



## LEGAL CONTRIBUTION TOWARD A GREENER EUROPEAN UNION

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**Abstract:** *European Union has a diverse environment and recently the awareness of the importance of sustainable development has increased significantly. Subsequently, the greener and more sustainably oriented narratives have been used in documents and legislation produced by the European Union. The European institutions have established a legal framework to facilitate sustainable investments. Consequently, member states of the European Union have been implementing more sustainably prone legislation, but have chosen different legal approaches on how they will tackle the challenges associated with the adoption of more sustainably prone legislation. One of the successful ways how member states encourage more sustainable choices are tax abatements. This article compares and evaluates the best approaches by member states with better-developed tax abatements for sustainable choices and their results. The findings of this article are that various approaches have been developed and suggest how other countries can mirror proven ways towards improvement.*

**Keywords:** *Tax abatement, Sustainability, Legislation.*

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## 1. INTRODUCTION TO DIVERSE ENVIRONMENT AND SUSTAINABILITY

European Union is known for its diverse environment, which enables and enriches people's lives as well as their everyday life. Even though many people do not take the shrinkage of biological diversity as quite important, they probably should begin to worry about it. If not because of its intrinsic value and assurance or at least because of the expectation of better (and greener) life, they should look at it from the economic viewpoint of view. It is estimated that the shrinkage of biological diversity caused by humans causes the replacement of around 3% of global GDP each year (European Environment Agency, 2020).

Many people also think that pollution is just throwing waste around or gas emissions. While they are partially correct, there are also other aspects of pollution. The majority of the population in the European Union lives in urban areas and that number is only expected to grow. Biological diversity is also important since it ensures security on important topics, such as food and health, but also protects livelihoods and enables people to live in the countryside instead of being forced to move to the more populated areas to find new jobs due to unstable conditions in rural areas (Quinney, 2020). That makes different ways of pollution even more important to recognize and mitigate, such as noise or light pollution, since pollution regardless of the kind, decreases people's lives expectancy and effectively leads to more health problems irrespective of whether they live in rural or urban areas (Ten Brink et al., 2016).

## 2. GREENER ORIENTED NARRATIVES USED IN LEGISLATION

European Union has always been progressive and eager to improve in all areas including the care for the environment, nature and biological diversity. This can be seen early, in the beginnings of greener oriented documents, when European Union already passed the Council Directive 79/409/EEC that has been amended in 2009 and is now known as the Directive 2009/147/EC, more commonly known also as “the Birds Directive” (European Commission, 2021 a; European Commission, 2021 c). The directive complemented and supplemented the Organisation for Economic Cooperation and Development's The Polluter Pays Principle, which was established in 1972 (OECD, 1992). The OECD's principle burdens those whose actions produce pollutants with contributing adequately to the prevention of any hazards for (human) health or the environment.

Another important directive that aims to protect natural habitats and wild fauna and flora is Council Directive 92/43/EEC, which is also known as the “Habitats Directive” (European Commission, 2021 b). One of the outcomes of the Habitats Directive has been a widely known and successful project that established a network of protected areas around the European Union, Natura 2000. The project is ambitious with the intention to protect more than 1000 animal and plant species as well as more than 200 types of habitat (European Commission, 2021 b). Even though the objectives of the Natura 2000 were seen as very optimistic at the beginning, the project has proved to be the right tool for ambitious plans for the protection of the native biosystem and species.

### 2.1. The ambitious goals and their funding for the future

European legislative narrative has been getting progressively protective of natural habitats, biological diversity and protecting green areas and the trend will most likely continue since awareness of how important care for the environment and biodiversity is just keeps growing. That is supported also by a recently passed set of policy initiatives by the European Commission, widely known as The European Green Deal. The main objectives of the Green Deal are to transform the

European Union into a competitive economy that is also modern and efficient with its resources, including probably the most ambitious goal of the Green deal: for the European Union to be neutral at greenhouse gases emissions by 2050 (European Commission, 2022 a).

