

OPINION 13/2026

(pursuant to Article 322(1) TFEU)

**concerning the proposal
for a regulation of the
European Parliament and
of the Council establishing
the Temporary
Decarbonisation Fund**

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Main messages

Why we provide this opinion

Legal basis

- 01** A [proposal for a regulation establishing the Temporary Decarbonisation Fund](#) (“the Fund”) was adopted by the European Commission on 17 December 2025.
- 02** On 14 January 2026, the European Parliament formally asked the European Court of Auditors to give its opinion on the proposal. According to the Commission, one of the legislative bases for the proposal is Article 322(1) of the Treaty on the Functioning of the European Union (TFEU). The Article was included because the proposal lays down rules on the financing, management and control of an EU fund, in particular by requesting derogations from budgetary principles. Under the Treaty, the European Court of Auditors must be consulted when legislation is proposed pursuant to this Article.

Context

Temporary Decarbonisation Fund

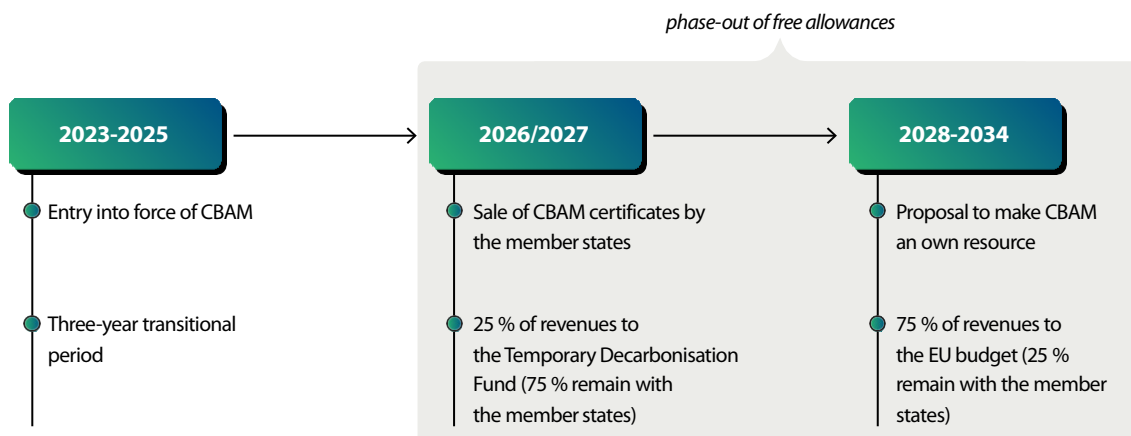
- 03** The Commission has proposed the Fund with the aim of providing temporary financial support to companies in carbon-intensive sectors, facing the risk of carbon leakage (the relocation of production to non-EU countries with weaker greenhouse gas emissions rules). The initiative also aims to ensure that decarbonisation efforts and emissions reduction incentives remain effective.

- 04** The Fund will provide financial support in 2028 and 2029, based on production in 2026 and 2027. This support will be financed by the sale of Carbon Border Adjustment Mechanism (CBAM) certificates. The Commission has envisaged the Fund to act as a temporary solution, pending a comprehensive review on how best to address the risk of carbon leakage from 2028 onwards. Since revenue from the sale of CBAM certificates will not be an own resource of the EU budget, it will constitute external assigned revenue.

