

## RECENT DEVELOPMENTS IN SPAIN'S E-MOBILITY MARKET APRIL 2022

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### OVERVIEW OF SPAIN'S E-MOBILITY LEGISLATIVE FRAMEWORK UPDATES

Throughout 2021 and the first quarter of 2022, Spain's e-mobility legislative framework has been updated and developed as the Spanish government ramps up its promotion of the decarbonisation of the transport sector to ensure the country's energy transition between 2030 and 2050.

As part of its strategy to achieve this goal, the government is focussing on the implementation and roll out of electric vehicle ("EV") charging infrastructure across the country and increasing the number of available to give priority to EVs and boost their sale. To this end, important pieces of legislation have been approved which require the construction of EV charging infrastructure and which develop and clarify the applicable legal framework.

Legislation has been approved to allocate the financial resources granted under the Next Generation EU fund via the Recovery, Transformation and Resilience Plan ("RTRP"). One of the flagship initiatives of this plan is called "Recharge and refuel", which will be driven by the deployment of EV charging infrastructure.

The first Strategic Project for Economic Recovery and Transformation approved in the context of the RTRP was for the Electric Vehicle Sector ("PERTE VEC"). This was passed in July 2021 to provide financial aid (through grants and loans) to projects that have an impact on the industrial value chain of EVs. It aims to connect vehicle manufacturers with new contacts in complementary sectors necessary for zero-emission vehicles, such as digital and energy.

The PERTE VEC sets a model for collaboration between these different sectors to make the manufacture and development of EVs in Spain using sustainable methods more accessible. PERTE VEC's objective is to, by 2023, have deployed between 80,000 and 110,000 units of EV charging infrastructure nationwide.

### ANALYSIS OF THE MAIN UPDATED LEGISLATIVE FRAMEWORK ON EV CHARGING INFRASTRUCTURE

**Royal Decree Law 29/2021, of 21 December on the Adoption of Urgent Measures in the Energy Field to Promote Electric Mobility, Self-consumption and the Deployment of Renewable Energies ("RDL 29/2021")**

RDL 29/2021, in force since 22 December 2021, introduced urgent measures to promote the e-mobility sector, self-consumption (“autoconsumo”) and renewable energy deployment. These measures were primarily adopted to eliminate any regulatory barriers impeding the development and implementation of the Strategic Project for the Economic Recovery and Transformation of Renewable Energies, Renewable Hydrogen and Storage. RDL 29/2021 promotes, and facilitates the roll out of EV charging points through the following measures:

## **(a) Requirement to install charging stations:**

(i) As from 1 January 2023, (a) all existing non-residential private buildings with a 20+ space, either indoors or in an outdoor space attached to the building, and (b) all 20+ space detached outdoor parking areas must have a minimum number of charging stations proportional to their total number of parking spaces. The requirements are as follows:

- one charging station installed per 40 parking spaces up until 1,000 parking spaces, and an additional charging station per 100 additional parking spaces; and
- in any building owned by the State Administration and its related or dependent public bodies, a charging station must be installed for every 20 parking spaces up until 500 parking spaces, and an additional charging station for every 100 additional spaces beyond that.

Exceptions to both rules above are applicable to protected buildings (i.e. buildings with historical or architectural value).

(ii) Building on the provisions of Law 7/2021 on Climate Change and Energy Transition, state highway operators with contracts in place as of 22 May 2021 will be required to install at least one EV charging point with a capacity corresponding to their sales volume, as follows:

1. owners of service stations with a turnover of more than 10m liters of gasoline and diesel A in 2019 will have to install at least one charging station with a power output of 150 kW or higher in their facilities, to be in service by 23 February 2023;
2. owners of service stations with a turnover of between five and 10m liters of diesel in 2019 will have to install at least one charging station with a power output of 50 kW or higher in their facilities, to be in service by 23 August 2023;
3. if there were no service stations in a province, autonomous city or island that reached a turnover of five or more million liters of gasoline and diesel A in 2019, the owners of service stations – in order of highest to lowest aggregate annual sales volume – that reach 10% of said turnover will have to install, for each of these facilities, at least one charging station of 50 kW or higher power to be in service by 23 August 2023; and
4. owners performing any renovations that require a review of their administrative permits, regardless of their turnover, must install at least one EV charging station with a power equal to or higher than 50 kW which must be operational at the time the new or renovated service station becomes operational.