The European Green Deal is seen as a major investment by the European Union and one of the priorities in the years 2019 to 2024. Since the Covid-19 pandemic, the Green Deal has also been seen as a part of the recovery plan. As for every strategic project, and Green Deal that definitely is, the funding has to be well prepared and sufficient. Green Deal's funding comes from European Union's seven-year budget and the NextGenerationEU Recovery Plan (at an estimated 600 billion euros) (European Commission, 2022 a).

European Green Deal has eight major actions: climate, environment and oceans, energy, agriculture, finance and regional development, industry, research and innovation, and transport (European Commission, 2022 a). Transport is then furthermore divided into two main sectors: Sustainable and Smart Mobility Strategy and Connecting Europe Express. The main objective of the first one is to lower greenhouse gas emissions caused by transport by 90% by 2050 as well as improve connectivity and access (European Commission, 2022 c) and the main objective of the second one is to connect Europe with long-distance train connections, as train travel is one of the safest, environmentally friendliest and cheapest possibilities of travelling across Europe. To emphasise its importance, the year 2021 was named as European Year of Rail (European Commission, 2022 b).

### 3. THE LEGAL FRAMEWORK

**European Union** has been making space for more sustainable choices for some time now, but probably the most of the attention and impact on everyday lives that everybody has noticed has received the Directive of the European Parliament and the Council (EU) 2019/904. This directive aims to reduce the impact of certain single-use plastic products on the environment. An important reason why the European legislator argued the need for such an impactful Directive is the astonishing finding that a lot of the marine litter is plastic, and about half of that plastic is single-use plastic products. Furthermore, this directive is aligned and contributes positively to United Nations' Sustainable Development Goal 14 (European Union, 2019).

**The Court of Justice of the European Union** tackles a wide range of areas connected to environmental issues. Areas that produce the most cases at the Court of Justice of the European Union are air, water, waste, nature and horizontal legislation, particularly Environment Impact Assessment (known also as EIA) (European Commission, 2021 b). Horizontal legislation is mainly procedural providing mechanisms and methods that are aimed at improvement of decision-making, legislative development and implementation (Berglund and von Raggamby, 2007). Environmental Impact Assessment is a process of evaluating the likeliness of environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse (Secretariat of the Convention on Biological Diversity, 2020). The judgements of the Court of Justice of the European Union bind member states of the European Union based on their membership in the Union.

**The European Court of Human Rights and the European Convention on Human Rights** also cover important topics on the environment. Even though the European Convention on Human Rights is a treaty originally drafted in 1950 by the Council of Europe, which is not a part of the European Union, it still binds member states of the European Union, because all member states of the European Union signed the treaty. This convention aims to protect human rights and political

freedom, therefore impacts member states' legal approach by following its articles and later adding protocols to the convention. Furthermore, the cases by the European Court of Human rights are applicable too, so countries have to follow Courts' decisions if they are relevant to them. Most commonly argued cases about environmental matters are regarding Article 2 (right to life), Article 3 (Prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private life and family life and home), Article 10 (Freedom of expression / Freedom to receive and impart information), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy) and Article 1 of Protocol 1 to the convention (right of property) (European Court of Human Rights, 2022).

### 3.1. More sustainably oriented legislation

All of the mentioned in the text above brought countries to more sustainable thinking about development. With help of various incentives countries and the European Union as a whole try to encourage more environmentally friendly solutions as well as worsen the possibilities for less sustainable things and projects. This is enabled by EU regulation 691/2011 of the European Parliament and of the Council, which was later amended with EU Regulation 538/2014 of the European Parliament and the Council (Eurostat, 2015, p.7).