Carbon Border Adjustment Mechanism and EU Emissions Trading System

- 05** On 1 October 2023 a new instrument came into force: the [Carbon Border Adjustment Mechanism](#). Under the mechanism, imported carbon-intensive goods are subject to the same carbon prices that European producers have to pay under the [EU Emissions Trading System \(EU ETS\)](#). The instrument is intended to protect EU industries from carbon leakage.
- 06** A transitional period was in force from 2023 to 2025. Since 1 January 2026, importers have been required to purchase CBAM certificates for each tonne of greenhouse gas emissions embedded in imported goods covered by the CBAM Regulation ([Regulation \(EU\) 2023/956](#)). This regulation applies to six energy-intensive sectors: iron and steel, cement, aluminium, fertilisers, chemicals (hydrogen) and electricity. Until 2026, European producers in these sectors have been allocated emissions allowances free of charge. This practice began to be gradually phased out once CBAM certificates started to be sold in January 2026. The phase-out period will last from 2026 to 2034. At the end of it, free allowances will no longer be issued for these sectors. Revenue from the sale of CBAM certificates in 2026 and 2027 will go to the member states. Under this new proposal, however, member states will be required to transfer 25 % of the proceeds from these sales, for those two years, to the Fund.
- 07** For the next multiannual financial framework period (2028-2034), as part of its [proposal on the system of own resources](#), the Commission has proposed to make 75 % of the revenue from the sale of CBAM certificates an own resource of the EU budget. The remaining 25 % will be retained by member states. In March 2026, this proposal has not yet been approved by the Council. The decision requires unanimity; if approved, it will also need to be ratified by all member states. [Figure 1](#) illustrates the timeline of the main developments.

Figure 1 – Timeline of CBAM and phase-out of free allowances



Source: ECA, based on the [CBAM regulation](#), the [ETS directive](#) and the Commission proposals for the [Own Resources Decision](#) and the [Temporary Decarbonisation Fund](#).

Scope and limitations

- 08** This opinion is based on our review of the proposal on establishing the Fund, which is accompanied by an explanatory memorandum and the compulsory financial statement. We held meetings with representatives of the Directorates-General for Taxation and Customs Union, Climate Action, Budget, as well as the Legal Service of the European Commission. We also received written replies to questions discussed at these meetings.
- 09** We analysed the Commission’s proposal and checked whether it poses any risks to sound financial management. We assessed the clarity of the drafting and the risk of misunderstanding or misinterpretation; we also examined whether the proposal is consistent with legislation in similar policy areas (in particular, the [Directive 2003/87/EC](#) on EU ETS and the [CBAM Regulation](#)).
- 10** Under Article 34 of the [Regulation \(EU, Euratom\) 2024/2509](#) ("the Financial Regulation") an ex-ante evaluation must be carried out when programmes and activities which entail significant spending are created. The Commission carried out this ex-ante evaluation in the form of a staff working document¹, however, it was not published alongside the proposal, contrary to the usual practice.

¹ [Staff Working Document \(2026\) 67](#), accompanying the proposal for a Regulation (EU) of the European Parliament and of the Council establishing the Temporary Decarbonisation Fund.

Key observations

- 11** The Fund is a temporary solution with the objective of addressing risks of carbon leakage during the start of the phase-out of the free allocation of EU ETS allowances. It will apply only to production and CBAM certificate sales in 2026 and 2027, as a bridging solution for these two years (paragraphs [03-04](#)).
- 12** According to the Commission, the Fund was set up to support the efforts by companies to further decarbonise, thereby helping to address the risk of carbon leakage. The conditions for receiving support from the proposed Fund have been modelled on those for obtaining the EU ETS free allowances in 2026 and 2027. The staff working document accompanying the proposal did not include an estimation of the additional investments in decarbonisation expected from establishing this Fund (paragraphs [17-19](#)).
- 13** New spending programmes, including the proposed Fund, must follow the rules set out in the Financial Regulation to ensure sound financial management. In this case, the Commission has requested three derogations from the Financial Regulation. We consider that in the first case, a derogation should not be used, as there are alternatives that can be followed within the provisions of the Financial Regulation. In the second case, we consider that the derogation from the Financial Regulation is necessary. In the third case, the proposed derogation is sufficiently justified; however, the wording does not properly reflect the extent to which the derogation will be used (paragraphs [20-27](#)).
- 14** The Commission estimates the total revenue of the Fund to amount to €632 million. Total expenditure is estimated to be €265 million. This mismatch raises doubts about the need to set the contribution share at 25 % of the member state revenue collected from the sale of the CBAM certificates. Estimated revenue and expenditure of the Fund are subject to great uncertainty, especially regarding the future pricing of EU ETS allowances and the scale of imports necessitating CBAM certificates. The member states will be required to transfer to the Fund the first portion of collected revenues already in 2028, while the payment will be disbursed in 2029. The proposal does not set out how the Commission will manage the collected revenue before it is disbursed (paragraphs [29-30](#)).
- 15** Although this is an entirely new fund, it builds on the existing administrative structures and reporting requirements for the free allocation of EU ETS allowances. This approach should contribute to a lower administrative burden to the beneficiaries and less cost for administering the Fund (paragraphs [31-32](#)).

