

THE FUTURE OF E-CHARGING INFRASTRUCTURE: SPAIN

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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 Spanish e-mobility market
2. Legal Framework for constructing and operating EV charging station
3. Existence of any subsidies regarding the construction or operation of recharging infrastructures
4. The different business models of e-charging infrastructure operators

"The most recent draft of Spain's Climate and Energy Integrated National Plan sets a target of five million electric vehicles on the roads by 2030."

1. OVERVIEW OF SPANISH E-MOBILITY MARKET

In accordance with European Union (EU) goals, the Spanish Government is very keen to promote e-mobility and focussed on achieving the same level of progress as in other EU countries.

The large-scale adoption of e-mobility assumes a change in electricity demand, making it more time-sensitive and variable in nature. To address this, Red Eléctrica de España ("REE"), the part state-owned company which operates Spain's national electricity grid and power transmission system, is developing the Electric Vehicle

Control Centre (CECOVEL), a global pioneer project in the development of smart energy systems, aiming at the efficient and safe integration of the demand associated with electric vehicles.

The most recent draft of Spain's 20 January 2020 Climate and Energy Integrated National Plan (CEINP)¹ sets a target of five million electric vehicles on the roads by 2030, with estimated associated total investment costs of c. €1,325bn and annual financial support of c. €200m from both the national and autonomous regional governments – based on the presumption that parity in the price of the electric and non-electric vehicles will be reached between 2025 – 2030 and public support therefore no longer being required.

Regarding the installation of e-charging infrastructure, the CEINP sets goal of at least one recharging installation per ten electric vehicles by 2030, as set out in the National Action Plan approved by the Spanish Government on 9 December 2016 to transpose Directive 2014/94/EU of the European Parliament and European Council of 22 October 2014 on the deployment of alternative fuel infrastructure.²

Notwithstanding the above challenges, there is certainly room for improvement in this area.

At present, according to REE, there are only 15,060 recharging points (5,000 of which are public) at 5,671 locations across Spain.³ In a 2019 guide on electrical mobility drafted for local authorities, REE estimated there were more than 63,000 electrical vehicles in Spain.⁴

Additionally, according to the last e-mobility survey launched by the Spanish Association of Manufacturers of Automobiles and Trucks (ANFAC), a quarterly analysis assessing industry developments in Spain, the number of electrified and pure electric vehicles in the nation's autonomous communities, as well as their recharging infrastructure, was at the tail of European e-mobility⁵ development. Therefore, in order to fulfil the goals set out above, significant investment will have to be made by both the public and private sectors, a solid legal framework established, and public supported initiatives and subsidies put in place.

2. LEGAL FRAMEWORK FOR CONSTRUCTING AND OPERATING CHARGING STATIONS

According to Law 24/2013 of 26 December on the electricity sector (the "LSE"), the main role of recharging services is to provide energy, for free or with a charge, through vehicle charging services and storage batteries under conditions allowing for an efficient charge at minimum cost to both the user and the electricity system.

In this regard, the entry into force of Royal Decree-law 15/2018 of 5 October on urgent measures to promote energy transition and consumer protection ("RD-Ley 15/2018"), was an important milestone for the sector as it liberalises the provision of energy recharging services. RD-Ley 15/2018 modified the LSE, eliminated the concept of charging managers for the provision of services and the resulting burdensome obligations. With the current regulations, consumers can provide these services, if they comply with regulatory requirements yet to be approved.

Moreover, the provision of recharging services in one or more locations may be carried out directly or through a third party, in an aggregated manner by one titleholder or several through interoperability agreements.



i) What to take into consideration when building and operating a charging station

The main regulation for the construction of e-charging infrastructure is the specific technical regulation related to the new Complementary Technical Instruction (CTI) BT 52 “Special purpose installations – Infrastructure for the recharging of electric vehicles” (the “RD ITC BT 52”) included in the electrotechnical regulation for low voltage.⁶ The regulation sets out the technical requisites to be fulfilled for the building of a charging station in Spain, which vary depending on its and the type of charge being installed. Pursuant to this regulation, the installation of the charging stations must be executed and certified by an accredited installer/technician.

Additionally, and depending on the works to be executed and the municipality and specific location of said works, they may require an urban planning license or a simpler procedure such as a communication or a responsible statement declaration (“*declaración responsable*”).

