

THE FUTURE OF E-CHARGING INFRASTRUCTURE: FRANCE

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THIS ARTICLE IS PART OF A SERIES ON THE FUTURE OF E-CHARGING INFRASTRUCTURE IN THE EUROPEAN UNION AND UNITED KINGDOM.

In this piece we will discuss:

1. **Overview of the French e-mobility market**
2. **Legal Framework for constructing and operating EV charging stations**
3. **What different business models do we see in the French market?**

1. OVERVIEW OF FRENCH E-MOBILITY MARKET

The French government announced on 26 May 2020 a stimulus package for the automobile industry of about 8 billion euros in grants, investments and loans. Among this stimulus package, several measures concern directly electrical vehicles and boosts existing policies.

The French government's Multiannual Energy Programme^[1] aims to increase the current size of the national e-mobility market twelvefold, with a goal of 1.3m electric vehicles and plug-in hybrid electric vehicles, for both private and commercial ends, on the road by the end of 2023 and 5.3m by the end of 2028. This goal is tied to the recent launch of a strategic plan on energy storage by the European Battery Alliance. To achieve such goal, the subsidy for the purchase of an electrical vehicle (with or without the destruction of an older vehicle) has been boosted and may now reach 12 000 euros in favour of both individuals and companies. In addition, a circular dated 23 November 2020 prescribes that the vehicle fleet owned by the State (and public entities under its control, the *établissements publics de l'Etat*) must respect a minimum threshold of 50% of green vehicles (either electrical, hybrid or hydrogen) at the time of renewal.

Since 2010, 470,295 electrically powered and hybrid vehicles have been registered in France. In 2020 alone, 119,737 electrically powered vehicles were registered, an increase of 135% compared to 2019.

To support this development, public authorities have set ambitious targets for the deployment of a charging network with 50,000 charging points available to the public in 2020 and 100,000 in 2022. As of November 2020, approximately 29,000 charging points were available.

In parallel with the development of public charging infrastructure, the regulatory framework is evolving to encourage the development of equipment in private spaces, e.g. commercial areas, condominiums, company car parks, etc. The Energy Transition for Green Growth Act has set a target of seven million private and public charging points for 2030.

2. LEGAL FRAMEWORK FOR CONSTRUCTING AND OPERATING CHARGING STATIONS

What is legally required to construct a charging station?

A building authorisation is required (prior declaration or building permit), depending on the size of the charging station. During this process, the charging station shall comply with national and local regulations (*plan local d'urbanisme*). Additional restrictions may apply, notably around listed buildings. For most stations, a prior declaration should be sufficient.

Any e-charging infrastructure with a power capacity of at least 600 kW must be declared to the Administration and comply with ICPE regulations (*installations classées pour la protection de l'environnement*). However, e-charging infrastructures accessible to the public are specifically excluded from such regime.

Depending on the location of the e-charging infrastructure, a public land occupation permission (*autorisation d'occupation du domaine public*) may be required. In such cases, a call for tenders might have to be implemented by the public entity prior to the grant occupation authorisation for said public land.

Lastly, the grid connection for the charging station can be built without specific comparison to other installations: the operator can request grid access from the grid operator of the public electricity distribution network or, if this access already exists, can benefit from an indirect grid connection. In addition, to facilitate the development of the e-charging stations, article L. 353-8 of the French Energy Code has also introduced the possibility for such infrastructure to be connected indirectly to the public electricity distribution network, i.e. to benefit from an offtake point (*point de soutirage*) not located on the public electricity distribution network.



What are the legal requirements for operating a charging station?

Law no. 2019-1428 of 24 December 2019 on mobility guidance (Law on Orientation of Mobility – LOM)

Public authorities have reinforced the regulatory framework by clarifying the Law on Orientation of Mobility. This legislation settled the legal confusion related to e-charging infrastructure operators and whether the nature of their activities qualifies them as either an electricity supplier or a service provider more generally (including but not limited to the supply of electricity). Such a clarification has been requested for some time, notably in an October 2018 French Energy Regulatory Commission (CRE) report.

Pursuant to Article 64 of the LOM, the nature of such activity is characterised as the provision of services, and not as a supplying electricity. Consequently, the operator is not required to act as an electricity supplier subject to the corresponding applicable regime.

