

# Legal study on EU legislation for corporate fleet electrification

Study by Milieu for Transport & Environment



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**ABBREVIATIONS USED**

<b>BEV</b>	Battery Electric Vehicle
<b>CVD</b>	Clean Vehicles Directive
<b>GHG</b>	Greenhouse gas
<b>PHEV</b>	Plug-in Hybrid Vehicle
<b>TFEU</b>	Treaty on the functioning of the European Union
<b>ZEV</b>	Zero Emission Vehicle
<b>ZLEV</b>	Zero- or low- Emission Vehicle

## 1 INTRODUCTION

### 1.1 CONTEXT AND BACKGROUND

In the European Green Deal, the Commission clearly announced its intention to fully decarbonise the EU's economy and society by 2050 in response to the existential threat of climate change. Reaching the climate neutral objective requires reducing GHG emissions progressively. As part of the European Green Deal, the Commission published the proposal for the European Climate Law setting the goal of making Europe's economy and society climate-neutral by 2050<sup>1</sup> and proposing a 55% emission reduction target by 2030 compared to 1990 levels<sup>2</sup>. The exact level of ambition is still to be determined, with the European Parliament asking for a 60% GHG emissions reduction by 2030. While the Council has agreed with the 55% GHG emission reduction by 2030<sup>3</sup>, it invited the Commission to assess the environmental, economic and social impacts at member state level. The Council also supported that 30% of the total expenditure from the EU's budget for 2021-2027 and Next Generation EU to target climate-related projects. The adoption of the Climate Law is expected to be imminent and will be instrumental, together with the financial instruments linked to it, to stimulate investment on GHG emission reduction measures.

If these overall objectives are to be attained, addressing emissions from the transport sector is of particular urgency. Indeed, transport remains the only sector in which greenhouse gas (GHG) emissions have not decreased, instead following the opposite trajectory, although at a slower pace in the last few years<sup>4</sup>. Consequently, transport's relative importance in the EU's GHG emissions has increased, and it now stands at about a quarter of the total<sup>5</sup>. Within this sector, road transport plays the largest role by far, representing 71% of overall transport emissions in 2018<sup>6</sup>, in addition to being the main cause of air and noise pollution in cities, with severe health consequences<sup>7</sup>.

The European Green Deal also recognises this fact, setting the goal of achieving a 90% reduction in road transport emissions by 2050. However, there is still a long way to go to achieve this target. Indeed, to date, road transport is the sector of the economy where the least progress has been made: the CO<sub>2</sub> emissions from new cars increased for three years in a row before the entry into force of the new CO<sub>2</sub> targets for cars and vans<sup>8</sup> this year. In order for the EU's climate neutrality goals to be achieved, virtually all cars will need to be zero or low emissions by 2050<sup>9</sup>. In turn, this would require all new cars, vans, smaller trucks and buses to be zero emission no later than 2035.

Much attention is therefore being brought to reducing emissions and encouraging electrification in the road transport sector, and many parts of the relevant regulatory framework are due to be revised in order to accelerate this process. In addition to the existing measures, additional levers are also being examined. For example, the Commission considered extending the Emissions Trading System (ETS) to road

<sup>1</sup> Commission proposal, March 2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0080&from=EN>

<sup>2</sup> Commission amended proposal, September 2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0563&from=EN>

<sup>3</sup> Council position: <https://www.consilium.europa.eu/media/47582/st14171-en20.pdf>

<sup>4</sup> EEA, 'Greenhouse gas emissions from transport in Europe', available at [Greenhouse gas emissions from transport in Europe — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/transport-emissions)

<sup>5</sup> Eurostat, 'Shedding light on energy in the EU :A guided tour of energy statistics – 2020 edition', available at [Shedding light on energy in the EU \(europa.eu\)](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1)

<sup>6</sup> EEA, "Greenhouse gas emissions from transport in Europe", available at [Greenhouse gas emissions from transport in Europe — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/transport-emissions)

<sup>7</sup> EEA, 'Transport and public health', available at [Transport and public health — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/transport-emissions)

<sup>8</sup> EEA, 'Average CO<sub>2</sub> emissions from new cars and new vans increased again in 2019', available at [Average CO2 emissions from new cars and new vans increased again in 2019 — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/transport-emissions)

<sup>9</sup> Commission Staff Working Document accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final, SWD(2020) 331 final, p. 247.

transport<sup>10</sup>, but this possibility has been mostly rejected by several studies as well as NGOs and other stakeholders.

However, one area which deserves particular attention and which is not yet specifically regulated is the corporate vehicle market segment. Indeed, today, six out of 10 cars sold in Europe are company cars<sup>11</sup>, and 96% of new company car registrations were still petrol and diesel vehicles in 2019. Because company cars drive on average 2.25 times further than private cars, they disproportionately contribute to road transport emissions.

Recognising this issue, the Commission has highlighted the need to further stimulate demand for zero-emissions vehicles in the Sustainable and Smart Mobility Strategy, and has in particular committed to propose actions to boost the uptake of zero-emission vehicles in corporate and urban fleets<sup>12</sup>.

## 1.2 SCOPE AND METHODOLOGY

This study will examine the legal feasibility of different options for legislative measures that could be put forward by the Commission in order to boost uptake of zero-emission vehicles in corporate fleets.

In particular, the following options are analysed:

- Revision of the Clean Vehicles Directive<sup>13</sup> to expand its scope to private fleets, setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more;
- Separate legislative proposal (Directive or Regulation) setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more;
- Other types of EU level measures that could be appropriate to set zero-emission vehicles quotas for companies owning fleets of 25 vehicles

The analysis will be based on desk research, using relevant sources of EU law, and publicly available reports, studies and academic writing.

In particular, in order to evaluate these options, this study will refer to the relevant criteria employed in the European Commission's Better Regulation toolbox<sup>14</sup>. The toolbox is a collection of guidelines and principles which are applied by the European Commission when preparing new initiatives and proposals and when evaluating existing legislation. These are intended to help ensure that EU policies and laws are designed and evaluated so that they achieve their objectives in the most efficient and effective way, ensuring their relevance, coherence with existing EU legislation and EU added value. The feasibility of any EU legal measure will therefore depend on whether it can be considered to meet the Better Regulation criteria.