The following requirements should be considered depending on where the recharging point is located:

"We have seen an increase of public tender procedures by town councils to install recharging point in public domains."

a) Motorways

The current regulation requires authorisation from the Ministry of Transport to install recharging points on motorways.⁷ The Government intends to amend this however, making the installation of recharging infrastructure easier by eliminating the need for authorisation from the Ministry of Transport to build recharging points at locations along national motorways such as hotels, restaurants and petrol stations. This should improve the success rate of requests to install recharging points and ensure their construction is no more onerous from a regulatory perspective than that of petrol stations.

This means easing the requirements for installing recharging points in locations where their construction does not entail more complex actions, such as parking plots where space is likely to already be available (more information on this can be found in Section 2.4 of the memorandum as regards '*electrolineras*').

b) Publicly-owned locations (e.g. municipal roads and public parking spaces etc.)

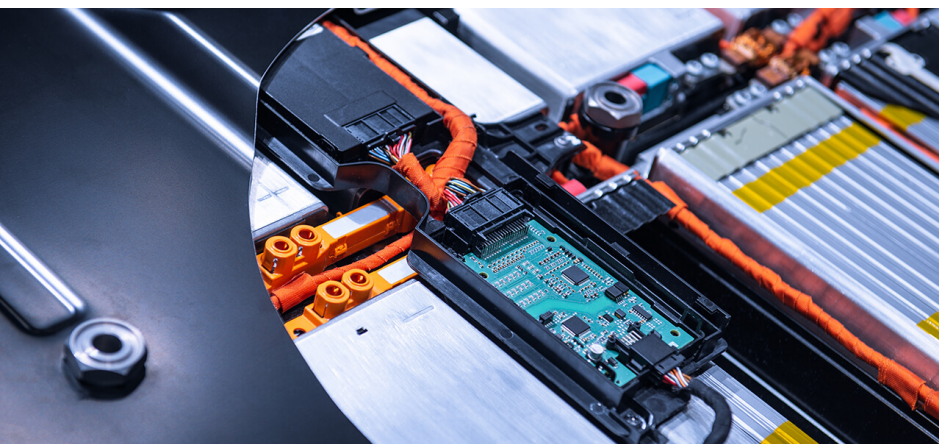
The installation of recharging points in public spaces, such as car parks and streets, shall be authorised initially by the competent body – which should normally be the city council – and shall comply with the public domain regulation. This may imply a public tender procedure as well as the specific regulation these administrative bodies enact.

In this regard, we have seen an increase of public tender procedures by town councils to install recharging points in public domains.

c) Privately-owned locations

It is important to highlight that the horizontal property regulation was amended to authorise recharging points installation for private use in buildings subject to the horizontal regime (i.e. properties located within a residential building that share communal facilities such as lifts, swimming pools, pathways and gardens). This authorisation is based on having received a relevant communication and doesn't require the agreement of the building's residents' committee, provided that the charging point is located on a private parking space. Otherwise, it must be approved by the committee.

Finally, pursuant to article 48 of the LSE, it is mandatory all recharging points for electrical vehicles are listed in a register managed by the relevant autonomous community where they are located, which must be electronically accessible to all citizens. Therefore, each e-charging installation must be properly registered in its autonomous community, which itself must communicate said information to the Ministry of Ecologic Transition for monitoring.⁸ The Ministry of Ecologic Transition determines what information recharging point owners must provide, depending on the installed power of the recharging point in question, its location and the transit of a higher or lower number of vehicles. However, the Ministerial Order regulating these issues has not yet been approved.



UPDATES ON THE FUTURE OF E-CHARGING INFRASTRUCTURE

2.1 Regulation and transposition of EU Directive 2014/94 in Spain

EU Directive 2014/94 (the “Directive”) on the development of infrastructure for alternative fuels was partially transposed into Spanish law by Royal-Decree 639/2016 of 9 December, by virtue of which a framework for installing alternative fuel was established (the “RD 639/2016”). The Directive was also transposed into the National Action Plan approved by the Spanish Government on 9 December 2016, which aims to develop the market for alternative fuels in the transport sector and implement the required recharging infrastructure.

The transposition of the Directive into Spanish law has had an extremely positive impact, as it has promoted and effectively implemented several incentive plans for sustainable mobility, especially regarding subsidies for the acquisition of electrical vehicles and the installation of recharging infrastructure.