Most commonly used environmental measures include environmental subsidies, price support, regulatory support mechanisms and environmental tax abatements. The latter is especially relevant for potentially environmentally damaging subsidies and policymaking in this sector (Eurostat, 2015, p.12). Environmentally friendly or at least friendlier products compete with well-established products that tend to have a worse impact on the environment, and they are usually more convenient and/or cheaper than their greener counterparts.

Environmental tax abatements alongside environmental subsidies and transfers alike aim to lower the cost of production or use of more environmentally mindful products (Eurostat, 2015, p. 12). This is usually done within the national budget, but not marked specifically, which indicates that the countries are willing to cover the additional cost of implementing more sustainable choices to ensure that their development in the future would not be endangered and would enable better prospects for their people and environment.

## 4. TAX ABATEMENTS AND COMPARISON OF THE APPROACHES

European Union defines environmentally related tax as a “*tax whose tax base is a physical unit (or a proxy of a physical unit) of something that has a proven, specific negative impact on the environment, and which is identified in ESA 95 as a tax*“ in Article 2 of the Regulation (EU) No 691/2011 of the European Parliament and the Council (European Union, 2011), with ESA being the European System of Accounts. Tax abatements are similar, but they are meant to reduce costs of environmentally better choices, compared to environmentally-related taxes. Tax abatements come in different forms but could be frequently seen as tax exemptions. However, they are not limited to only exemptions but could be recognized as allowances, credits, rate reliefs, or deferrals (Eurostat, 2015, p.17).

One of the popular, yet potentially environmentally problematic commodities in the European Union are vehicles. They importantly contribute to pollution and are an area that most countries already started taking measures, so different tax systems are comparable and there are various equivalents of choices that are slightly better or worse for the environment. In 2020, the trend of

an increasing number of vehicles, particularly passenger cars did not stop and have not been stopping in the past few years. Despite the COVID-19 pandemic, many travel restrictions and a significant increase of work from home for the majority of the professions as well as most of the education system being online for at least part of the year, the passenger car fleet in the European Union still grew for 1,2% compared to the year before. This percentage may not seem as much, but when considering that there were 246,3 million cars on the roads ([European Automobile Manufacturers' Association, 2022](#)) and around 448 million people in the European Union ([Eurostat, 2020](#)), that equals one passenger car per less than two people.

Countries in European Union are tackling the increasing passenger car fleet, and since there will likely be even more cars on European roads in the future, they are trying to at least ensure that cars that are used are as much environmentally friendly as possible. This could be divided into two groups; CO<sub>2</sub> – based motor vehicles (eg. petrol and diesel) and electric vehicles (that include battery-electric, plug-in hybrids, hybrids, extended-range electric, fuel cell electric, liquified petroleum gas, and compressed natural gas among other electrified options of engines in the vehicles)

#### **4.1. Taxes for CO<sub>2</sub> – based motor vehicles**

CO<sub>2</sub> – based vehicles are increasingly considered a bigger burden for the environment, than their electric counterparts, even though due to all materials used for the production of vehicles, none can be considered as really environmentally friendly, just as more or less damaging and burdening for the environment.

Members of the European Union have different taxes to compensate for the use of CO<sub>2</sub> – based motor vehicles. The most frequently used approach is taxation at the acquisition of the vehicle and during ownership (most commonly charged each year), but some countries vary from this method and have just one of these taxes or even none at all (Estonia, Lithuania and Poland). To allow transparency and better comparability in taxation, most taxes are calculated based on emissions of grams of CO<sub>2</sub> per kilometre, while some countries take into account also when the vehicle has been registered (Latvia) or the registered value of the vehicle (Malta and Croatia). Vehicles with lower emissions are usually subject to lower tax rates. There are very few tax abatements for CO<sub>2</sub>-based vehicles, and even those that exist, are reserved only for vehicles with extremely low or zero emissions.