The process of examining an initiative via these tools involves a number of assessments of a legal, but also socio-economic nature, including cost-benefit analysis based on evidence. Indeed, any initiative which is expected to have significant economic, environmental or social impacts will have to be subject to an impact assessment (IA) in order to properly assess these impacts. This is for example the case for new legal acts, and for revision or recasts of existing legal acts, and would therefore be required for any of the measures envisaged under this study<sup>15</sup>.

<sup>10</sup> [Climate change – updating the EU emissions trading system \(ETS\) \(europa.eu\)](#)

<sup>11</sup> Dataforce, 2020, Company Car Report, available at [2020\\_10\\_Dataforce\\_company\\_car\\_report.pdf \(transportenvironment.org\)](#)

<sup>12</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final, para. 15

<sup>13</sup> Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles

<sup>14</sup> European Commission, 'Better Regulation toolbox', available at [Better regulation toolbox | European Commission \(europa.eu\)](#)

<sup>15</sup> European Commission, 'Tool #9. When is an impact assessment necessary?', available at [TOOL #9 When is an impact assessment necessary? \(europa.eu\)](#)

In depth socio-economic evaluations are however outside of the scope of this study, which will instead focus on the legal aspects related to the options for electrification of passenger fleets. Nevertheless, the answers to some of the legal questions involved depend on economic considerations (e.g. cost or administrative burden in relation to proportionality). In such cases, the need for further analysis will be pointed out.

## 2 ANALYSIS

### 2.1 PRELIMINARY CONSIDERATIONS: THE BETTER REGULATION CRITERIA

In order to determine the feasibility of a measure setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more at EU level, a first question to be addressed will be whether it meets the tests of **proportionality** and **subsidiarity**.

The **subsidiarity** test involves showing that the EU level is the most appropriate for adopting the kind of measure envisaged, because the objective of the measure cannot be achieved sufficiently by the Member States and the scale or effects of the proposed action require Union action<sup>16</sup>. Answering this question will firstly depend on the measure's legal basis and whether it involves one of the Union's exclusive or shared competences. If the envisaged act falls under an issue of exclusive competence of the EU, then subsidiarity is necessarily met, as by definition only the Union can act. If the act instead involves a shared competence, then further considerations need to be taken into account to determine whether action is more appropriate at Member State or EU level. Relevant points to consider here would, for example, be the degree to which the characteristics of the problem being addressed affect only some Member States or vary across the different Member States, in which case national characteristics would need to be taken into account when proposing the EU legislation or even lead to the conclusion that national action might be more appropriate. Also relevant is the question of whether action at the Member State level alone would create additional challenges or be of limited effectiveness<sup>17</sup>.

If the subsidiarity test is met, **proportionality** then requires that the content and form of the proposed measure do not go beyond what is necessary in order to meet its objective. In order to meet this test, it should for example be examined whether the measure only addresses the aspects of the issue that are best addressed at EU level, takes the simplest form, leaves enough room for national circumstances, and does not cause unreasonable costs for the actors concerned<sup>18</sup>.

Other criteria suitable for legal analysis include **coherence** and **effectiveness**. **Coherence** is concerned with whether the measure is generally coherent with the objectives of other measures in the existing regulatory framework, and whether any synergies/conflicts exist between these measures that could improve/hinder their effectiveness. **Effectiveness** examines the extent to which a measure would achieve its stated objective.

The efficiency criteria is also considered when evaluating a measure. However, as it concerns whether the measure achieves the objective at the lowest cost, its assessment falls outside of the scope of this legal study.

### 2.2 OPTION 1: REVISION OF THE CLEAN VEHICLES DIRECTIVE

The EU's revised Clean Vehicles Directive 2009/33/EC (CVD), as amended by Directive (EU) 2019/1161 adopted in June 2019<sup>19</sup> sets requirements in order to promote use of energy-efficient vehicles through public procurement. The new Directive needs to be transposed into national law by 2 August 2021.

The Directive sets minimum procurement targets for clean light-duty and heavy-duty vehicles, as a proportion of total vehicles covered by awarded contracts under the two reference periods (2021-2025; 2026-2030). It applies to cars, vans, trucks and buses (excluding coaches), when they are procured

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<sup>16</sup> European Commission, *Better Regulation Toolbox: Tool #5. Legal basis, subsidiarity and proportionality*, p. 26. Available at [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-5\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-5_en_0.pdf)

<sup>17</sup> *Idem*

<sup>18</sup> *Idem*

<sup>19</sup> Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles

through:

- **Purchase, lease, rent or hire-purchase contracts** under obligations by EU public procurement rules (Dir. 2014/24/EU<sup>20</sup> and 2014/25/EU<sup>21</sup>)
- **Public service contracts** for the provision of passenger road transport services (Reg. 1370/2007<sup>22</sup>)
- **Services contracts** for public road transport services, special-purpose road passenger-transport services, non-scheduled passenger transport, refuse collection services, mail and parcel transport and delivery. (Annex I of the CVD)

The CVD borrows criteria from the CO<sub>2</sub> standards for cars and vans<sup>23</sup> to define a “clean vehicle” as:

- Until 31 December 2025: no more than 50g/km CO<sub>2</sub> and up to 80% of applicable real driving emission (RDE) limits for nitrogen oxides (NO<sub>x</sub>) and ultrafine particles (Particle Number – PN)
- From 1 January 2026: only zero emission vehicles (ZEVs)

The suggested revision of the CVD examined here would:

- expand its scope to also cover companies with corporate fleets of 25 vehicles or more, and
- require them to ensure that a proportion of this fleet is constituted by ZEVs, with the aim of achieving 50% by 2025 and 100% by 2030.

### 2.2.1 Subsidiarity

The CVD is based on Art. 192(1) of the Treaty on the functioning of the European Union (TFEU), which is the legal base for measures relating to the environment. In the CVD’s Recitals, the co-legislators underline the role of demand-side measures for clean vehicles in reaching the EU’s long-term EU environmental, climate and energy goals, as well as in boosting innovation and competitiveness in the EU transport industry.

The objective of the CVD is to ‘...to ensure that contracting authorities and contracting entities take into account lifetime energy and environmental impacts, including energy consumption and emissions of CO<sub>2</sub> and of certain pollutants, when procuring certain road transport vehicles with the objectives of promoting and stimulating the market for clean and energy-efficient vehicles and of improving the contribution of the transport sector to the environment, climate and energy policies of the Union (Art. 1). Stated in a more general way, the CVD aims to ‘provide a demand-side stimulus for clean vehicles in support of a low-emission mobility transition’ (Recital 33).