## **(b) Measures to simplify the installation of charging stations:**

(i) RDL 29/2021 allows the installation of charging points and their corresponding infrastructure in protected areas of state-owned main roads with prior authorisation by the relevant Ministry, provided that they are removable and road safety is assured;

(ii) The installation and operation of charging points with a power output of less than 250 kW will not need a permit, license or authorisation for works, installation, operation or functioning, including environmental authorisations or others of a similar nature<sup>1</sup> from public administrations. Instead, it will require a “responsible declaration” (*“declaración responsable”*) regarding compliance with the applicable regulations in force. The responsible declaration will permit the installation of the charging point and the start of the energy recharging service from the date of its submission to the competent Public Administration, without prejudice to the powers of verification or inspection of any relevant Public Administration.

(iii) EV charging infrastructure with a power of 250+ kW, will be subject to administrative authorisations in accordance with article 53 of the Electricity Sector Law, including (i) Prior Administrative Authorisation and related environmental impact assessment; (ii) Construction Administrative Authorisation; and (iii) Operating Administrative Authorisation. In addition, EV charging infrastructure with a power output of 250+ kW is categorised as energy infrastructure of public utility for the purposes of expropriation.

## **(c) Local tax rebates:**

(i) RDL 29/2021 gives the option of the local governments to approve tax rebates (*“bonificaciones potestativas”*) for homologated EV charging infrastructure through the amendment of Royal Decree Law 2/2004, of 5 March, on the revised text regulating local taxes:

1. up to 50% on the real estate tax (*“IBI”*) for properties with EV charging points;
2. up to 50% on the business activity tax (*“IAE”*) quota for taxpayers who pay tax under the municipal quota and who have installed EV charging points in the premises assigned to the relevant economic activity; and
3. up to 90% on the construction, installation and works tax (*“ICIO”*) for construction, installation or works for the installation of EV charging points.

## **(d) New sanctioning regime adapted to EV charging:**

(i) RDL 29/2021 introduced new sanctions in the Electricity Sector Law related to electricity distribution companies and their requirement to properly respond to access and connection permits requests, relating to EV charging infrastructure. Notably, there are specific offences for when distribution companies (i) do not comply with the response deadlines, (ii) unjustifiably impose conditions, difficulties or delays in connection with the processing of access and connection permits and connection of new facilities to the consumers’ grid; (iii) cause prejudice to the consumer. Depending on the seriousness of the offense and whether it is repeated, the infringement could qualify as non-serious, serious or very serious, with corresponding consequences; and

(ii) the recently approved Royal Decree-Law 6/2022, of 29 March, included as a non-serious infringement *“Non-compliance by consumers who provide electric vehicle energy recharging services, or by other parties involved in the provision of this service, with the requirements or obligations established by regulation”*.

## **Royal Decree 184/2022, of 8 March, regulating energy recharging services for electric vehicles**

On 19 March 2022, the long-awaited Royal Decree 184/2022 of 8 March regulating the energy charging services for EVs (“RD 184/2022”) was published in the Spanish Official Gazette. RD 184/2022 develops the EV charging services provisions contained in article 48 of the Electricity Sector Law, defining the roles of different parties in EV charging services and infrastructure and contributing to the development and installation of e-charging points.

RD 184/2022 clarifies the parties operating in the provision of e-charging services, including the rights and obligations of each party. The key provisions of RD 184/2022 are the following:

(i) Definitions of the main parties operating in the provision of e-charging services and infrastructure:

- charging point operator (“CPO”): an operator, natural or legal person, which holds the operating rights to an EV recharging station. The CPO is generally an electricity consumer;
- under RD 184/2022 the CPO may assign or transfer, in whole or in part, the rights to operate EV charging point infrastructure to third parties, who in turn assume the rights and obligations of the CPO under RD 184/2022; and
- Electric mobility service provider (“EMSP”): a company that participates, as a third party, in the provision of energy charging services, without owning EV charging point infrastructure or their operating rights, with which EV users contract all the services related to the charging of an electric vehicle.