16 We suggest amending the proposal during the legislative process as follows (see [Annex I](#)):

- propose a solution to the issue of unused appropriations in line with the provisions of the Financial Regulation (paragraphs [21-23](#));
- explicitly state that support is to be paid retroactively (paragraphs [26-27](#));
- consider whether the contribution share of 25 % of revenues is appropriate (paragraph [29](#));
- consider a single transfer of contributions from the member states to the Fund on 31 March 2029 (paragraph [30](#)).

Specific comments

Objectives of the fund

- 17** According to the explanatory memorandum, the Fund's objectives are to provide financial support to operators in carbon-intensive sectors at risk of carbon leakage, and to effectively incentivise emission reduction. The proposal applies to the fertiliser, aluminium, and iron and steel sectors; specifically, the products listed in the annex to the proposal.
- 18** To achieve the decarbonisation and emissions reduction objectives, Article 7 of the proposal sets out certain conditions for companies to receive support. These build on the conditions for the free allocation of EU ETS allowances, set out in Articles 22a and 22b of the Delegated Regulation to the [ETS directive \(Regulation \(EU\) 2019/331\)](#), which require operators to:
- implement all recommendations of an energy audit, except for cases where the payback time for the relevant investments exceeds three years;
 - implement other measures with an equivalent effect on greenhouse gas emissions reductions where the costs of implementing the recommendation are disproportionate;
 - submit a climate neutrality plan for production processes with high emissions levels.
- 19** Article 7 of the proposal also imposes a limited number of additional conditions. For example, the recommendations do not need to be implemented if the payback time of the investment exceeds five years (as opposed to three for free allocations under the EU ETS), or there must be a legal commitment for investments to achieve the targets referred to in a climate neutrality plan. The Commission has not assessed the impact that these

additional conditions would have on the decarbonisation investments made by companies. Additionally, since payments from the Fund will be based on the historical production, they are not directly supporting new investments in decarbonisation, but only indirectly through conditionality requirements. **The staff working document lacks an estimation of the additional investments in decarbonisation anticipated from establishing this Fund.**

Derogations from the Financial Regulation

- 20** In the legislative proposal, the Commission requests derogations from three provisions of the [Financial Regulation](#): Article 12(4)(c), Article 21(5), and Article 196(3).

Derogation from Article 12(4)(c): returning excess revenue to the member states

- 21** Article 12(4)(c) of the Financial Regulation stipulates that appropriations corresponding to external assigned revenue “shall be fully used by the time all the operations relating to the programme or action to which they are assigned have been carried out or they may be carried over and used for the succeeding programme or action”. However, Article 3(4) of the proposal sets out that: “Revenues remaining after the full disbursement of funding to final beneficiaries and payment of administrative costs of the Fund shall not be automatically carried over to be used by the Fund. By derogation from Article 12(4), point (c), of Regulation (EU, Euratom) 2024/2509, the Commission shall return the excess revenues to the member states in proportion to their financial contribution to the Fund.”
- 22** A derogation from a provision contained in Article 12 of the [Financial Regulation](#) entails a derogation from a provision of Title II of the Financial Regulation which lays down the budgetary principles, in this case the principle of annuality. This is contrary to Article 3(1) of the Financial Regulation, which prohibits any derogation from a provision setting out a budgetary principle, stating that “provisions concerning the implementation of revenue and expenditure of the budget, and contained in a basic act, shall comply with the budgetary principles set out in Title II”.
- 23** The Commission has used similar derogations in the past (such as [Regulation \(EU\) 2023/955 establishing the Social Climate Fund](#); [Regulation \(EU\) 2024/792 establishing the Ukrainian Facility](#)). Nevertheless, **such derogations should only be used in exceptional circumstances to avoid fragmentation of the rules applicable to the fundamental budgetary principles and an increase of the risks to sound financial management** (see also recital 12 of the Financial Regulation). Therefore, **we consider that this proposal should not provide for such a derogation**, as there are alternatives that can be followed