#### **4.2. Taxes for electric vehicles**

Tax abatements and even purchase incentives are however very frequent for electric vehicles. At either acquisition or during the ownership of the electric vehicle, many countries offer tax benefits compared to the CO<sub>2</sub> – based vehicles, not rarely for both occasions. If the emissions are very low, some countries provide tax exemptions for such vehicles to stimulate investment into new and environmentally friendlier vehicles. Surprisingly, some countries do not have any encouragement for purchasing or owning electric vehicles.

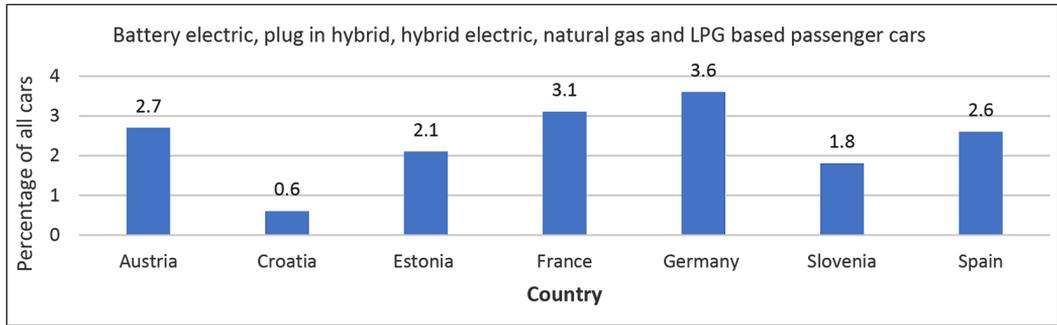
Variants of tax bases for vehicles in selected countries are presented in tax bases and incentive schemes that are used in selected countries, mentioned in the first column (Table 1). It can be easily noticed how each country utilizes a different system that is tailored to its needs. Estonia does not use a specific system of differentiation between vehicles but has an optimistic percentage of electric vehicles. Germany utilizes a complex and precise incentive scheme which results in almost double amount of electric cars when looking at the percentages of all vehicles, but the absolute number

is much higher since it has comparatively much more cars than Estonia or Slovenia. The percentage of electric passenger cars shows that countries with more developed tax abatements and incentive schemes have better and faster development towards a green future (Figure 1 and Table 1). Germany (3,6%) can be used as a great example of how to help people transfer to greener choices based on its success with these environmentally mindful transfers. Croatia (0,6%) has implemented promising incentive schemes, but the effect will be probably seen in a few years since it joined the EU at the latest and will need some time to see the results of implemented schemes.

**Table 1.** Variants of tax bases for vehicles in selected countries

Country	The tax base for the acquisition of CO <sub>2</sub> – based vehicles	Tax base during the ownership of CO <sub>2</sub> – based vehicles	Tax for the acquisition of electric vehicles	Tax base during the ownership of electric vehicles	Purchase incentive for electric vehicles
<b>Austria</b>	VAT deduction for zero-emission Fuel consumption tax (NoVa), calculated by CO <sub>2</sub> emission in g/km	None	VAT deduction and tax exemption for zero-emission	Tax exemption for zero-emission	Bonus, only for new cars with a value less than 60.000 EUR
<b>Croatia</b>	CO <sub>2</sub> emissions, purchase price, fuel type of the vehicle	None	No excise duties	Exemption from environmental tax	Incentive scheme, up to 9,333 EUR once a year
<b>Estonia</b>	None	None	None	None	None
<b>France</b>	Bonus/malus scheme (bonus for less than 20g CO <sub>2</sub> /km, malus for 138g CO <sub>2</sub> /km or more)	Annual malus for cars emitting over 190g CO <sub>2</sub> /km	Regions provide various exemptions (half or full)	None	Incentive schemes, based on CO <sub>2</sub> emissions and household income
<b>Germany</b>	Bonus for purchase of low emission vehicle, but not directly linked to its CO <sub>2</sub> emissions	Only for cars registered from 1.7.2009, but excludes cars emitting less than 90g CO <sub>2</sub> /km	None	10-year tax exemption	Bonus up to 9.000 EUR for cars valued up to 40.000 EUR and 7.500 EUR for cars valued over 40.000 EUR
<b>Slovenia</b>	CO <sub>2</sub> emission and fuel type	None	The minimum tax rate for cars emitting less than 110g CO <sub>2</sub> /km	None	Incentive schemes with a value of up to 7.500 EUR
<b>Spain</b>	CO <sub>2</sub> emission	Since 2018, higher emitting vehicles pay higher taxes for the first 3 years	Tax exemption from special tax for cars emitting less than 120g CO <sub>2</sub> /km	75% reduction electricity vehicles in main cities	Incentive schemes up to 7.000 EUR for cars

