

THE FUTURE OF EV CHARGING: SPOTLIGHT ON FRANCE

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In this article, the third in our “The Future of EV Charging Infrastructure: Spotlight on” series, we provide an overview of the main pieces of regulation governing the development of EV charging infrastructure in France.

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THE GRADUAL ADOPTION OF A HARMONISED LEGAL FRAMEWORK

France's e-mobility legal framework is based on a series of legislative and regulatory acts that transpose the Alternative Fuels Infrastructure Directive (“AFID”)¹ and shape an increasingly comprehensive legal framework for e-mobility market in France. There are two main purposes to the regulations on e-mobility: the development of a sufficient network of e-charging infrastructure and the implementation of incentives to encourage the switch to e-mobility.

Regarding EV charging infrastructure, the main objectives in terms of deployment were set out in Article 41 of the Law on Energy Transition and Green Growth passed in 2015.² Since then, numerous acts have been passed, notably in 2019 (Energy and Climate Law,³ Mobility Orientation Law⁴) and 2021 (Climate and Resilience Law⁵). Some of the provisions passed by these laws have been codified mainly in the French Energy Code.

Regulatory provisions may be found in a series of decrees and orders passed since 2017, with Decree 2017-26 of 12 January 2017⁶ being the main text governing the activity of charging operators. Specific regulations also apply in relation to connecting to the public distribution network,⁷ smart charging,⁸ the activity of charging point operators and developers,⁹ interoperability¹⁰ and data management obligations.¹¹ Other regulations have been passed requiring new buildings to be equipped (or pre-equipped) with e-charging points¹² and to offer a number of financial incentives to build e-charging points.¹³

Alongside the development of EV charging infrastructure, the French government has passed a number of measures to encourage the purchase of electric (or hybrid) vehicles,¹⁴ mainly in the form of financial assistance for purchasing such vehicles.

This body of legislation is set to evolve following the publication in the EU Official Journal on 22 September 2023 of Regulation 2023/1804 on the deployment of alternative fuels infrastructure (“AFIR”).

THE OBJECTIVES IN TERMS OF INFRASTRUCTURE DEPLOYMENT AND E-MOBILITY SWITCH

The Law on Energy Transition and Green Growth passed in 2015¹⁵ determines the national framework for action to develop the market for alternative fuels and the deployment of the corresponding infrastructure.¹⁶ The law set targets of 100,000 public charge points by 2023 (this target was reached on 5 May 2023¹⁷) and 7,000,000 public and private charge points by 2030.

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As part of the stimulus plan 'France 2030 Investment' ("France 2030"), a number of grants have been awarded to accelerate the development of fast-charging stations on the national road and motorway network in cities and local regions. From the point of view of local planning, a master plan is being created for the development of charging infrastructure open to the public for electric vehicles and plug-in hybrid vehicles.¹⁸

Through France 2030, the French government is aiming to produce two million zero-emission vehicles and to develop low-emission, sovereign, and resilient mobility, for which €3.6bn in funding has been earmarked.

In addition, the French government's Multiannual Energy Programme¹⁹ aims to increase the current size of the national e-mobility market twelvefold, with a goal of 1.3 million electric vehicles and plug-in hybrid electric vehicles, for both private and commercial ends, on the road by the end of 2023 – a figure achieved according to the framework published by Avere-France,²⁰ the national association for the development of e-mobility. The goal for the end of 2028 is 5.3 million electric vehicles and plug-in hybrid electric vehicles.

To achieve this 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 €13,000 for both individuals and companies. In addition, various provisions require public bodies to acquire green vehicles, particularly when renewing their fleets.

Since 2010, 470,295 electrically powered and hybrid vehicles have been registered in France. Between January and September 2023, 307,735 electrically powered vehicles were registered.

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QUALIFICATION AND REGULATION OF EV CHARGING SERVICES BY LAW

In 2019, public authorities reinforced the regulatory framework by adopting the Law on Orientation of Mobility. This legislation settled the legal confusion related to EV 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 L. 344-4 of the French Energy Code, the nature of an EV charging operator is characterised as the provision of services and not as the supply of electricity. Consequently, the operator is not required to act as an electricity supplier subject to the corresponding applicable regime.

In 2021, Ordinance no. 2021-237 reinforced the legislative provisions applicable to the EV charging market. One of the key provisions was the adoption of a ban on grid operators, including those of closed distribution networks (*gestionnaires de réseaux de distribution fermés*)³, owning, developing, managing or operating an e-charging infrastructure. Indeed, pursuant to Article L. 353-7 of the French Energy Code, these stakeholders are also prohibited from owning, developing, managing or operating an e-charging infrastructure network. There are two exceptions: 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 private initiative and for a duration of five years.