While the main objective of the CVD which triggers the legal basis is environmental, the competences involved here fall also under the transport, and procurement policies. As indicated by Article 4 TFEU, these are all shared competences, but the CVD also concerns the sectorial harmonisation of procurement rules, which is an exclusive EU competence<sup>24</sup>.

The introduction of provisions into the CVD setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more would fit with the general objective of this legislation. However,

<sup>20</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

<sup>21</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

<sup>22</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations

<sup>23</sup> Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011

<sup>24</sup> Commission Staff Working Document, Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles, SWD(2017) 366 final

these provisions would involve competences related to environment and transport, but not to procurement, which is relevant in terms of the subsidiarity principle analysis. It is therefore necessary to further establish the need for EU action on this issue under the subsidiarity principle applicable to acts related to share competences.

Several of the arguments on subsidiarity put forward in the impact assessment for the CVD are also of relevance for the examined revision. Indeed, it notes that the reduction of GHG has a clear and widely accepted cross-border dimension, and that although Member States have means to promote more fuel-efficient vehicles, their effectiveness to address this issue will be dependent on the willingness of other countries applying similar measures<sup>25</sup>. In this regard, where Member States take measures to promote the uptake of clean vehicles in corporate fleets, this is mainly done through tax measures and other incentives. Currently, no EU Member State or any other country appears to have legal requirements directly imposing environmental criteria on corporate fleet composition.

Concerning whether such national measures would be more adequate than EU level measures to promote EVs, it can be recognised that current tax benefits and purchase incentives measures for stimulating electric vehicle purchase/clean cars purchase currently applied in the EU Member States vary widely in scope and type, and are not equally as effective. Tax benefits for clean company cars are currently implemented by 13 Member States. In some cases, the measure is applicable only to battery electric vehicles (BEVs) and/or plug-in hybrid electric vehicles (PHEVs), sometimes including fuel-cell electric vehicles (FCEVs), or in others to all vehicles under a certain CO<sub>2</sub> limit. These measures lower the ownership cost of the vehicle and can take the form of exemptions, deductions of varying degrees, reductions in the taxable amount (such as reductions on benefit-in-kind income tax), or minimum rates. In addition, some Member States also offer companies purchasing incentives for clean vehicles, whereby the upfront cost of purchase of the vehicle is reduced. This can take the form of a grant, or otherwise a tax rebate or exemption upon purchase or registration. These purchase incentives are sometimes available only for a limited duration of time, or for a limited total amount<sup>26</sup>.

The evidence concerning the effectiveness of fiscal incentives for stimulating electric vehicle purchase indicates that they are successful inasmuch as they make their total ownership costs (TCO) – i.e. purchase cost plus operating costs over the period where the vehicle is used – comparable to those of traditional internal combustion engine (ICE) vehicles<sup>27</sup>. Although purchase incentives are effective in this regard, they also represent very substantial cost (in the case of grants) or loss of revenue (in the case of point of purchase tax breaks) to governments<sup>28</sup>. Different types of purchase incentive also seem to have variable influence on different market segments, with grants tending to favour uptake of smaller EVs and reductions in VAT or registration tax having a greater impact on larger, more expensive models<sup>29</sup>. This latter consideration is of importance with regards to measures targeting company cars, as these kinds of models constitute a large part of this market segment. Concerning exemptions or rebates on recurring taxes, these are criticised for sending a comparatively weak price signal and being less effective at increasing demand for EVs<sup>30</sup>, although there are currently few studies on this issue. Nevertheless, these can be effective in conjunction with purchase incentives to further draw down the TCO, and make ZEVs a more attractive choice for employees.

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<sup>25</sup> *Idem*, p. 23

<sup>26</sup> ACEA, 'Electric vehicles : tax benefits & purchase incentives', available at [Overview - Electric vehicles: Tax benefits & purchase incentives in the European Union | ACEA - European Automobile Manufacturers' Association](#)

<sup>27</sup> Hardman, S., Chandan, A., Tal, G., Turrentine, T., 2017. *The effectiveness of financial purchase incentives for battery electric vehicles – A review of the evidence.*, Renewable and Sustainable Energy Reviews 80 (2017), 1100–1111, available at <https://phev.ucdavis.edu/wp-content/uploads/2017/09/purchase-incentives-literature-review.pdf>

<sup>28</sup> Velten E.,K., Stoll T., Meinecke L., Kreibich S.C., Duin L., 2019, *Measures for the promotion of electric vehicles*, Ecologic Institute, available at [https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/foerderung\\_von\\_e-autos.pdf](https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/foerderung_von_e-autos.pdf), pp. 23, 28

<sup>29</sup> Levay, P.Z., Drossinos, Y., Thiel, C., 2017, *The effect of fiscal incentives on market penetration of electric vehicles: A pairwise comparison of total cost of ownership*, Energy Policy 105 (2017) 524-533, available at <https://www.sciencedirect.com/science/article/pii/S0301421517301404>

<sup>30</sup> Runkel M., Mahler A., Beerman A-C., Hittlemayer A., 2018, *A comparison of CO<sub>2</sub> based car taxation in EU-28, Norway and Switzerland*, available at [https://www.transportenvironment.org/sites/te/files/2018\\_03\\_Vehicle\\_taxation\\_GBE\\_report.pdf](https://www.transportenvironment.org/sites/te/files/2018_03_Vehicle_taxation_GBE_report.pdf)

While national tax measures or purchase incentives are not the only available measures to promote EVs, they are broadly used in Member States as the main measures to encourage EV uptake. However, they are budget dependent, so it can be expected that Member States whose budgets do not allow for large sums to be invested in ZEV purchase incentives will only have limited success in increasing uptake in corporate fleets. For example, stimulus measures introduced in the context of the COVID-19 pandemic have included such measures in many Member States, but the gains remain concentrated in the countries with the most means<sup>31</sup>. In the long term, the economic fallout of the pandemic may also have an impact on these incentives for Member States with tighter budgetary constraints. The temporary nature of some of these measures also means that there is less predictability for companies when making purchasing decisions, and sends less of a clear market signal.

