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Shaping EU climate and energy policy: Insights from and questions for the Ariadne project

INTERACTIONS BETWEEN THE NEW ETS II AND NATIONAL CARBON PRICING INSTRUMENTS – THE CASE FOR “HIGHER” NATIONAL CARBON PRICES? AND WHAT ABOUT THE REVENUES?



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BLOCK I: INTERACTIONS BETWEEN EU AND NATIONAL CARBON PRICING INSTRUMENTS



THE ETS 2 AND NATIONAL CARBON PRICING INSTRUMENTS – LEGAL ASPECTS

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THE EU CLIMATE GOVERNANCE A MULTI-LEVEL SYSTEM



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THE EU CLIMATE GOVERNANCE A MULTI-LEVEL SYSTEM

EU Climate and Energy Targets

(incl. min (net) -55% GHG emission reduction until 2030)

EU Emissions Trading System for industry and energy (EU ETS)

EU-wide „Cap-and-Trade“ (quantitative control) with
a fixed GHG emissions cap on EU-level

EU Effort Sharing Regulation (ESR)

Legally binding GHG emission reduction targets for each state

National Measures

National Measures

EU
measures

EU
measures

EU
measures

EU
measures

EU Emissions Trading System (EU ETS)

Quantitative Control

- › Since 2005
- › Combustion plants > 20MW in industry and energy sectors (+ aviation and maritime)
- › EU-wide cap (maximum number of GHG emission allowances)
- › EU-wide trade between the obligated entities (plant operators)
- › Price determined by supply and demand

Effort Sharing Regulation (ESR)

National GHG emission reduction targets

- › Since 2009
- › GHG emissions not covered by EU ETS
 - › Special regime for land use and forestry (LULUCF)
- › Legally binding GHG emission reduction targets for the Member States
 - › Budget system with Annual Emission Allowances (AEA)
- › Flexibility options (banking and borrowing) and trade between Member States

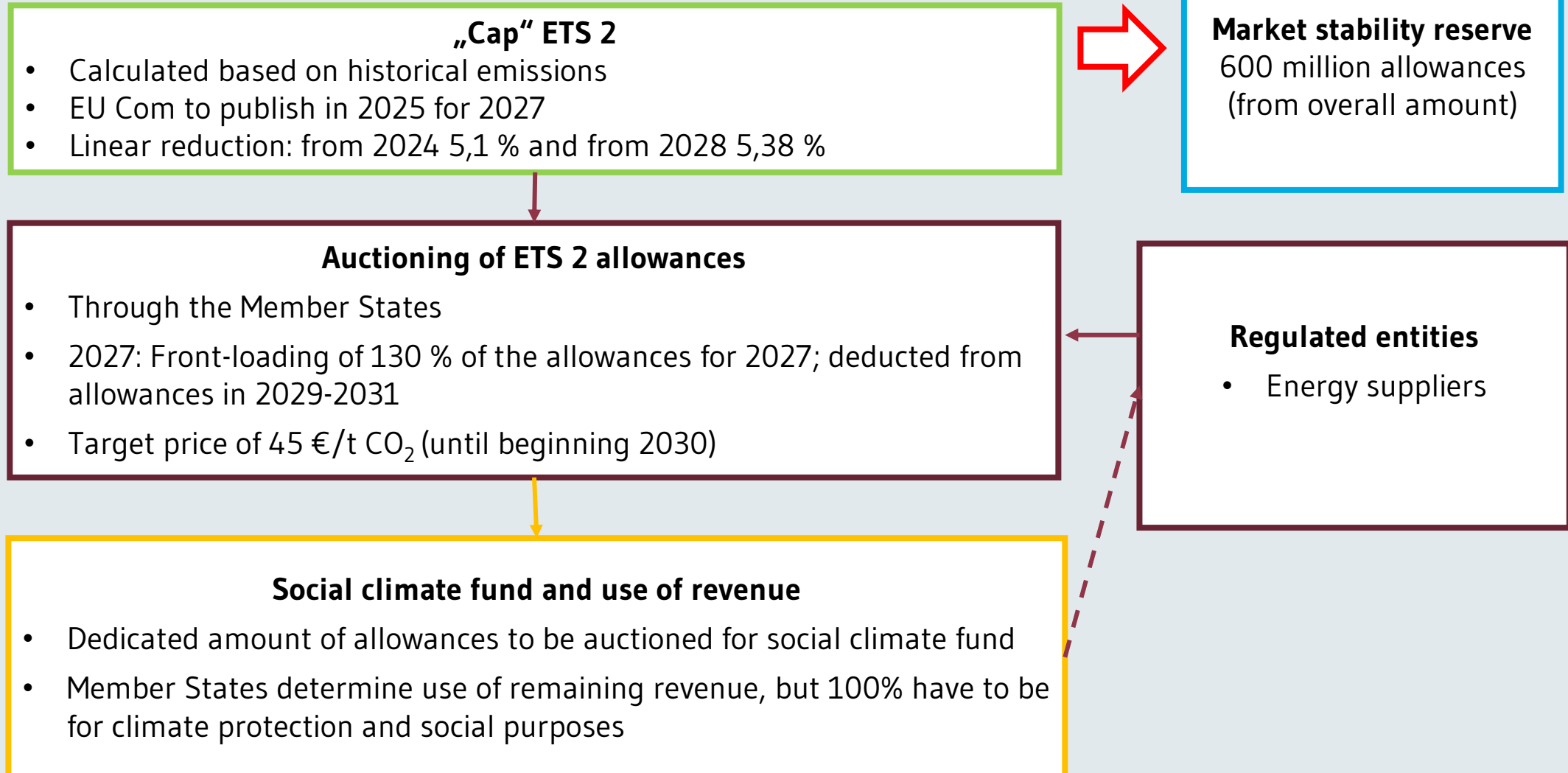
THE EU CLIMATE GOVERNANCE WITH THE NEW EU ETS 2