THE LEGAL REGIME RELATING TO THE CONSTRUCTION OF EV CHARGING INFRASTRUCTURE

- **Planning permission:** the installation of EV charging infrastructure does not raise any particular difficulties. Although planning permission is generally required, it is usually relatively easy to obtain. Particular attention should be paid to national and local planning regulations, which may theoretically include specific rules or local bans (e.g. near listed buildings). For most stations, a prior declaration of works (as opposed to formal authorisation) should be sufficient.
- **ICPE declaration:** any EV charging infrastructure with a power capacity of at least 600 kW must be declared to the Administration and comply with ICPE regulations²¹ (*installations classées pour la protection de l'environnement*). However, EV charging infrastructure accessible to the public are specifically excluded from the regime.
- **Occupation of the public domain:** depending on the location of the EV charging infrastructure, a public land occupation permission (*autorisation d'occupation du domaine public*) may be required. In such cases, a request for tenders may be implemented by the public entity prior to granting occupation authorisation for said public land.
- **Grid connection:** the grid connection for EV charging infrastructures can be built without specific comparison to other installations: an operator can request grid access from the grid operator. In addition, to facilitate the development of EV charging infrastructures, 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.
- **Interoperability of stations:** customers/users shall have easy access to information related to an EV charging point and developers are compelled to ensure the interoperability of their EV charging infrastructures in order to facilitate roaming charging.

MARKET DESIGN

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 vehicles: energy producers and providers, car manufacturers, parking operators, real estate investors, major players in the construction field and investment funds, as well as public authorities.

The public initiative in France 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 diverse in size, ranging from only a few charging points to several hundreds.²²

From a legal standpoint, 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 and a concession-based one.

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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 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 if the public authority has identified a specific need for itself in terms of infrastructure and, to our knowledge, recourse to this type of procurement contract should remain relatively limited.

On the other hand, when the installation and operation of charging stations in a given territory presents 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 this 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 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 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).

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 this infrastructure.

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 domains plots (and therefore the conclusion of a public contract relating to such occupancy), e.g. when the charging stations are to be installed alongside roads or in public car parks. In this respect, we can see that for several years now, many local authorities have simply been signing agreements to occupy public land, either as a result of a public authority's desire to develop charging infrastructure on their property, or as a result of an expression of interest from an operator. Generally, this type of agreement is concluded following an advertising and prior selection procedure based on Article L. 2122-1-1 of the French Code for the Property of Public Entities. Although this type of structure allows for the use of this type of contract, we anticipate that the strong competition within the framework of these prior selection procedures could eventually create disputes between competitors (the administrative jurisdiction being competent to hear disputes relating to the prior selection procedures put in place by public bodies).

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.

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SUBSIDIES AND TAX

It is through regulation and financial or tax incentives that public authorities aim to encourage the development of charging infrastructure. A distinction must be made between direct and indirect aids.

Direct aid

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 increased this tax credit from 30% to 75%.

With regard to public car parks, from 1 January 2025 at the latest, car parks with more than 20 units managed by a public authority (i.e. directly by a public entity), via a public contract or a public service delegation scheme must have at least one charging point for electric and plug-in hybrid vehicles, located in a space sized to allow access for PRMs.

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 area where the project is to be implemented is not densely populated enough). This mechanism is however set on a case-by-case basis. Therefore, the condition and amount at stake depends on the specificities of each project.

Under the Advenir programme, subsidies can be granted to individuals, public entities or companies to support the installation of charging points located on roads (i.e. open 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. For the implementation of e-charging points located in France, the subsidy amount of the supply and installation costs, with a cap, can reach €9,000 per charging point (depending on the number of charging points in the project at stake).

Indirect aids

Pursuant to article L. 341-2 of the French 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, the LOM authorised a 75% reduction for consumers connected to an electric vehicle charging infrastructure, the benefit of this measure being limited to requests for connection to the network made up to 31 December 2021.^[1] A decree dated 6 February 2023 provides for a 75% reduction in the cost of connection to the electricity grid until the end of 2025 for IRVEs included in a validated master plan for the development of charging infrastructure open to the public for electric vehicles and plug-in hybrid vehicles.