Since 2015, there has been a notable increase of around 400% in the number of commercial registrations of ZEVs. However, the proportion of ZEVs in corporate fleets in 2019 still stood at around 2.2%, with a further 3.1% for HEVs and most of the rest (92.3%) being petrol or diesel. There is therefore significant progress still to be made for electrification in this market sector. Most of this increase (1.8% out of the 2.2%) is also concentrated on a few countries, namely Belgium, France, Germany, Italy, Netherlands, Poland, Spain and the UK<sup>32</sup>.

The lack of consistency in relation to the types of vehicles that are eligible for these incentives is also potentially problematic. Where these incentives apply to PHEVs or based on a vehicle's CO<sub>2</sub> emissions performance, it can be expected that they will be less effective in terms of lowering CO<sub>2</sub> emissions. Indeed, there is a consistent gap between vehicle's declared CO<sub>2</sub> emissions and their real-world performance, currently estimated at around 39% for new vehicles<sup>33</sup>. Moreover, evidence suggests that real-world CO<sub>2</sub> emissions for PHEVs are three to four times higher than at type-approval for company cars<sup>34</sup>.

The uneven capacity of different Member States to offer substantial purchase incentives and tax reductions, and the differences in the types of vehicles these incentives apply to would therefore appear to limit Member State's effectiveness at lowering GHG emissions and air pollution through demand side measures targeting corporate fleets.

In contrast, **an EU-level measure such as the one examined would be more effective in increasing the number of ZEVs in corporate fleets in a more generalised way across all Member States**, independently of their economic capacity. It would also ensure that **harmonised criteria** are applied as to which vehicles are considered sustainable. An EU measure would be more appropriate both for reasons of scale and effectiveness in achieving the searched EU environmental objective.

Although the uptake of electric vehicles is increasing, in general and in the corporate market segment, market penetration still remains relatively low. In order for the EU to achieve its climate goals, the decarbonisation of the EU's vehicle fleet will need to accelerate significantly. The scale and speed of action necessary is best achieved at EU level.

It can therefore be concluded that there is **added value for an EU action** to ensure that demand for clean vehicles in the corporate vehicle market segment significantly contributes to reducing GHG and air pollution.

In addition, Union action to set zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more would reinforce the EU added value already identified for the existing requirements of the CVD.

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<sup>31</sup> ACEA, Fuel types of new cars: electric 10.5%, hybrid 11.9%, petrol 47.5% market share full-year 2020, available at [Fuel types of new cars: electric 10.5%, hybrid 11.9%, petrol 47.5% market share full-year 2020 | ACEA - European Automobile Manufacturers' Association](#)

<sup>32</sup> Dataforce, 2020, Company Car Report, available at [2020 10 Dataforce company car report.pdf \(transportenvironment.org\)](#)

<sup>33</sup> ICCT, 2020, Press release: Real-world vehicle fuel consumption gap in Europe is stabilizing, available at [Real-world vehicle fuel consumption gap in Europe is stabilizing | International Council on Clean Transportation \(theicct.org\)](#)

<sup>34</sup> Plötz P., Moll C., Mock P., Li. Y, 2020, Real-world usage of plug-in hybrid electric vehicles: fuel consumption, electric driving, and CO<sub>2</sub> emissions, available at [Real-world usage of plug-in hybrid electric vehicles: Fuel consumption, electric driving, and CO2 emissions \(theicct.org\)](#)

Indeed, it would provide even more of a clear and long-term policy signal to market actors towards a rapid transition to sustainable mobility, thereby contributing to key EU policy objectives on growth, jobs and competitiveness as well as on completing the Energy Union. Indeed, mandating clean vehicle procurement requirements in the private sector would further reinforce market certainty, boosting investment, innovation and competitiveness in the EU transport sector. More consistent demand across the EU for clean vehicles would also support the functioning of the internal market, and would further increase cost reductions and economies of scale.

In light of the above, under the subsidiarity principle, it would seem to be advisable to establish a measure setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more at **EU level** rather than at national level.

### 2.2.2 Proportionality

In order to be considered proportional, the examined measure would have to be designed so that the objective of increasing demand for ZEVs in corporate fleets is achieved without overly burdening companies, and in particular SMEs.

Determining the precise parameters needed for the measure to meet the proportionality requirement would necessitate economic (cost-benefit) analysis beyond the scope of this study. Nevertheless, it can be argued that the type of envisaged measure could be considered proportional, given that it would only target companies with a fleet of a certain size (e.g. 25 vehicles), which should avoid smaller companies being concerned. Indeed, most vehicles in the corporate market segment are bought by large leasing and fleet management companies. Moreover, the examined measure would initially only require a certain proportion of the corporate fleet to be electrified, thereby leaving a substantial amount of the decision on fleet composition to the companies. This proportion could be increased over time, with the objective of achieving 100% by 2030. An appropriate lead time to allow concerned companies to adapt to the requirements and enable manufacturers to respond to demand would also moderate any adverse impacts.

Moreover, it can be expected that the increase in demand generated by such a measure would drop the upfront costs for purchase of ZEVs. However, some studies indicate that ZEVs are already cheaper to operate than comparable ICE vehicles in some cases<sup>35</sup>, or will at least be so in the near future<sup>36</sup>. This would therefore ultimately generate savings for the companies concerned, reducing the implementation cost of the EU measure, in line with the proportionality principle.

It can further be noted that some companies that would be concerned by the suggested measure are already making commitments to electrify their fleets. For example, Uber has committed to provide 50% of its rides in ZEVs across seven European capitals by 2025<sup>37</sup>. The major leasing and fleet management company LeasePlan has declared its intention to electrify its entire fleet by 2030<sup>38</sup>, while Zenith and Lex Autolease in the UK have promised to do so by 2025<sup>39</sup>. This would therefore indicate that electrification of corporate fleets of this scale and in this timeframe is considered feasible by the industry itself. A measure such as the one examined would therefore generalise these best practice examples.

An additional element to consider is the Commission's "One-in, One-out" approach, whereby each legislative proposal creating new burdens should relieve people and business of an equivalent existing burden at EU level in the same policy area. In this regard, as previously mentioned, there are currently no requirements in this area that apply to companies concerned by the examined measure, and therefore there is no equivalent burden that these businesses could be relieved of.