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THE NEW EU ETS 2 FOR BUILDINGS AND ROAD TRANSPORT



THE EU CLIMATE GOVERNANCE WITH THE NEW EU ETS 2

EU Climate and Energy Targets

(incl. min (net) -55% GHG emission reduction until 2030)

EU Emissions Trading System for industry and energy (EU ETS)

EU-wide „Cap-and-Trade“ (quantitative control) with
a fixed GHG emissions cap on EU-level

EU Effort Sharing Regulation (ESR)

Legally binding GHG emission reduction targets for each state

EU Emissions Trading System for buildings and road transport (EU ETS 2)

EU-wide „Cap-and-Trade“
(quantitative control) with a fixed
GHG emissions cap on EU-level

National Measures

EU
measures

National Measures

EU
measures

EU

measures

ES

THE EU CLIMATE GOVERNANCE WITH THE NEW EU ETS 2 AND A NATIONAL CARBON PRICING INSTRUMENT



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THE EU CLIMATE GOVERNANCE THE SITUATION IN GERMANY

EU Climate and Energy Targets

(incl. min (net) -55% GHG emission reduction until 2030)

EU Emissions Trading System for

Bundes-Klimaschutzgesetz (Federal Climate Change Act)

(GHG emission reduction of -65% to 2030, -88% to 2040; net zero to 2045)

EU-level

EU Effort Sharing Regulation (ESR)

Legally binding GHG emission reduction targets for each state

EU Emissions Trading System for buildings and road transport (EU ETS 2)

EU-wide „Cap-and-Trade“
(quantitative control) with a fixed
GHG emissions cap on EU-level