within the provisions of Article 12(4)(c) of the Financial Regulation (appropriations may be carried over and used for a programme or action with a similar objective).

Derogation from Article 21(5): assigning the revenue to the Fund

- 24** Article 21(5) of the Financial Regulation stipulates: “a basic act may assign the revenue for which it provides to specific items of expenditure. Unless otherwise specified in the basic act, such revenue shall constitute internal assigned revenue”. Article 3(3) of the proposal diverges from this provision by stating that : “[t]he amounts contributed shall be assigned revenue to the Fund in accordance with Article 21(5) of Regulation (EU, Euratom) 2024/2509. By way of derogation from that provision, the amounts contributed shall constitute external assigned revenue”.
- 25** The CBAM Regulation lacks a clause assigning revenue to the Fund since the need for a Temporary Decarbonisation Fund was not foreseen at the time. Therefore, **we consider that the clause permitting a derogation from Article 21(5) of the Financial Regulation is necessary in the present proposal.**

Derogation from Article 196(3): retroactive disbursement of the funds

- 26** Article 196(3) under Title VIII (Grants) of the Financial Regulation stipulates the following: “Grants shall not be awarded retroactively for actions already completed”. Article 11(1) of the proposal introduces the derogation from this article: “the Commission may also pay support with respect to investments and productions even if already completed”. In accordance with Article 3(2) of the Financial Regulation, we consider that the derogation is sufficiently justified in recital 8 of the proposal, as the CBAM revenue will only become available in 2028.
- 27** However, Article 1(2) of the proposal establishes that the Fund will support the production of goods that will take place in 2026 and 2027, while companies can only apply for financial support in 2028. Therefore, all funds will be disbursed retroactively. **We therefore consider that while the derogation is sufficiently justified, the Article 11(1) of the proposal does not clearly indicate the extent to which retroactive disbursement is planned to be used.**
- 28** We also note that, aside from the legal soundness of the derogation, retroactive disbursements in general pose a particular risk to sound financial management because the awarding authority will have no influence on the actions funded by the grant.

Revenue collection and asset management

- 29** The proposal estimates the total revenue of the Fund at €632 million (€308 million for 2026 and €324 million for 2027). Total expenditure under the Fund is estimated to be €265 million. **This mismatch raises doubts about the need to set the contribution share at 25 % of the member state revenue collected from the sale of the CBAM certificates (Article 3(2) of the proposal).** That said, both estimated amounts are subject to great uncertainty. Proceeds from the sale of CBAM certificates are a new form of revenue, and no historic data on income levels exists. On the spending side, there is a lack of detailed data regarding products which may become eligible because of a heightened risk of carbon leakage at national level (opt-in products pursuant to Article 6(2) of the proposal). These opt-ins are estimated to represent €75 million in total expenditure, but are very difficult to predict.
- 30** Article 3(3) of the proposal requires member states to transfer the first portion of their contributions to the Fund by 31 March 2028 (25 % of revenue collected for 2026) and the second portion by 31 March 2029 (25 % of revenue collected for 2027). To limit the administrative burden for companies, the Commission plans to disburse the payment of the support in a single round in 2029, covering both production years. Consequently, **for more than one year the Commission will make limited use of the estimated €308 million transferred by the member states in 2028.** There are no provisions in the proposal stipulating how the Commission will manage these assets.