<sup>35</sup> Palmer K., Tate. J.E., Wadud. Z., Nellthorp J., 2018, *Total cost of ownership and market share for hybrid and electric vehicles in the UK, US and Japan*, Applied Energy Volume 209, pages 108-119.

<sup>36</sup> ING, 2017, *Breakthrough of electric vehicle threatens European car industry*, available at [ING EBZ breakthrough-of-electric-vehicle-threatens-European-car-industry\\_tcm162-128687.pdf](https://www.ing.com/press-releases/2017/06/20/ing-ebz-breakthrough-of-electric-vehicle-threatens-European-car-industry_tcm162-128687.pdf)

<sup>37</sup> Transport & Environment, *Uber to electrify half its rides in Europe after T&E public appeal*, available at [Uber to electrify half its rides in Europe after T&E public appeal | Transport & Environment](https://www.transportenvironment.com/uber-to-electrify-half-its-rides-in-europe-after-t-e-public-appeal)

<sup>38</sup> LeasePlan, *Sustainability*, available at [LeasePlan Corporation N.V. | Sustainability](https://www.leaseplan.com/en/sustainability)

<sup>39</sup> FleetLeasing, *Zenith and Lex join EV100: pledge to reduce CO<sub>2</sub>*, available at [Zenith and Lex join EV100; pledge to reduce CO<sub>2</sub> | Fleet industry news \(fleetnews.co.uk\)](https://www.fleetnews.co.uk/news/zenith-and-lex-join-ev100-pledge-to-reduce-co2)

It should therefore be possible to ensure that the envisaged measure meets the proportionality test, provided that its specifics be adapted in light of appropriate economic analysis.

## 2.2.3 Coherence

### 2.2.3.1 Cars and vans CO<sub>2</sub> standards

The EU's main approach to achieving the objective of reducing CO<sub>2</sub> emissions from road transport has been through fleet-level emissions standards. These measures set CO<sub>2</sub> performance targets for vehicle manufacturers to meet by a certain date, thereby encouraging the supply of efficient vehicles. The post-2020 CO<sub>2</sub> standards for cars and vans<sup>40</sup> were adopted in 2019, and are already due for review this year in order to raise ambition<sup>41</sup>.

The examined measure and the CO<sub>2</sub> performance standards clearly pursue the same overall objective, namely reducing GHG emissions from the transport sector. The two measures are highly complementary in this regard, with one addressing the issue by increasing demand for clean vehicles, and the other ensuring supply of such vehicles. As mentioned above, the CVD's definition of ZEVs is borrowed from the CO<sub>2</sub> standards, as these include specific mechanisms to encourage manufacturers to increase sales of zero- and low-emissions vehicles (ZLEVs).

The CO<sub>2</sub> standards have been quite successful in this regard, but there is a risk that the supply of electric cars will stagnate after 2022 under current regulations, thereby increasing the need for measures such as the one envisaged. Indeed, although relatively low until recently, the share of ZEVs in new car sales has increased considerably in 2020, reaching 10.5% for the first time compared to 3% the previous year<sup>42</sup>. For vans, the numbers remain lower, at around 1.3% of the market share in 2019<sup>43</sup>. This sharp increase can largely be attributed to the compliance strategy used by several manufacturers in order to meet their emissions targets for 2020/2021<sup>44</sup>. Indeed, manufacturers made use of the "super-credits" offered under the CO<sub>2</sub> performance standards legislation from 2020 to 2022, which allow for ZLEVs to be counted multiple times in the calculation of a manufacturer's average specific emissions. These "super-credits" were however capped at 7.5 g/km CO<sub>2</sub> over the 3-year period, and manufacturers that had already reached this cap before the 2021 target and still had to lower their average specific emissions therefore had to further increase EV sales.

Manufacturers won't benefit from "super-credits" to achieve their 2025 and 2030 targets, but are instead offered leniencies with regards to their specific CO<sub>2</sub> fleet targets if electric vehicles represent 15% of their sales by 2025 or 30% in 2030. However, it has been noted that these incentives may be of limited effectiveness in encouraging manufacturers to increase sales of electric vehicles. This is because the ZLEV targets are voluntary, only offering an advantage to manufacturers if they are met but no sanction if they are not, and the CO<sub>2</sub> targets for 2025 and 2030 are achievable with far fewer electric vehicle sales than foreseen by the ZLEV target. Moreover, manufacturers that are already near the ZLEV targets could potentially then meet their CO<sub>2</sub> targets without substantially improving the emissions performance target of their ICE fleet, or even while significantly worsening it<sup>45</sup>.

<sup>40</sup> Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011

<sup>41</sup> Annexes to the Commission Work Programme 2021, "A Union of vitality in a world of fragility", COM(2020) 690 final, available at [https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02\\_DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02_DOC_2&format=PDF)

<sup>42</sup> ACEA, Press release: Fuel types of new cars: electric 10.5%, hybrid 11.9%, petrol 47.5% market share full-year 2020, available at [Fuel types of new cars: electric 10.5%, hybrid 11.9%, petrol 47.5% market share full-year 2020 | ACEA - European Automobile Manufacturers' Association](https://www.acea.eu/press-releases/fuel-types-of-new-cars-electric-10.5-hybrid-11.9-petrol-47.5-market-share-full-year-2020)

<sup>43</sup> EEA, New registrations of electric vehicles in Europe, available at [New registrations of electric vehicles in Europe — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/press-releases/2021/04/new-registrations-of-electric-vehicles-in-europe)

<sup>44</sup> Transport & Environment, 2020, Mission (almost) accomplished – Carmakers' race to meet the 2020/2021 CO<sub>2</sub> targets and the EU electric cars market, available at [2020 10 TE Car CO<sub>2</sub> report final.pdf \(transportenvironment.org\)](https://www.transportenvironment.org/publications/mission-almost-accomplished-carmakers-race-to-meet-the-2020-2021-co2-targets-and-the-eu-electric-cars-market)

<sup>45</sup> Mock, P., Lutsey N., Tietge U., 2018, *Off the hook: Europe's current ZLEV proposal would allow CO<sub>2</sub> emissions of new combustion engine vehicles to increase*, available at [Off the hook: Europe's current ZLEV proposal would allow CO<sub>2</sub> emissions](https://www.transportenvironment.org/publications/off-the-hook-europe-s-current-zlev-proposal-would-allow-co2-emissions-of-new-combustion-engine-vehicles-to-increase)

Some of these issues may be addressed in the upcoming revision of the CO<sub>2</sub> standards in order to ensure that they continue to be effective at increasing the supply of ZEVs. Nevertheless, it could be envisaged to instead rely on the demand for ZEVs generated by the examined measure to achieve the target shares of electric vehicles, and remove these incentives in the upcoming revision of the CO<sub>2</sub> performance standards. Alternatively, if the ZLEV sales targets are modified to also penalise manufacturers that fail to meet them, the examined measure would also support the achievement of these targets.