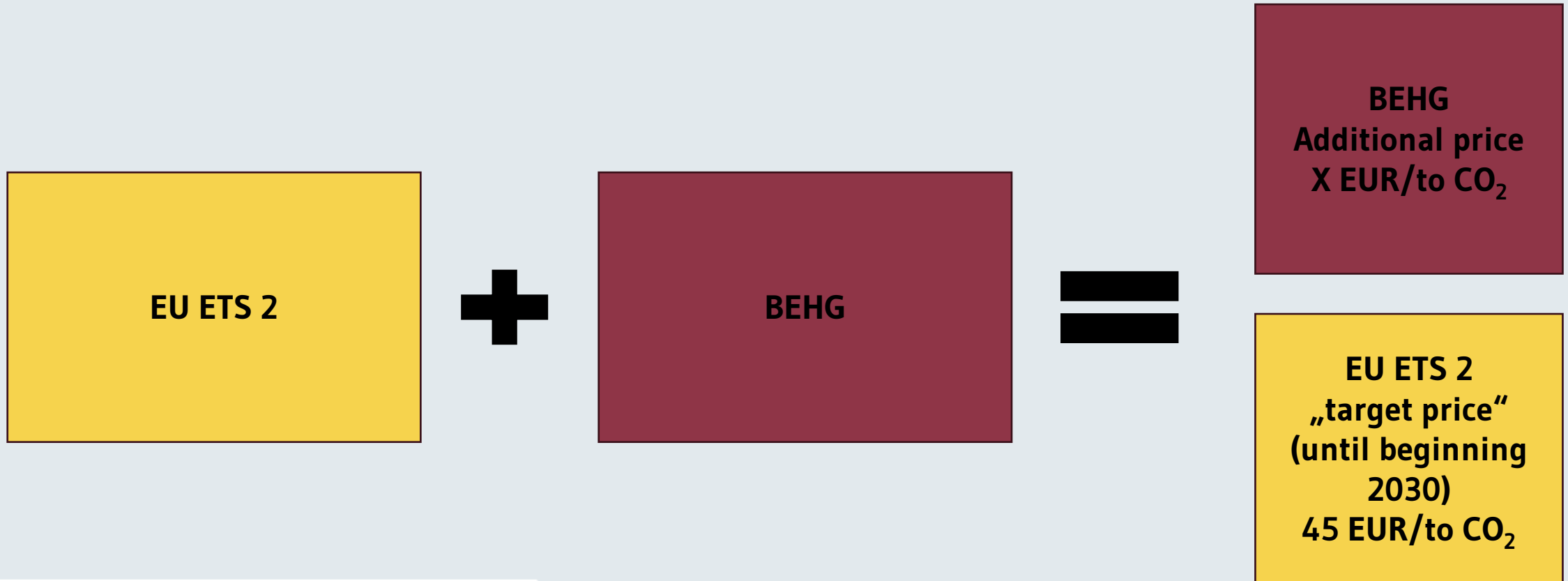
Brennstoffemissions- handelsgesetz (BEHG)

National emissions trading system
with regulated prices (price control)

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es

National Measures

EU ETS 2 + NATIONAL CARBON PRICING INSTRUMENTS?



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EU ETS 2 AND NATIONAL CARBON PRICING INSTRUMENTS A LEGAL ANALYSIS



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EU ETS DIRECTIVE DOES NOT PROHIBIT ADDITIONAL NATIONAL CARBON PRICING INSTRUMENTS

EU ETS Directive does not prohibit additional national carbon pricing instruments

- › **Art. 30e(3) ETS Directive** allows MS to temporarily exempt obligated entities from EU ETS 2 provided that (inter alia) they pay **national carbon taxes** of (at least) the same amount as prices in EU ETS 2
- › Art. 30h(2) ETS Directive sets **a target price of 45 EUR/to CO₂ – not a maximum price (automatic release of GHG emission allowances from EU ETS 2 reserve to keep price in range)**
- › Other EU secondary law does **not contain prohibition either** (no parallel to Art. 9 of Industrial Emissions Directive)

PLUS: EU Commission reiterated **necessity/advantages of additional national measures to reach GHG emission reduction targets of ESR**

EU TREATIES DO NOT PROHIBIT NATIONAL CARBON PRICING INSTRUMENTS EITHER – QUITE THE OPPOSITE

ETS Directive as directive **generally leaves discretion to Member States in implementation** – plus: according to CJEU **no „exhaustive regulation“**

ESR may even require additional national measures

Plus: **Art. 193 TFEU explicitly allows „more stringent protective measures“** concerning environment

- › Same objective as EU law?
- › Higher ambition level compared to EU law?
- › No conflict with other provisions of the Treaties?
- › (Notification with EU Commission?)

See also: Experience with **UK Carbon Price Floor (under EU ETS)!**

CONCLUSIONS



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CONCLUSION

EU law does **not prohibit** additional national carbon pricing instruments

National GHG emission reduction targets under ESR **may even warrant** additional national carbon pricing instruments

And the **UK has done it in the past...**

“The environmental impact in MS also depends on the additionality to national measures under the ESR and to national carbon pricing measures, i.e. whether those MS that have carbon taxation will reduce/abolish them with the introduction of an EU wide carbon pricing system.”

