30d(6) subpara. 3 ETS Directive govern the Member States' obligation to report on the use of ETS1 and ETS2 revenues to the Commission. This obligation forms part of the integrated reporting obligation laid down in Art. 19(2) and Annex VIII, Part 3 of the EU Governance Regulation (EU) 2018/1999. The reports must be submitted annually by July 31.

According to Art. 10(3) subpara. 4 ETS Directive, the reports must also specify, where relevant, which measures financed by ETS revenues also serve to implement the integrated national energy and climate plans under the EU Governance Regulation or the territorial just transition plans pursuant to Art. 11 of Regulation (EU) 2021/1056 on the Just Transition Fund.

The reporting must be sufficiently detailed to enable the Commission to assess Member States' compliance with the rules on revenue use, Article 10(3), subpara. 5 ETS Directive. The amount of revenue from the respective ETS systems must therefore be specified precisely; expenditure items must be quantified and described in sufficient detail to show which of the permissible purposes they fall under. Implementing Regulation (EU) 2020/1208 prescribes a table format to that end.[28]

The Commission has announced that, in light of the legislative changes (starting 2023, Member States had to spend 100% of their auction revenues for the permissible purposes), it will monitor the use of revenues more closely.[29] Accordingly, pursuant to Art. 5 (2) of Implementing Regulation (EU) 2020/1208, the Commission may and should request any missing information; Member States must provide this information within two months.

To ensure transparency regarding the entirety of national revenues, the annual report must also include information on aid for indirect CO2 costs, to the extent these are financed from ETS1 revenues. This must apply notwithstanding the separate reporting obligation under Art. 10a(6), subpara. 2, sentence 2, ETS Directive. The latter reporting obligation applies regardless of whether the aid is financed from ETS1 revenues or from other sources.

5 COMPLIANCE AND POLICY RECOMMENDATIONS

- The Commission and Member States should thoroughly examine whether national budgetary laws allow for the sequestering of ETS revenues in a separate fund or other mode of earmarking, and consequently implement their findings.
  - This follows from the obligation to determine the use of the revenues (see above 3.1).
  - It will also allow for easier reporting and compliance monitoring by Member States and the Commission (see above **Fehler! Verweisquelle konnte nicht gefunden werden.**).
  - It creates higher transparency of revenue use, promoting public acceptance of the ETS1 and ETS2 instruments, and enables the public to monitor how the funds are used. At a time when democracy is under threat, concrete measures are essential to empower the public and strengthen democracy.
- To simplify the administration for such funds, Member States may use both ETS1 and ETS2 revenue for ETS2-compatible purposes. This would also enable the funding of urgently needed measures in the buildings and transport sectors, where many Member States repeatedly overshoot their annual ESR budgets.

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[28] The 2024 Member State reports can be downloaded here (last retrieved: 08.07.2026).
[29] European Commission, Report on the functioning of the European carbon market in 2023, 19.11.2024, COM(2024) 538 final, p. 23; Report on the functioning of the European carbon market in 2024, 03.12.2025, COM(2025) 735 final, p. 23.

  - Particularly with regard to ETS2, which will primarily affect private households and SMEs, increased investment efforts, clarity, and transparency can increase acceptance.
  - At the very least, such funds or earmarkings should clearly differentiate between ETS1 and ETS2 revenues.
- Member States should, without delay, draft and submit their Social Climate Plans (see above 3.2.2.2.3). This will broaden Member States' possibilities and discretionary room when determining the use of ETS2 revenues.
- The Commission and Member States should closely monitor the 25% indicative limit regarding aid for indirect CO2 emission costs (3.2.1.2.1). Both Commission and Member States should increase efforts for other measures that will sustainably lower the costs of indirect CO2 emissions.
- To improve legal certainty, the wording of the ETS Directive should be clarified as follows:
  - In Art. 10(3), subpara. 1, sentence 2, and Art. 30d(6), subpara. 1, sentence 2: after "*Member States shall use their revenues or*", the phrase "***where earmarking or other methods of usage in kind is not possible,*** " should be inserted.
  - In Art. 10a(6), subpara. 2, sentence 1: after "*Memer States shall also*", the phrase "***, to their best possible effort,*** " should be inserted.
  - In Art. 30d(6), subpara. 1, sentence 2, after "*for one or more of the purposes referred to in Article 10(3)*", the references "***subparagraph 1, points (f), (h), (ha), and (hb)***" should be inserted. Between the words "giving" and "*priority*", the word "***strict***" should be inserted. Before Art. 30d(6), subpara. 2, a new subparagraph should be inserted: "***Member States may use their revenues for the other pruposes referred to in Artile 10(3) of this Directive, if they have ensured that low- and middle-income households do not suffer from and are not at risk of energy and transport poverty.***"
- To assist Member States in their compliance efforts, the Commission should publish the following:
  - Best practices to sustainably lower indirect CO2 costs to prevent exceeding the 25% limit.
  - Guidelines on requirements for the leveraging of finances for the legal presumption of compliance according to Art. 10(3), subpara. 3, and Art. 30d(6), subpara. 2 of the ETS Directive.

6 GREEN LEGAL IMPACT GERMANY E.V.

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Oberlandstraße 26-35 | D-12099 Berlin
Tel. +49 30 235 97 79-60
post@greenlegal.eu | www.greenlegal.eu

Vorstand | Executive Board
Immo Graf | Dr. Cornelia Nicklas | Tobias Ott | Dr. Roda Verheyen
VAT-ID: DE356148457

GLS Bank, Bochum
IBAN: DE16 4306 0967 1062 0836 00
BIC: GENODEM1GLS

V.i.S.d.P.: Henrike Lindemann

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Author:

Valentine Zheng

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