### 2.2.3.2 Alternative Fuels Infrastructure Directive

The 2014 Alternative Fuels Infrastructure Directive<sup>46</sup> required Member States to develop national policy frameworks (NPFs) for the deployment of a sufficient number of publicly available refuelling and charging points for alternative fuel vehicles and vessels. This was intended to improve coordinated development of infrastructure across the EU, providing the long-term security needed for investment in technology for alternative fuels and alternative fuel vehicles.

The examined measure therefore presents very significant synergies with this legislation, as deployment of alternative fuels infrastructure and demand for alternatively fuelled vehicles are highly connected. Indeed, availability of charging infrastructure correlates strongly with electric vehicle adoption<sup>47</sup>, and concerns about insufficient access to charging infrastructure ('range anxiety') contribute to slowing down demand for alternatively fuelled vehicles. This is arguably particularly the case for vehicles in corporate fleets, as these typically travel longer distances. On the other hand, it can be difficult to mobilise the significant investment necessary for alternative fuel infrastructure in the absence of a sufficient number of vehicles to use it.

Moreover, a proposal for the revision of the 2014 Directive is due to be put forward this year<sup>48</sup>, as part of the measures planned by the Commission in the context of the Smart and Sustainable Mobility Strategy<sup>49</sup> to speed up the shift to a sustainable transport sector and the use of alternative transport fuels. The examined measure would mesh perfectly with this initiative by providing an additional lever to increase demand for ZEVs and thereby encourage the development of the required infrastructure. Also of note in this regard is the fact that workplace charging infrastructure is likely to play an increasingly important role in the future, as more EV drivers will be living in shared multi-dwelling buildings with no or limited access to private parking<sup>50</sup>. Measures that target company cars are therefore coherent with this projected trend in charging infrastructure development.

### 2.2.3.3 Batteries Directive

The 2006 Batteries Directive<sup>51</sup> is the only piece of EU legislation specifically dedicated to batteries, which aims to reduce the impacts on the environment of batteries and accumulators by imposing

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[of new combustion engine vehicles to increase | International Council on Clean Transportation \(theicct.org\)](#); Transport & Environment, 2019, *New car CO<sub>2</sub> standards: Is the job of securing electric cars in Europe done?*, available at [Impact of Cars CO<sub>2</sub> limits loopholes in EV sales and CO<sub>2</sub> reduction \(transportenvironment.org\)](#)

<sup>46</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure

<sup>47</sup> Sierzchula W., Bakker S., Maat K., van Wee B., 2014, *The influence of financial incentives and other socio-economic factors on electric vehicle adoption*, Energy Policy Volume 68, May 2014, Pages 183-194; Slowik P., Lutsey N., 2017, *Expanding the electric vehicle market in U.S. cities*, International Council on Clean Transportation, available at [Expanding the electric vehicle market in U.S. cities \(theicct.org\)](#)

<sup>48</sup> Annexes to the Commission Work Programme 2021, "A Union of vitality in a world of fragility", COM(2020) 690 final, available at [https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF)

<sup>49</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM/2020/789 final, available at [EUR-Lex - 52020DC0789 - EN - EUR-Lex \(europa.eu\)](#)

<sup>50</sup> Transport & Environment, 2020, *Recharge EU : how many charge points wil Europe and its Member States need in the 2020s*, available at [01 2020 Draft TE Infrastructure Report Final.pdf \(transportenvironment.org\)](#), p. 22

<sup>51</sup> Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC

environmental performance requirements on all operators involved in their life cycle, from production to collection, recycling, treatment and disposal. The Directive also improves the functioning of the internal market by harmonising requirements for the placing on the market of batteries and accumulators.

There are clear links between this legislation and the measure examined, as the increase in the number of ZEVs caused by the examined measure would require far more batteries to be produced and subsequently recycled. Indeed, the surge in demand for batteries, already set to increase 14-fold globally by 2030 and for which the EU could account for 17%, will require a high amount of raw materials. The number of waste batteries will also increase dramatically, with projections already estimating the number of lithium batteries ready for recycling to rise by 700 times between 2020 and 2040<sup>52</sup>.

However, the Commission's recent evaluation of the Batteries Directive concluded that it is not adapted to these technological and economic changes<sup>53</sup>. For example, although they are covered under the Directive, the lithium-ion batteries used in ZEVs do not have their own category. Instead, they are categorised as 'industrial batteries' with regards to collection rates, and 'other waste batteries' for recycling efficiency rates. The Directive does not set any collection rates for industrial batteries, merely prohibiting their landfilling or incineration. As for recycling efficiency rates, Annex III of the Directive provides that this should reach 50% for 'other waste batteries'. As this rate is based on the mass of the battery (i.e. 50% of the weight must be recycled), this creates an incentive to only retrieve from the lithium-ion battery the raw materials that are easy to extract and of higher market value, such as cobalt, nickel, aluminium and copper, while other elements such as lithium are discarded.

In order to address these issues and adapt this legislation to the goals of the EU Green Deal, the Commission has recently come forward with a proposal to replace the Directive with a new Sustainable Batteries Regulation<sup>54</sup>. The proposed legislation would therefore create a category specifically for electric vehicle batteries, require producers of these batteries to organise free collection of waste batteries, increase recycling efficiency for lithium-based batteries to 65% of average weight by 2025, and 70% of average weight by 2030, and set minimum levels of recovery for different materials for all recycling processes.

Thus, although the examined measure would be problematic under the framework of the current Batteries Directive, the requirements of the proposed Regulation should be able to appropriately address the environmental impacts of the expected increase in battery production it would generate.

#### 2.2.3.4 Type-approval legislation on air quality standards

As part of the requirements governing market access for vehicles, the EU imposes standards for certain air pollutants, such as nitrogen oxides (NOx) and particulate matter (PM), which are set by Regulation 715/2007<sup>55</sup> for light passenger and commercial vehicles (Euro 6 standards).