RD 639/2016 aims to promote renewable resources and minimise reliance on fossil fuels in the transport sector, mitigate its environmental impact and achieve EU objectives on renewable energy in the sector. It promotes the creation of infrastructure for alternative fuels, including regulating the minimum requirements for the construction of recharging points for electric vehicles.

2.2 Tax incentives to e-charging infrastructure

Along with the subsidies granted by the Spanish Government relating to sustainable mobility over the past years (detailed in *Section 3 following*), there have also been tax incentives.

These tax incentives have a special focus on the acquisition of electric vehicles, which can be matriculated without paying excise taxes (“*Impuesto Especial sobre Determinados Medios de Transporte*”).⁹ Indeed, the tax rate is calculated based on a vehicle’s CO2 fuel emissions, and for electric vehicles these are non-existent. Additionally, electric vehicles can take advantage of a bonus of up to 75% on their annual registration tax payment (“*Impuesto de Vehículos de Tracción Mecánica*”), depending on the town council¹⁰ they’re registered in.

Furthermore, personal use of a company vehicle of 30% and 20% for electric and hybrid vehicles respectively,¹¹ allows employees to benefit from a reduction in the remuneration valuation of their personal income tax.

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Finally, in the Navarre region only, corporate income tax deductions of 30% and 5% are available for investing in electric or hybrid vehicles respectively, with certain limit caps depending on the type of vehicle.¹²

In general, there are currently no tax incentives in force in Spain for recharging infrastructure. Only Navarre provides for a 15% corporate income tax deduction (of up to 25% in certain cases) for investing in recharging systems such as in civil works, installation, wiring and connection point necessary for the entry into service of a normal or high-power recharging system, with a cap limit of €5,000 and €30,000 for normal and high-power recharging, respectively.¹³ However, the construction of e-

charging infrastructure can benefit from certain subsidies plans which will be reviewed in *Section 3* of this article.

2.3 Future legal framework and the so-called '*electrolineras*'

In the last few weeks, the Spanish government has been making legislative progress supporting recharging infrastructure.

In this regard, the government has recently approved Ministerial Order TMA/178/2020 ("Order TMA/178/2020")¹⁴ which amends the previous regulations covering access to national public roads, service roads and service facilities construction. The new regulation promotes and provides for the implementation of recharging points for electric vehicles by private operators along Spanish roads' network, thereby promoting private sector activity in this area.¹⁵

The regulation also implements so-called '*electrolineras*', i.e. recharging points installed in existing petrol stations, which means requires accommodating the existing regulations covering petrol stations to the new '*electrolineras*' regime. Consequently, facilities considered complementary to existing ones will not be required to comply with subsequent regulations on access to the electricity network, which will be the case when recharging points are installed autonomously.

Order TMA/178/2020 determines the requirements to be met by such recharging points, including how the administration will authorise their construction, as well as ensuring that recharging facilities are connected to the road network through corresponding access.¹⁶

Moreover, the regulation intends to address certain peculiarities relating to recharging points, for example, recharging time for an electric vehicle is higher than for a petrol-run vehicle, so the installation of electric recharge points will take place in locations that have service facilities with existing parking spaces, such as gas stations, or any other facilities close to the road network with available parking space.

Promoters and private operators of these '*electrolineras*' will oversee the financing of recharging infrastructure financing and bear its installation costs.

3. EXISTENCE OF ANY SUBSIDIES REGARDING THE CONSTRUCTION OR OPERATION OF RECHARGING INFRASTRUCTURES

As a response to EU Directive 2014/94, the Spanish Government initiated a series of plans to measure the promotion of the acquisition of electrical vehicles and the construction of recharging points. These plans focus on subsidising the purchase of electrical vehicles and construction of e-charging infrastructure to spur the growth of both and thereby encourage wider market development also.¹⁷

These subsidies were initially granted by the Ministry of Economy, Industry and Competitiveness, as the competent body to resolve the subsidy awards process. However, in the latest subsidy plan agreed by the Spanish Government, the Programa MOVES 2019, competency to grant them in this context has been given to the designated competent bodies determined by the relevant autonomous community.



Regarding the application of subsidies for the construction of recharging points, the Programa MOVES 2019, specifies the following as being able to benefit from them: self-employed professionals, natural persons of legal age, owners of communal buildings, legal persons and the public sector. The subsidy request must be made online.