EU Commission

Impact Assessment ETS 1/4, p. 112

BLOCK II: USE OF REVENUE FROM ETS II AND NATIONAL CARBON PRICING INSTRUMENTS



USE OF REVENUE FROM CARBON PRICING INSTRUMENTS AND SOCIAL ACCEPTABILITY

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AGENDA

- › Revenues raised by carbon pricing
- › Provisions for the use of revenues in the ETS I, ETS II and Social Climate Fund
- › Social Compensation through climate dividend schemes / direct income support

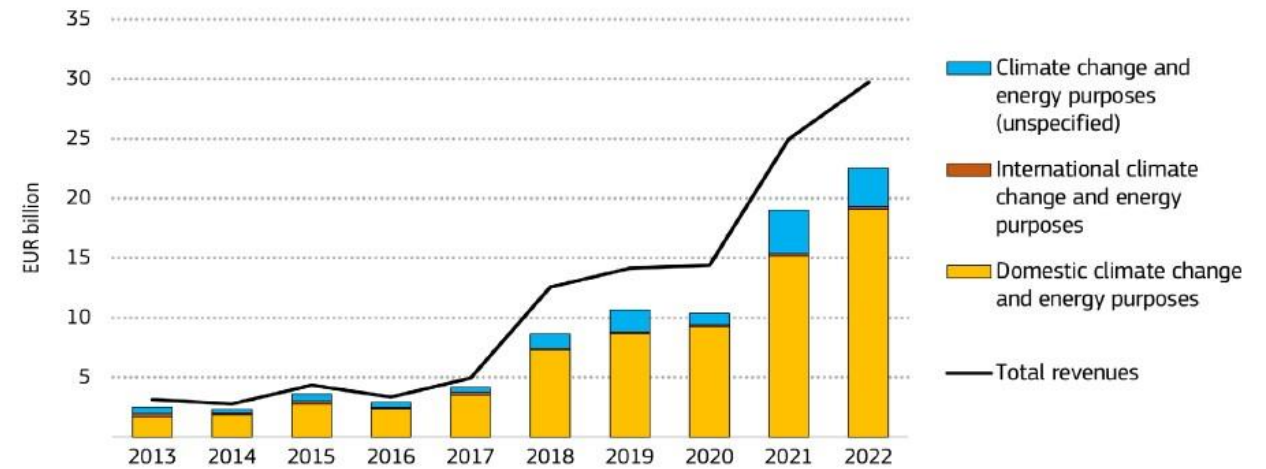
REVENUES RAISED BY THE EU ETS

- › Total auctioning revenues generated under the **ETS I** amounted to EUR 38.8 bn in 2022, of which EUR 29.7 bn went directly to Member States.
- › Of the total revenues generated between 2013 and 2021, an average of 76% was used for climate- and energy-related purposes
- › In 2022, **German nETS** revenues totaled EUR 6.4 bn (198 Mio. allowances for fixed price of EUR 30, 18.5 Mio allowances for a fixed price of EUR 25)
- › Under the planned price path for nETS revenues totaling EUR 178-227 billion can be achieved by 2030.

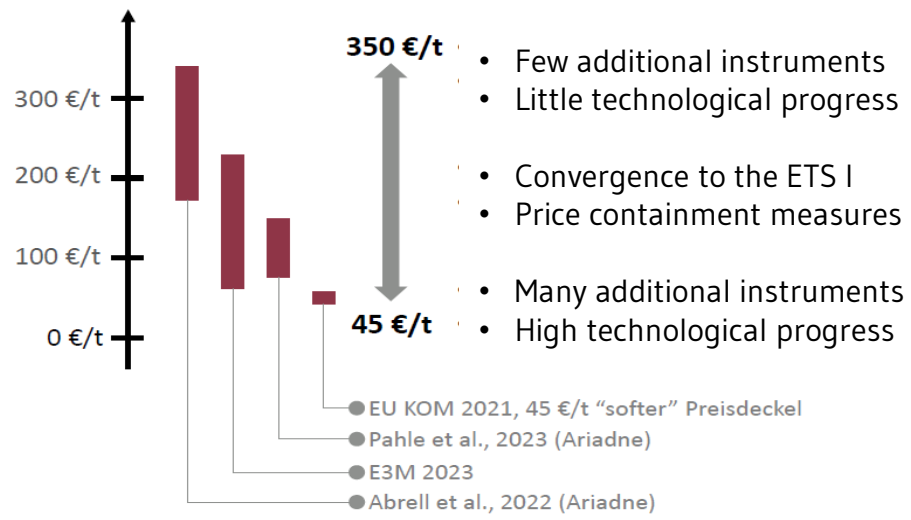
› ETS II ???