These standards are a key part of the EU's approach to improving air quality in the EU, since road transport (and diesel vehicles in particular) is responsible for a significant proportion of air pollutant emissions, especially in cities. The pollution from road transport is also particularly harmful, as it is released close to the ground and often near where people live and work. The need to tackle air pollution from transport has been made even clearer after the Dieselgate scandal, as although the type-approval

<sup>52</sup> EC Report on Raw Materials for Battery Applications, CSWD(2018)245/2 final

<sup>53</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation and the impact on the environment and the functioning of the internal market of Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, COM(2019) 166 final

<sup>54</sup> Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020, COM(2020)0798, 2020/0353 (COD)

<sup>55</sup> Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information

testing methods for emissions have since been improved, there are still many Member States that struggle to meet their air quality obligations due to the high number of polluting vehicles.

Measures that promote electric vehicles are largely coherent with the general objective of combatting air pollution. Evidence suggests that BEVs represent an absolute benefit in terms of NO<sub>x</sub> emissions over ICE vehicles, even considering additional NO<sub>x</sub> produced by electricity generation. For PM, the benefits are not yet as obvious when considering overall emissions. Emissions are higher for vehicle production, due to the amount of coal generated electricity used in battery manufacture, and PM emissions for the use stage depend largely on the energy mix. For local emissions, estimations for PM reduction range from slight to significant depending on the model used. However, BEVs can in general be expected to significantly improve air quality in cities where the power stations are not situated nearby. The absolute air quality impact will also improve as the share of renewables increases in the energy mix<sup>56</sup>.

Furthermore, electric vehicles would also contribute to lowering emissions of a number of other atmospheric pollutants which are not covered by Euro 6, such as PM under 23 nanometres, NH<sub>3</sub> (a precursor to ultra-fine particles), or N<sub>2</sub>O and CH<sub>4</sub> (potent GHGs). These pollutants may be covered by the future Euro 7 standard, due to be proposed later this year<sup>57</sup>, but emission levels would presumably remain higher for ICE vehicles than BEV.

Beyond the direct air quality benefit, a larger share of electric vehicles on the market would also potentially improve market surveillance of lifetime compliance with emissions standards by concentrating it on a smaller number of ICE vehicles.

#### 2.2.4 Effectiveness

The effectiveness of demand-side measures in achieving CO<sub>2</sub> reduction and air quality objectives is already demonstrated by the existing CVD, whose requirements for public procurement are currently the only measures addressing the demand side of these issues at EU level.

However, while the public sector undoubtedly has an important impact on demand, particularly for urban buses where it is the main driver, company vehicles represent by far the largest market share of new vehicle sales for cars. Corporate vehicle ownership has indeed been increasing in relation to private vehicle ownership in recent years, and now represents 57% of new car registrations<sup>58</sup>. The importance of this market sector is notably referred to by the CVD itself, Recital 23 of which notes that *‘in order to further promote transport decarbonisation, improve air quality and maintain a level playing field between different operators, Member States can, in compliance with Union law, decide to impose similar requirements also on private operators and services outside the scope of this Directive, such as taxi, car rental and ride-pooling companies’*. As already noted previously however, no Member State has yet taken any measures of this kind.

In addition to representing a majority of new vehicle sales, corporate fleets also have a higher mileage, with vehicles often traveling more than 20,000km a year (2.25 times further than private cars). Corporate fleets, in particular those of ride-hailing services and taxis, also represent a significant amount of urban traffic<sup>59</sup>. Increasing the share of ZEVs in these fleets would therefore have a particularly significant impact on CO<sub>2</sub> emissions and air pollution.

Moreover, since many corporate vehicles are leased for a duration of 3 or 4 years and are then sold on

<sup>56</sup> EEA Report No 13/2018 Electric vehicles from life cycle and circular economy perspectives - TERM 2018: Transport and Environment Reporting Mechanism (TERM) report, available at [Electric vehicles from life cycle and circular economy perspectives - TERM 2018 — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/press/2018/04/13/electric-vehicles-from-life-cycle-and-circular-economy-perspectives-term-2018)

<sup>57</sup> Annexes to the Commission Work Programme 2021, “A Union of vitality in a world of fragility”, COM(2020) 690 final, available at [https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF)

<sup>58</sup> Dataforce, 2020, Company Car Report, available at [2020\\_10\\_Dataforce\\_company\\_car\\_report.pdf \(transportenvironment.org\)](https://www.dataforce.com/2020-10-Dataforce-company-car-report.pdf)

<sup>59</sup> Transport & Environment, 2020, Why Uber should go electric, available at [Why Uber should go electric.pdf \(transportenvironment.org\)](https://www.transportenvironment.org/why-uber-should-go-electric.pdf)

to the second-hand market, a measure such as the one envisaged would greatly increase availability of ZEV vehicles in this market segment as well. The second-hand car market is substantially larger than that for new vehicles, and is the main channel for vehicle acquisition for lower income groups<sup>60</sup>. This would therefore make a significant additional contribution to lowering emissions and air pollution from road transport by making such vehicles more affordable to the wider public and generalising their use.

A demand side measure at EU level targeting the corporate fleet would therefore be highly effective at increasing market uptake of clean vehicles.

### 2.3 OPTION 2: SEPARATE LEGISLATIVE PROPOSAL

Rather than expanding the scope of the CVD to cover corporate fleets, it could be instead envisaged to set these requirements in a separate legal act. A new legislative act in this field would have the same objective presumably take the same legal base as the CVD, namely Article 191 TFEU for environmental policy, and would follow the ordinary legislative procedure, which usually takes at least 3 years from publication of the proposal by the Commission to adoption of the final text by the co-legislators.

The considered requirements for corporate fleets would in any event require new and separate provisions to those applying to public procurement contracts, so whether these requirements are added into the CVD or are contained in a separate instrument would be a mainly formal distinction.

Concerning **subsidiarity**, a new legal act imposing a ZEV quota on companies with corporate fleets of at least 25 vehicles would involve the same objectives and competences as discussed above for an amendment to the CVD. The same analysis as developed in section 2.2.1 above would therefore apply.

It can be concluded that such as a measure would be more appropriate to be adopted at EU level both for reasons of scale and effectiveness in achieving the searched EU environmental objective.