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FOOTNOTES

- [1] Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure Text with EEA relevance.
- [2] Law no. 2015-992 of 17 August 2015 on Energy Transition and Green Growth.
- [3] Law no. 2019-1147 of 8 November 2019 Energy and Climate Law.
- [4] Law no. 2019-1428 of 24 December 2019 Mobility Orientation Law.
- [5] Law no. 2021-1104 of 22 August 2021 Climate and Resilience Law.
- [6] Decree No. 2017-26 of 12 January 2017 on charging infrastructure for electric vehicles and various measures transposing Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of infrastructure for alternative fuels.
- [7] Articles L. 353-8 and L. 353-9 of the French Energy Code ; Article 64 (II) of the Mobility Orientation Law ; Order of 12 May 2020 on the charging of the Public Transmission User Tariff for the connection to the public electricity networks of electric and plug-in hybrid vehicle charging infrastructures open to the public and charging workshops for electric or plug-in hybrid vehicles assigned to public road passenger transport services ; Order of 6 February 2023 on the charging of the Public Transmission User Tariff for electric and hybrid rechargeable vehicles open to the public that are part of a master plan for the development of charging infrastructures.
- [8] Articles L. 353-10 and 353-11 of the French Energy Code ; Order of 19 July 2018 on devices for controlling the charging of electric vehicles.
- [9] Article L. 334-4 of the French Energy Code ; Order of 22 December 2014 relating to the creation of electric vehicle charging service signs ; Order of 12 January 2017 specifying the provisions relating to operating unit identifiers for electric vehicle charging ; Order of 27 October 2021 relating to qualifications for design studies, installation and maintenance of electric vehicle charging infrastructures ; Order of 27 October 2021 relating to service quality commitments relating to electric vehicle charging infrastructures open to the public ; Decree no. 2022-1763 of 30 December 2022 on assistance for collective residential housing in the face of rising electricity prices for 2023.
- [10] Articles L. 353-4 and R. 353-4-1 to R. 353-4-7 of the French Energy Code.
- [11] Articles R. 353-4-4 and R. 353-4-5 of the French Energy Code ; Articles L. 1115-1 et seq. of the French Transport Code ; Articles D. 1115-1 to R. 1115-8 of the French Transport Code ; Order of 4 May 2021 on data concerning the geographical location and technical characteristics of charging stations and points for electric vehicles.
- [12] Articles L. 113-11 to L. 113-15 of the French Construction and Housing Code ; Article R. 113-6 of the French Construction and Housing Code ; Order of 23 December 2020 relating to the application of Article R. 111-14-2 of the French Construction and Housing Code.
- [13] Tax credit: Article Article 200 quater C of the French General Tax Code ; Article 18bis of Annex 4 of the General Tax Code ; Article 31 of the Finance Act 2023 (Act no. 2022-1726 of 30 December 2022) ; Order of 27 May 2021 issued for the application of Article 200 quater C of the French General Tax Code. Reduced VAT rate: N of article 278-0 bis of the French General Tax Code Article 65 of the Finance Act 2023 (Act no. 2022-1726 of 30 December 2022). Benefits in kind : Decree of 10 December 2002 on the valuation of benefits in kind for the purpose of calculating social security contributions. Travel expenses : Article 6B of Appendix 4 of the French General Tax Code.
- [14] The conversion premium, which aims to help individuals and professionals in France to buy a new or used vehicle in exchange for the disposal of an old vehicle; the ecological bonus, which aims to help all individuals and professionals in France, to buy or rent a new or used electric and/or hydrogen vehicle; microcredit clean vehicles intended to help modest households acquire a low-emission vehicle for long-term rental or rental with purchase option.
- [15] Law no. 2015-992 of 17 August 2015 on Energy Transition and Green Growth.

[16] Article 40 of Law on Energy Transition and Green Growth.

[17] Communication from the French Government, “100,000 electric charging points open to the public”, 9 May 2023

[18] Articles L. 353-5 and L. 353-6 of the French Energy Code.

[19] Decree 2020-456 of 21 April 2020 on Multiannual Energy Programme.

[20] <https://www.avere-france.org/publications/>.

[21] Environmental-related regulations which applies to certain types of facility that are likely to have an impact on the environment or constitute a hazard, and for which an authorisation, registration procedure or prior declaration is required.

[22] French Ministry of Ecological Transition, Charging infrastructure analyses for electric vehicles, July 2019, p. 24

[23] Order of 12 May 2020 on the charging of the public electricity network usage fee for the connection to the public electricity networks of electric and plug-in hybrid vehicle charging infrastructures open to the public and charging workshops for electric or plug-in hybrid vehicles assigned to public road passenger transport services

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