If the activity would have been considered as the supply of electricity, it would be prevented by the general principle of interdiction to resell electricity (*principe d'interdiction de la rétrocession d'énergie*) – applicable to an entity which is not an electricity supplier. However, e-charging infrastructures usually offer the consumer more than just the possibility to charge their vehicle, notably parking services.

Further decrees are expected to be issued by the French government in the coming weeks/months to clarify specific rules related to efficient energy management and remote control of charging, among others.

Ordinance no. 2021-237 of 3 March 2021²

Pursuant to this Ordinance, a whole chapter related to public e-charging infrastructure has been integrated into the French Energy Code.

The Code now includes a legal definition of an e-charging point ("*point de recharge*"): a parking space allowing the charging of one vehicle at a time or the change of battery of one vehicle at a time.

The Ordinance introduces a new scheme to be established by the local authorities to promote the development of e-charging infrastructure open to the public on their territory (*schéma directeur de développement des infrastructures de recharges ouvertes au public pour les véhicules électriques et les véhicules hybrides rechargeables*). The operators willing to develop an e-charging infrastructure network will have to comply with the directives set forth in those schemes.

More importantly, pursuant to article L.353-7 of the French Energy Code, grid operators, including operators of closed distribution networks (*gestionnaires de réseaux de distribution fermés*)³, are excluded from the e-charging infrastructure market. Indeed, this article provides an interdiction for this type of stakeholders on owning, developing, managing or operating an e-charging infrastructure network. Two exceptions are provided: when the e-charging infrastructure in question is developed for the sole use of the grid operator or in the case of a specific exemption granted by the CRE based on the absence of a and for a duration of five years.

Finally, to encourage further development of e-charging infrastructure, the Ordinance promotes the benefits of transparency and . Customers/users shall have easy access to the information related to an e-charging point and the developers are compelled to ensure the interoperability of their e-charging infrastructure in order to facilitate roaming charging.

Please note that the Ordinance n°2021-237 of 3 March 2021 is to be completed with a decree specifying its provisions.

"The installation of more than 22,000 charging points has been facilitated by the ADEME programme."

Transposition of EU-Directive 2014/94/EU

The European Directive on the development of infrastructure for alternative fuels (EU Directive 2014/94/EU) was transposed into French law with an executive package in 2017, notably decree no. 2017-26 of 12 January 2017. This regulatory framework made it possible to set measures concerning charging outlet standards, energy management and the control of charging, roaming and interoperability, as well as the installation and maintenance of infrastructure. From a technical stand point, operators of e-charging infrastructure must comply with the provided by this Decree. Among these requirements and with respect to public e-charging infrastructure, it should be emphasised that each e-charging point is granted a unique identity number. In addition, the location and technical characteristics of an e-charging point must be accessible in a public database and access to public e-charging infrastructure is guaranteed for a customer/user without the need for them to hold a subscription with the charging station operator.

Are there any subsidies or tax incentives to motivate construction or operation of charging stations?

It is through the regulation and financial or tax incentives that public authorities aim to encourage the development of charging infrastructure.

Any construction of a building primarily used for housing, tertiary, industrial or commercial activities and equipped with parking spaces, for which a building permit has been applied for as of 1 January 2017, shall ensure the pre-wiring of parking spaces, so as to facilitate the installation of charging points. This obligation has been reinforced by the LOM, which extends this pre-wiring obligation to any construction altered by major renovation (*i.e.* equivalent to more than a quarter of the total value of the building at stake) as of 11 March 2021. Additionally, individuals installing a charging point at their home can benefit from a 75% tax credit (applicable on the expenses relating to the supply and installation of the charging point) which is capped at €300 per charging point. The 2021 Finance Law increases this tax credit from 30% to 75%.

Previously, the development of publicly available charging stations has been through the French Environment and Energy Management Agency (“ADEME”)’s now defunct programme “*Investing for the Future*” (“*Programme d’Investissements d’Avenir*” – PIA). Through this programme, ADEME was entitled to grant subsidies to selected projects for the development of charging infrastructure. The selection was made by means of calls for tenders in order to identify the most useful and subsidy-efficient projects. The installation of more than 22,000 charging points has been facilitated by this programme. The PIA, as it relates to charging infrastructure, is no longer applicable and no renewal of this type of mechanism is contemplated in the short-term future.