Concerning **proportionality**, the analysis developed above in section 2.2.2 would also be mostly applicable. However, the evaluation of proportionality also pertains to the choice of legal instrument, as it calls for the simplest form of measure for achieving the stated objectives. In this regard, it might be considered whether it would not be more advantageous for the examined measure to take the form of a Regulation. Indeed, according to Article 288 TFEU a directive is binding as to the results to be achieved but leaves to the national authorities the choice of form and method. This flexibility makes directives more appropriate when the measure to be adopted needs to take into consideration the specificities and differences in Member States. The CVD is designed to consider differences in circumstances for public administrations by setting different minimum targets for each Member State based on GDP, and by allowing full flexibility in how effort is distributed across different contracting authorities and contracting entities.

In contrast, it can be expected that companies with fleets of 25 vehicles or more will face broadly similar circumstances with regards to vehicle purchases regardless of the GDP of the Member State concerned. Differences would mostly result from the incentives in place for corporate purchases of ZEVs in each Member State, but these would likely be adapted in light of the proposed new legislation as they would no longer be necessary. Indeed, such incentives or tax breaks would trigger a significant cost or loss of income as the number of ZEVs increases sharply following introduction of a ZEV quota. Moreover, since the quota would apply to each company with 25 vehicles or more, the issue of how to allocate responsibility across several entities, as is the case for Member States with their different contracting authorities or entities under the CVD, does not apply here. There is therefore less of a need to account for national particularities, making a Regulation possibly more appropriate.

Moreover, setting the requirements for corporate fleets in a Regulation would make it possible to apply them in a clear and uniform way within a shorter timeframe, given the direct effect of regulations which means that no transposition period would be required. The Regulation provisions would need to be very

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<sup>60</sup> Vanherle K. and Vergeer, R. , 2016, *Data gathering and analysis to improve the understanding of 2nd hand car and LDV markets and implications for the cost effectiveness and social equity of LDV CO2 regulations*, DG Climate Action, European Commission, available at [2nd hand cars en.pdf \(europa.eu\)](#)

clear and precise to enable their implementation. However, Regulations do sometimes necessitate the adoption of implementing measures at national level, but they need to be adopted faster to enable implementation of the measures already in force.

Lastly, concerning the **coherence** and **effectiveness** of a ZEV mandate for corporate fleets in a separate legislative instrument, the reasoning for the corresponding sections in Option 1 would also be largely applicable.

It can therefore be concluded that there is an added value for an EU action in the form of a separate legal act setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more.

## 2.4 OPTION 3: OTHER MEASURES

As previously mentioned, there are a number of measures in the relevant regulatory framework for road transport that contribute to achieving electrification in the road transport sector. However, the mechanisms used by these instruments do not appear easily adaptable to specifically target corporate fleets. For example, the incentives for ZEV sales within the CO<sub>2</sub> performance standards could be reinforced in the upcoming revision, but the concerned entities for this legislation are the car manufacturers, and it is not obvious how these could be required to increase sales specifically to the corporate market segment.

The other demand-side measure with the most potential for increasing the share of ZEVs would be the Energy Taxation Directive<sup>61</sup> (ETD). This instrument lays down minimal tax rates for motor fuels and electricity, above which Member States have discretion to establish their respective rates. These minimum tax rates have remained unchanged since 2003, and are currently unrelated to the CO<sub>2</sub> emissions or energy content of energy products. Some countries (e.g. Denmark, Finland, France, Ireland, Luxembourg, Portugal, Slovenia, Sweden) however apply specific carbon taxes for road transport as part of the fuel excise duties and electricity taxes<sup>62</sup>. Therefore, as it stands, the ETD does not make any particular contribution to encouraging decarbonisation in the transport sector.

However, the ETD is due to be reviewed, with the aim of ensuring that tax rates of energy products reflect their negative climate externalities, while also ensuring a fair distribution of costs in society<sup>63</sup>. Increasing the price of fossil fuels while making electricity used for transport cheaper would incentivise the use of electric vehicles, and particularly so for high mileage fleets such as company cars. Ideally, provision could then be made so that the revenue generated by taxes on transport fuels is earmarked for sustainable investments, such as for example supporting purchase incentives for ZEVs.

The Union competence on taxes is quite limited. Under Article 113 TFEU the EU may adopt a measure with the Council as legislator, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee. The measures are limited to harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition. The ETD establishes certain requirements on Member States regarding their decisions on tax rates, but tax allocation remains strictly within the competence of the Member States, and therefore this could not be mandated by an EU measure.

Requiring zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more goes beyond the scope of the ETD and promoting a raise on tax rates for fossil fuels would not be sufficient. Therefore, it again does not seem possible to use the revision of the ETD to target uptake of ZEV in corporate fleets specifically, and although there would likely be effects on this sector in terms of ZEV

<sup>61</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

<sup>62</sup> European Commission, *Transport taxes and charges in Europe – An overview study of economic internalization measures applied in Europe* (2019), p.27

<sup>63</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-Revision-of-the-Energy-Tax-Directive>

uptake, the same results in terms of fleet composition could not be guaranteed.

## 2.5 CONCLUSION

It can be confirmed that an EU measure setting zero-emission vehicles quotas for companies owning fleets of 25 vehicles or more would be more appropriate than national level measures both for reasons of scale and effectiveness in achieving the searched EU environmental objective. It is also concluded that such an EU measure would provide added value justifying its adoption. The issue is what would be the best form of such an EU measure.

The above analysis would suggest that either a revision of the CVD to include a ZEV mandate applying to companies with a corporate fleet of 25 vehicles or more, or a separate legal instrument to this effect, would meet the necessary criteria for regulatory action at EU level.

A revision of the CVD might face issues linked to political opportunity as it was already recently revised in 2019, and is only due for review in 2027. However, this fact should not prevent the EU institutions to consider it. It can be noted that the timetable for other key pieces of legislation on road transport has already been brought forward. Indeed, the latest CO<sub>2</sub> performance standards, also adopted in 2019, were initially due for review in 2023 but are already on the agenda for this year.

From that point of view, the introduction of this measure through the adoption of a new Regulation, might be easier. In addition, since the suggested measures do not appear to require as much consideration of national particularities as the existing provisions of the CVD, it might be preferable to set the ZEV quotas in a Regulation, allowing for a faster result.