The **ETS II** price is highly uncertain and difficult to predict
 – Price development scenarios vary widely:

Figure 9: Auctioning revenues received by EU Member States and report usage (2013-2022)



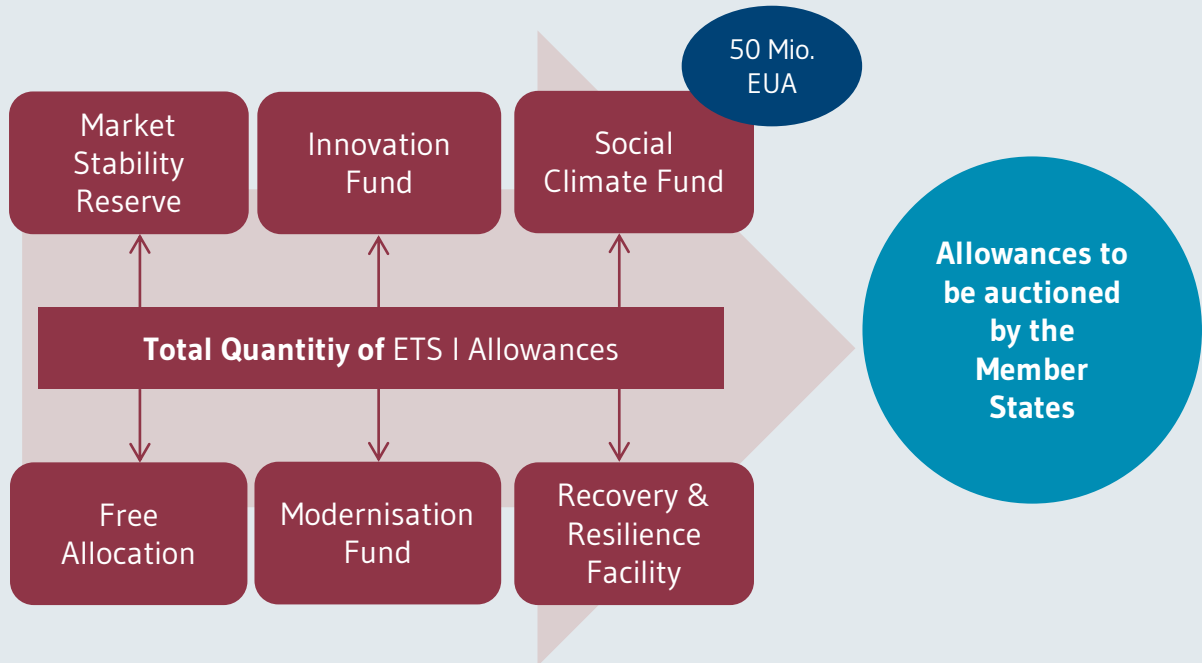
Source: EU COM, Climate Action Progress Report (2023)



Source: Pahle, Presentation on "CO2-Preise im EU-ETS(2)" (2023)