Subsidies for projects initiated by a public entity

When the charging infrastructure project is initiated by a public entity through the conclusion of a public contract (via a concession for instance), the contracting authority remains entitled to grant subsidies to the contract awardee in order to compensate public service obligations or constraints (e.g. when the territory where the project is to be implemented is not enough densely populated). This mechanism is however set on a case-by-case basis. Therefore, the condition and amount at stake depend on the specificities of each project.



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i) The “Advenir” programme

Under the Advenir programme, subsidies can be granted to either individuals, public entities or companies to support the installation of charging points located on roads (*i.e.* opened to the public without any discrimination), on public or private parking structures (*e.g.* collective housing, company parking, public parking). The programme is based on the Energy Savings Certificate mechanism and is financed by companies operating in the energy sector (*e.g.* EDF Group, Bolloré Energy). The ADEME also provides its expertise and participates in the implementation and promotion of this programme.

The Advenir programme targets rather limited scale projects (for instance, based on the size of a company's workforce, fleet of vehicles or real estate) but can nonetheless be used for larger projects. In that respect, the amount of the subsidy granted can be rather limited and depends on the type of project at stake (either individuals or companies, either for private or public car parks). For example, for the implementation of e-charging points located in , the subsidy amount of the supply and installation costs with a cap which can reach €9,000 per charging point (depending on the number of charging points in the project at stake).

Lastly, to receive subsidies from this programme, the supply and installation of the charging points must be completed by qualified professionals who comply with the specifications of the programme and the applicable regulation.

"A project is deemed to be of national scale when it spans the territory of at least two French regions."

ii) Transmission User Tariff (TURPE) reductions

Pursuant to article L.341-2 of the Energy Code, a portion of an electricity consumer's connection costs can be assumed by the grid operator through a reduction of the Public Transmission User Tariff ("TURPE") – a fee paid by electricity consumers for the use of the public grid. This reduction is capped at 40% of the connection costs. However, LOM allows up to a 75% reduction for consumers with a connection to an electric vehicle charging infrastructure. Pursuant to the implementing decree dated 12 May 2020, the benefit of this measure is limited to grid connection request made

until 31 December 2021. In addition, if several grid connection requests are made on behalf of the same and the grid access are located less than 100 metres from each other, only the less expensive grid connection will benefit from the 75 % reduction. If several grid connection requests are made, within a same year, on behalf of the same contracting authority and the grid accesses are located less than 100 metres from each other, only the first grid connection request will benefit from the 75 % reduction.

The LOM provides that the magnitude of this increase will be meant to encourage the implementation of charging infrastructure where it is needed and shall be limited to charging infrastructure implemented in public areas, available to the public without discrimination.

iii) RVE Law exemptions

The law no. 2014-877 of 4 August 2014 facilitating the deployment of a network of electric vehicle charging infrastructure in public areas (the IRVE Law) introduced a specific exemption to the article L.2125-1 of the Public Property Code which imposes the payment of fees for any occupation of the public domain belonging to any type of public entity (State, public institutions or local authorities). However, such an exemption can only apply when the project at stake is part of a national scale project (*“projet de dimension nationale”*). IRVE Law exonerates an operator of charging stations of such fees, should the operator at stake be the State or any private operator (being specified that public entities may be part of such private operator).



A project is deemed to be of national scale when it spans the territory of at least two French regions and when the number and distribution of the charging points to be installed would ensure a well-balanced development of said kind of infrastructure within the concerned areas.

The project must also be formally approved by the Minister in charge of industry and ecology. Additionally, a consultation must be held among charging infrastructure operators, local authorities, the public entities managing the public domain concerned, and the grid operator.

Lastly, the operator must obtain the right to occupy such plots. Such authorisation may be granted pursuant to a call for tenders' procedure, or after the public authority managing the plot at stake has ensured, by the implementation of sufficient publicity measures, that no other person is interested in the occupation of the plot at stake.

3. WHAT DIFFERENT BUSINESS MODELS DO WE SEE IN THE MARKET?

Though the French market is becoming more structured, there is still a rather large range of stakeholders operating in the development, of charging stations for electric vehicle: energy producers, energy providers, car manufacturers, parking operators, major players in the construction field and investment funds, as well as public authorities.

The public initiative in the development of charging stations in France

The role of local authorities (especially the *syndicats d'énergie*, public entities co-ordinating different levels of local authorities to manage energy-related matters) has been decisive in the development of charging stations. In 2019, local authorities directly initiated 70% of France's charging stations opened to the public. Most of these deployments (94%) received financial support under the Investments for the Future Programme (PIA) and were heterogeneous in size, ranging from only few charging points to several hundreds.