(ii) General principles for the provision of the charging service:

1. the main function is the delivery of energy, free of charge or for a fee through EV charging services under conditions that allow charging in an efficient manner and at minimum cost for the user and for the electricity system;
2. it may be provided by any consumer, provided that it complies with the obligations and requirements of the RD 184/2022;
3. it may be carried out directly or through a third party, in an aggregated manner by one owner or by several ones through coordination agreements;
4. EMSPs shall carry out their activity under fair and non-discriminatory market conditions. CPOs shall not grant preferential treatment to them through the application of an unjustified price difference that may hinder competition and ultimately lead to higher prices for consumers or any other practice involving undue preferential treatment;
5. provider of publicly accessible EV charging points must ensure that prices charged are reasonable, easily and clearly comparable, transparent and non-discriminatory. Nevertheless, discounts, special offers and promotions may be applied to users, provided that these do not contravene the above-mentioned principles, especially the guarantee of non-discriminatory treatment in relation to prices charged;
6. distribution companies must cooperate on a non-discriminatory basis with providers of charging services for vehicles at charging points accessible to the public; and
7. charging service must be provided under conditions that guarantee the universal accessibility of EV charging point infrastructures for public access.

(iii) Rights and obligations of the CPO under RD 184/2022:

- EV charging point operators have the same rights and obligations regarding supply as electricity consumers<sup>2</sup> agreements must be established to ensure compliance with the same;
- CPO may: (i) own one or more charging point infrastructure units or, as the case may be, the accompanying exploitation rights; (ii) deliver energy free of charge or for a fee through EV charging services; and (iii) enter into interoperability agreements with EMSPs; and
- CPO duties include (i) ensuring the delivery of energy in an efficient and accessible manner; (ii) informing users about the origin of the energy supplied and environmental impacts (iii) providing an efficient and accessible energy delivery service; (iv) having the necessary means to allow billing according to the energy supplied at the charging point to the user of the EV; and (v) complying with maintenance and operational obligations;

(iv) Rights and obligations of EMSP under RD 184/2022:

- EMSPs may participate in the provision of services as an intermediary between CPOs and EV users, establishing interoperability agreements with the former;
- EMSPs must: (i) inform customers about the origin of the energy supplied, as well as the environmental impacts of the different energy sources and the proportion used among them. This information shall be provided by the operator of the charging point, based on the information on the origin of the energy supplied available to it by virtue of its respective type of supply contract; (ii) present, in a clear and transparent manner, the price of the energy delivered while providing the service, as well as the price of the energy actually supplied; and (iii) have real time customer services available; and

- the energy charging service may be provided through the following: a) punctual charging by the CPO when there is no previous contract in place; b) the prior execution of a contract between the CPO and the user of the electric vehicle; and c) an EMSP through an interoperability agreement.

(v) **Interoperability Agreements**, which can be entered into between the CPO and the EMSP for the provision of energy charging services, based on transparency and non-discrimination between the participating parties. These agreements shall include, at the least, the information necessary for compliance with the obligations of the EMSP.

(vi) **Obligations of the electricity distribution company**: The distribution company shall cooperate on a non-discriminatory basis with the operator in the deployment of EV charging infrastructure, such as through providing the information corresponding to the access capacity of the distribution grid to accommodate the power of the projected charging point station.

(vii) **Reporting obligations**: information on EV charging points for public access vehicles shall be made available by both the CPO and the EMSP to the public to the to the Ministry, through the National Access Point for traffic information.

## New regulation to come: Draft Act on Sustainable Mobility

On 1 March 2022, the Council of Ministries approved the first version of the Draft Act on Sustainable Mobility (the “Draft Act”), submitted by the Ministry for Transportation, Mobility and Urban Agenda, which includes developments on e-charging infrastructure and services.

The Draft Act was open to the public for review until 13 April 2022 after which the Council of Ministries will review it for a second time to approve it and begin legislative proceedings in Congress. Regarding EV charging infrastructure, it should be noted that the text of the Draft Act includes:

- public information that the government may make available relating to EV charging stations, as well as the particular characteristics of a charging service; and
- a period of six months before service providers’ reporting obligations on public access points for electric charging become live

*Madrid Associate Sara González also contributed to this article.*

## 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.

## SOURCES

- Law 7/2021, of 20 May, on Climate Change and Energy Transition.
- Law 24/2013, of 26 December, on the Electric Sector.

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- Royal Decree 184/2022, of 8 March, Royal Decree 184/2022, of 8 March, regulating the energy recharging services for electric vehicles.
- Royal Decree-Law 29/2021, of 21 December, adopting urgent measures in the energy field to promote electric mobility, self-consumption and the deployment of renewable energies.
- Royal Decree-Law 23/2020, of 23 June, approving measures in the field of energy and other areas for economic recovery.
- Strategic Project for Economic Recovery and Transformation for the Electric Vehicle Sector.
- The Recovery, Transformation and Resilience Plan.

[1] Except in buildings of historical-artistic heritage with the category of asset of cultural interest ("BIC")

[2] See in this regard article 44 of LSE

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