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USE OF ETS I REVENUES

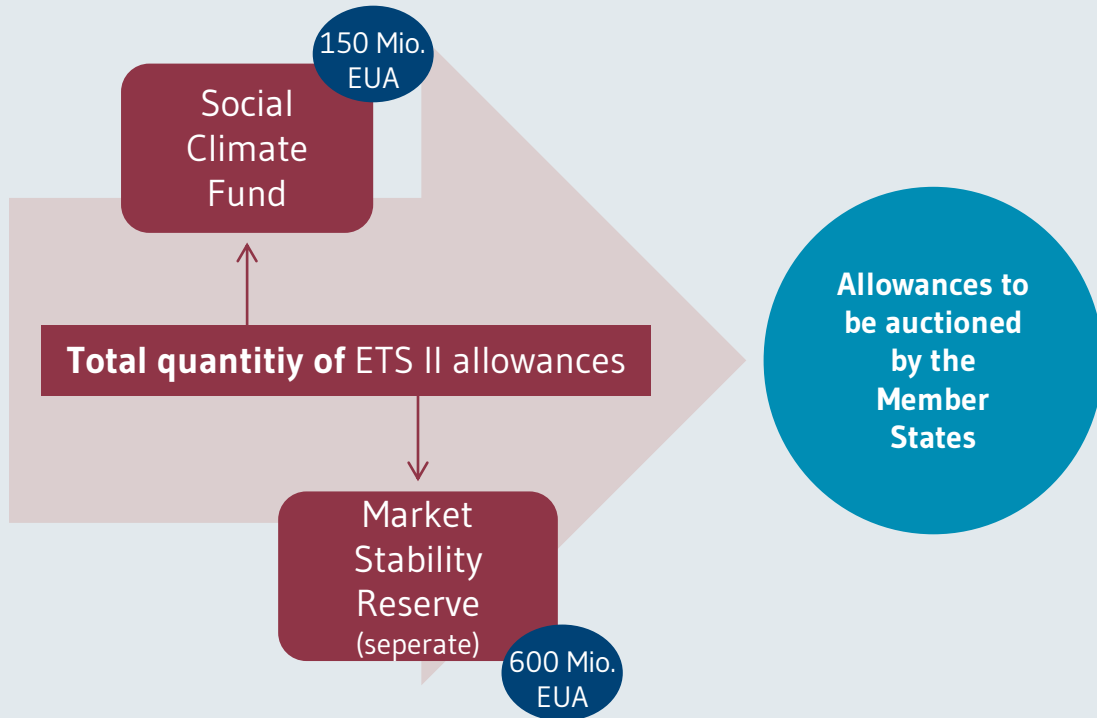


- › **100%** of MS revenue is **earmarked** for:
Climate protection, energy transition & social issues
- › Catalogue of permissible purposes for the use of revenue in Art. 10(3) ETS Directive

- a) Reduction of greenhouse gas emissions; **adaptation** to climate change
- b) **Renewable energy, grids, low-carbon economy technologies** and energy efficiency
- c) measures to avoid deforestation and support the protection and restoration of peatland, forests and other land-based ecosystems or marine-based ecosystems, and increase biodiversity-friendly afforestation and reforestation
- f) Decarbonisation of **transport** (road, sea, air)
- h) **Energy efficiency, renewable heating/cooling, building renovation**
- ha) financial support to **address social aspects in lower- and middle-income households**
- hb) finance national **climate dividend schemes with a proven positive environmental impact**
- l) address any residual risk of **carbon leakage**

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USE OF ETS II REVENUES



- › **100%** of MS revenue is **earmarked** for:
Climate protection, energy transition & social issues
- › Catalogue of permissible purposes for the use of revenue in Art. 30d(6) ETS Directive

Member States shall use their revenues

- › for one or more of the **ETS I purposes, prioritising activities that can contribute to addressing social aspects** of ETS II
- › for one or more of the **following purposes**:
 - a) Buildings: including measures to decarbonise the heating and cooling supply or to reduce energy demand
 - b) Transport: including measures to accelerate the introduction of zero-emission vehicles or to promote the switch to public transport in order to address social aspects
 - c) Financing of national social climate plans (Art. 4 ff., 15 SCF Regulation)
 - d) Financial compensation to avoid double counting of emissions

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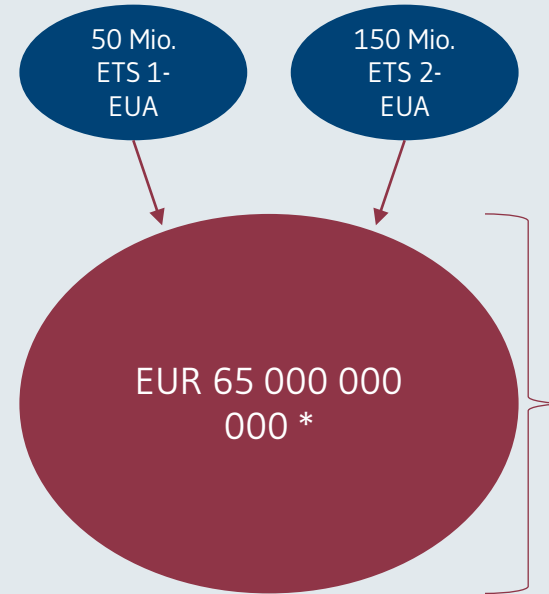
SOCIAL CLIMATE FUND

Art. 7 and Art. 8 SCF-Regulation (EU) 2021/1060

- › The Fund shall provide financial support to Member States to finance the measures and investments set out in their Social Climate Plans.