**Source:** European Automobile Manufacturers' Association, 2020; European Automobile Manufacturers' Association, 2021



**Figure 1.** Percentage of electric vehicles in selected countries

**Source:** European Automobile Manufacturers' Association, 2022, p.14

Spain is one of the most important countries in the European Union regarding car production. Perception of vehicles is important because it puts additional motivation on companies that produce cars to produce models that are not CO<sub>2</sub>-based if there is a strong demand for them. Spain succeeded in making electric cars more attractive even though they tend to be more expensive with scheme Moves III which offers incentives up to 7000 EUR for the purchase of environmentally friendly cars. Alongside initial incentives to buy more environmentally friendly cars, some cities, like Madrid implemented that cars with stickers proving that they are low or zero emission, can park in the special zones in the city centre without having to pay for parking (Jimenez and Flores, 2015). Such regulations are very simple, easy to implement, make usage of low emission cars more enjoyable and therefore boost the popularity of such cars and care for the environment. Even though Spain is already above the average (shown in Figure 1, the average for shown countries is 2,36%), and with such smart and easy regulations, this could result in a much higher percentage of electric vehicles in the upcoming years.

## 5. CONCLUSION AND FINAL THOUGHTS

It can be concluded that countries with more developed tax incentive schemes have a higher percentage of electric passenger cars, which is a promising result that shows that environmentally friendlier development is faster and more accessible with tax abatements and incentive schemes as well as that people and companies choose greener options if they are available and have some encouragement from national and international legislation. Taxes and incentive schemes can be daunting, so countries trying to implement new and environmentally better choices should try to focus on simplifying the explanation of how everything works, so it will be easily understood by everyone and be patient with the results of these projects, because such shifts towards green future are important, but need some time to show the outcomes. Even though tax abatements are crucial for development, important steps toward a greener European Union can be also supported with simple regulations like no need to pay parking fees.

One of the most popular and widely available types of cars that are not CO<sub>2</sub>-based and one of the most environmentally friendly are electric cars. But following the most basic concept of engine and mechanics, these are in essence big batteries. While the concept is innovative and a big and important step toward zero emissions travel goals, there must also be a discussion regarding how environmentally problematic can be batteries. Just some major concerns about batteries are that they require rare elements to be produced, the efficiency decreases over time, with every discharge the battery capacity decreases (Koenigsberg, Kohli and Montoya, 2011) and the question remains, on how environmentally friendly can such car batteries be repaired and recycled.

Undoubtedly, electric cars have a lot of advantages, but one of the aspects that is still questionable is their longevity compared to for example diesel cars with internal combustion engines. While batteries and output, or in terms of transport their range, decreases in a couple of years, their diesel counterparts can produce the same output and retain the same range over a much longer period of time, even a decade leaves no noticeable decrease in output and range. Buying new and innovative things is a good thing for industry and support towards green transition, but we should be careful not to fall into replacing cars early, just because they do not last long, but are more environmentally friendly during their shorter usage period. We should take into consideration that although emissions might be low while driving, there are also a lot of emissions produced during the manufacturing process and recycling, which means that if the usage period of low emissions is short, overall emissions, might still be higher with electric cars than CO<sub>2</sub>-based cars.

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