"The public procurement contract does not transfer any risk from the public person to the contract's holder."

From a legal stand point, those public initiatives have been implemented through public contracting solutions. The public procurement regulation in France offers two main solutions for the deployment of charging stations: a public procurement contract-based model or a concession-based one.

When a local authority decides to deploy a network of charging stations for electric vehicles on its territory, it may decide to execute a public procurement contract for the construction of these charging stations and, when appropriate, one for their operation also. The public procurement contract does not transfer any risk from the

public person to the contract's holder: the contract's holder is remunerated through the price paid by the local authority for the provided services (construction and/or operation of the charging stations). This model is relevant when the construction and operation of charging stations does not offer any possibility of profitability, due for example, to the characteristics of the geographical area in which they are implemented (high construction and connection costs, low density of potential users).

On the other hand, when the installation and operation of charging stations in a given territory present possibilities for economic profitability, the local authority may prefer to opt for a concession contract. Within the framework of a concession, an operating risk ("risque d'exploitation") is transferred from the public entity to the holder of the contract. Like in the public procurement contract-based model, the contract's holder is entrusted with the mission of installing and operating charging stations, however his payment does not come from a price paid by the public entity but from the operation of the charging stations. In a sense, the contract's holder must find a way to make the operation of the charging stations economically profitable. However, the public entity may have an interest in granting subsidies to the contract's holder to compensate for any service constraints (in terms of user charges, the number and location of charging stations on its territory for example) and/or to contribute to the profitability of the operation (being specified that such support shall not remove all operational risk).

Despite the end of the PIA programme as it relates to charging stations, public initiatives are still an important lever for the development of charging infrastructure in France. For instance, the city of Paris has recently launched a call for tenders for the supply, installation and technical and commercial operation of charging stations for electric vehicles and removal of old charging stations (under a concession framework). The selected operator shall remove the old Autolib' infrastructure (the public rental electric vehicle service) and install and operate instead publicly accessible charging stations.

The important role of private operators

Private operators also operate in the charging station market, either by assuming, on behalf of public entities, operational management of their infrastructure, or by directly deploying charging stations for their own purpose. In that respect, car dealerships and car manufacturers as well as large retailers play a significant role in the deployment of these infrastructures.

Private stakeholders have been operating in the charging station market largely by answering the needs of local public entities by performing public contracts (either public procurement contracts or concessions). Additionally, purely private initiatives are also present in France. Such initiatives may still require the occupation of a public domain's plots (and therefore the execution of a public contract relating to such occupation), *e.g.* when the charging stations are to be installed alongside roads or in public car parks.

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In comparison with public initiated projects, the most significant differences are observed in terms of geographic deployment, with a significant presence of these private operators on national roads and particularly on the motorway network, as well as a preference for accelerated charging facilities.

It can be noted that the charging stations deployed by private operators can offer either restricted (for a specific type/brand of vehicle – *e.g.* the Tesla network) or more open (*e.g.* the IONITY network developed by a consortium of German car manufacturers) charging.

Diversity of economic models

There is presently no single economic model for charging at terminals accessible to the public. Local authorities generally invoice for access to the charging station to cover operation costs, but according to a highly variable range of prices. Certain car manufacturers creating fast or ultra-fast charging networks integrate part of the cost into the price of their vehicles but can also invoice all or part of the recharge. For a large retail outlet, free charging is usually compensated for financially by the expectation of greater customer visits.

DISCLAIMER

Please note that this briefing is not exhaustive of all legal aspects that may be relevant in this context and cannot replace legal advice in a specific situation.

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[1] Decree no. 2020-456 of 21 April 2020 relating to the Multiannual Energy Programme. The Multiannual Energy Programme defines the targets and methods of action of the public authorities for the management of all forms of energy, it covers two successive periods of five years pursuant to Article L. 100-1 A of the French Energy Code.

[2] Ordinance no. 2021-237 of 3 March 2021 transposing Directive (EU) 2019/944 of the European Parliament and of the Council of June 5, 2019 concerning common rules for the internal market in electricity and amending Directive 2012/27/EU, and measures adapting to Regulation (EU) 2019/943 of the European Parliament and of the Council of June 5, 2019 on the internal market in electricity.

[3] For instance, operators of ports or airports.

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