Administration of the Fund

- 31** Although the proposal plans for an entirely new fund, the application procedures for support from the Fund, as set out in Article 8(1) of the proposal, build on the existing administrative structures and reporting requirements for the free allocation of EU ETS allowances, both at member state and at Commission level, as set out in in the delegated² and implementing³ Regulations on the free allocation of emissions allowances. **Beneficiaries will therefore not be required to use new channels for the financial support application procedure; growth in administrative costs will also be limited.**

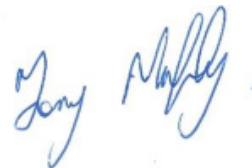
² Commission Delegated Regulation (EU) 2019/331 (Article 3).

³ Commission Implementing Regulation (EU) 2019/1842 (Article 3).

32 The free allocation of allowances is determined at the level of installations or sub-installations. The amount of support available from the Fund, however, is based on the production of individual goods within these installations. In some cases, in particular those concerning small companies, the available production data is not yet detailed enough to allow the precise amount of support to be provided from the Fund to be calculated. We note that the Commission should make use of the provisions of Article 8(3) of the proposal to require further details to be included in the production data report.

This opinion was adopted by Chamber I headed by Ms Joëlle Elvinger, Member of the Court of Auditors, in Luxembourg at its meeting of 25 March 2026.

For the Court of Auditors



Tony Murphy
President

Annexes

Annex I – Suggested changes with comments

Table 1 | Suggested changes with comments

Text of the proposal	Suggested change	Comments
<p>Article 3(2)</p> <p>Those contributions shall correspond to 25 % of the revenues that each Member State has collected from the sale of CBAM certificates pursuant to Article 20 of Regulation (EU) 2023/956 in relation to embedded emissions declared for 2026 and 2027.</p>	<p>No specific wording proposed.</p>	<p>The Commission should match more closely the contributions requested from the member states to the Fund's expected expenditure.</p>
<p>Article 3(3)</p> <p>Member States shall transfer to the Fund a monetary amount that corresponds to the amount referred to in paragraph 2 of this Article respectively by 31 March 2028 and 31 March 2029.</p>	<p>Member States shall transfer to the Fund a monetary amount that corresponds to the amount referred to in paragraph 2 of this Article respectively by 31 March 2028 and 31 March 2029.</p>	<p>With this proposed change it is avoided that amounts stay unused with the Commission for more than one year.</p>

Text of the proposal	Suggested change	Comments
<p>Article 3(4)</p> <p>Revenues remaining after the full disbursement of funding to final beneficiaries and payment of administrative costs of the Fund shall not be automatically carried over to be used by the Fund. By derogation from Article 12(4), point (c), of Regulation (EU, Euratom) 2024/2509, the Commission shall return the excess revenues to the member states in proportion to their financial contribution to the Fund.</p>	<p>No specific wording proposed.</p>	<p>The Commission should consider using the alternatives provided for in the Article 12(4)(c) of the Financial Regulation to avoid the need for the derogation.</p>
<p>Article 11(1)</p> <p>By derogation from Article 196(3) of Regulation (EU, Euratom) 2024/2509, the Commission may also pay support with respect to investments and productions even if already completed.</p>	<p>By derogation from Article 196(3) of Regulation (EU, Euratom) 2024/2509, the Commission's may also pay support will be paid with respect to investments and productions even if already completed.</p>	<p>With this proposed change it is clarified that all support will be paid retroactively.</p>

Abbreviations

Abbreviation	Definition/Explanation
CBAM	Carbon Border Adjustment Mechanism
EU ETS	EU Emission Trading System
TFEU	Treaty on the Functioning of the European Union

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This opinion was issued pursuant to Article 322(1) TFEU which requires the European Court of Auditors to be consulted before the adoption of legislative acts relating to the EU's financial rules.

The purpose of this opinion is to comment on the design, governance and funding provisions of the proposed Temporary Decarbonisation Fund. It is intended to help ensure that the future fund promotes sound financial management and contributes to the objectives of the EU's climate and industrial policies.

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