The Programa MOVES 2019, assigned €45m to subsidies, that were distributed among the autonomous communities, with the proviso that between 30% to 60% of the subsidy's budget has to be for the construction of recharging point infrastructure for electrical vehicles. Specifically, at least a 50% of this budget was for the building of fast and extra-fast recharging points.

The latest subsidies for recharging infrastructure were agreed on 31 December 2019 with the closing of the Programa MOVES 2019.¹⁸ Its provisions were not unfortunately as positive as those of previous incentive programmes. Nonetheless, the Spanish Government is preparing a second draft for 2020. This new plan would follow that of 2019, but financial help is to be increased by approximately 40%. In this programme, the autonomous communities will also oversee the subsidy award process as part of the competency distribution in the sector.¹⁹

"The Programa MOVES 2019, assigned €45m to subsidies, that were distributed among the autonomous communities, with the proviso that between 30% to 60% of the subsidy's budget has to be for the construction of recharging point infrastructure for electrical vehicles."

4. THE DIFFERENT BUSINESS MODELS OF E-CHARGING INFRASTRUCTURE OPERATORS

There are several distinct agents acting in the electricity market, divided into the generation, distribution and sale of electricity, these being the key phases involved in the electricity system and to be carried out by separate private independent agents. In relation to the e-charging infrastructure, key players are distributed in the same way, but the legislation in this sector allows for private companies in charge of distribution to also be the ultimate owner of infrastructure for recharging electric vehicles.

Although the above is permitted, it is more likely that the companies responsible for electricity distribution recharging points will be different to those in charge of installing them, be they public or private.

In the Spanish market there are a great many companies operating as installers of recharging points. Market practice usually means operators providing for the infrastructure construction do not provide or distribute electricity to said installations. There is one notable exception to mention: Iberdrola Distribución Eléctrica, S.A., as one of the biggest distributors of electricity in Spain, has recently expanded its activities into the construction of recharging infrastructure.

DISCLAIMER

Please note that this article 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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[3] Red Eléctrica España, "*Red Eléctrica publica un mapa de puntos de recarga inteligente del vehículo eléctrico en España*", Red Eléctrica España, 16 December 2019 (<https://www.ree.es/en/node/12411>)

[4] https://www.ree.es/sites/default/files/downloadable/Guia_movilidad_electrica_para_entidades_locales.pdf

[5] <https://anfac.com/actualidad/el-lento-progreso-de-la-electro-movilidad-coloca-a-espana-en-la-ultima-posicion-del-barometro-en-2019/>

[6] Approved by means of Royal Decree 1053/2014, 12 December, approving a new Complementary Technical Instruction (CTI) BT 52 “Special purpose installations. Infrastructure for the recharging of electric vehicles”, of the Electrotechnical Regulation for low voltage, approved by Royal Decree 842/2002, of 2 August, and modifying other complementary technical instructions of the same.

[7] Order of 16 December 1997, regulating the access to State roads, service roads and the construction of service installations.

[8] Law 24/2013, 26 December, of the Electrical Sector.

[9] Law 38/1992, 28 December, on Excise Taxes.

[10] Royal Legislative Decree 2/2004, 5 March, approving the revised text of the Law Regulating Local Taxes.

[11] Royal Decree 439/2007, 30 March, approving the Personal Income Tax Regulations.

[12] Navarra Foral Law 26/2016, 18th December, on Corporate Income Tax.

[13] Navarra Foral Law 26/2016, 18th December, on Corporate Income Tax.

[14] Order TMA/178/2020, of 19 February, amending the Order of 16 December 1997, regulating access to State roads, service roads and the construction of service facilities.

[15] El Periódico de la Energía, “El Gobierno ultima un Decreto para impulsar el despliegue de ‘electrolineras’ en las carreteras”, El Periódico de la Energía, 17 February 2020, (<https://elperiodicodelaenergia.com/el-gobierno-ultima-un-decreto-para-impulsar-el-despliegue-de-electrolineras-en-las-carreteras/>)

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[19] Javier López de Benito, “El Gobierno avanza detalles del segundo plan MOVES” Movilidad Eléctrica, 19 February 2020 (<https://movilidadelectrica.com/nuevo-plan-moves/>)

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