Main objective: **Funding for targeted structural measures** to reduce reliance on fossil fuels

- › increased energy efficiency of buildings,
- › decarbonisation of heating and cooling of buildings, incl. the integration of energy from renewable sources,
- › granting improved access to zero- and low-emission mobility and transport
- › **temporary direct income support** to bridge the gap until structural measures can take effect



*
When ETS postponed until 2028
→ max. amount
EUR 54 600 000 000
→ Reduction of max. financial allocation per MS

Maximum financial allocation per Member State			
Member State	Share as % of total	TOTAL 2026-2032 (in EUR, current prices)	
		Pursuant to Article 10(1), first and second subparagraphs	Pursuant to Article 10(1), third subparagraph *
Belgium	2,55	1 659 606 425	1 394 069 397
Bulgaria	3,85	2 499 490 282	2 099 571 836
Czechia	2,40	1 562 617 717	1 312 598 882
Denmark	0,50	324 991 338	272 992 724
Germany	8,18	5 317 778 511	4 466 933 949
Estonia	0,29	186 244 570	156 445 439
Ireland	1,02	663 390 868	557 248 329
Greece	5,52	3 586 843 608	3 012 948 631
Spain	10,52	6 837 784 631	5 743 739 090
France	11,19	7 276 283 944	6 112 078 513
Croatia	1,94	1 263 071 899	1 060 980 395
Italy	10,81	7 023 970 924	5 900 135 577
Cyprus	0,20	131 205 466	110 212 591
Latvia	0,71	463 676 528	389 488 284
Lithuania	1,02	664 171 367	557 903 948
Luxembourg	0,10	66 102 592	55 526 177
Hungary	4,33	2 815 968 174	2 365 413 267
Malta	0,07	45 500 000	38 220 000
Netherlands	1,11	720 463 632	605 189 451
Austria	0,89	578 936 189	486 306 399
Poland	17,60	11 439 026 446	9 608 782 215
Portugal	1,88	1 223 154 017	1 027 449 374
Romania	9,25	6 012 677 290	5 050 648 923
Slovenia	0,55	357 971 733	300 696 256

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SOCIAL COMPENSATION THROUGH NATIONAL CLIMATE DIVIDEND SCHEMES?

For ETS revenues: Art. 10(3) ETS-Directive

Member States shall use those revenues (...) for one or more of the following

- ha) to provide financial support to **address social aspects in lower- and middle-income households**, including by reducing distortive taxes, and targeted reductions of duties and charges for renewable electricity
- hb) to finance national **climate dividend schemes with a proven positive environmental impact** as documented in the annual report referred to in Art. 19(2) GovReg

For SCF resources: Art. 8(2) SCF-Regulation

- › Member States may include in the estimated total costs of the Plans the costs of measures providing **direct income support to vulnerable households and vulnerable transport users** to reduce the impact of the increase in road transport and heating fuel prices.
- › Such support shall be **temporary and decrease over time**.
- › Member States may provide temporary direct income support **if their Plans contain measures or investments** aimed at those vulnerable households and vulnerable transport users in **accordance with Article 8(1)** of this Regulation.
- › Such support shall be **limited to the direct impact of the [ETS II]**.
- › The **costs** of measures providing temporary direct income support shall not represent more than **37,5 % of the estimated total costs of the Plan**, (...).

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CONCLUSION

- › The member states' room for manoeuvre in using the revenues from the ETS has narrowed. At the same time, the catalogue in Article 10(3) still provides for many different options for the Member States to make use of the revenues
- › The revenues generated under the ETS II are supposed to be primarily used to finance activities that can contribute to addressing social aspects of the ETS II. Yet, it is unclear what exactly this “priority-clause” in Art. 30h(6) ETS-Directive means in practice.
- › The newly established Social Climate fund intends to contribute to a socially fair transition towards climate neutrality by addressing the social impacts of the inclusion of the buildings and road transport sector in the ETS II; The overall volume as well as the maximum amount per Member State is quite limited and it remains to be seen in how far this instrument will have impact.
- › Unclear in how far national climate dividend schemes can be financed through ETS revenues or SCF resources

DISCUSSION



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