

Electromobility – main legal dilemmas

TO ENCOURAGE THE USE OF ELECTRIC CARS, EU COUNTRIES MUST PROVIDE THEIR CITIZENS WITH RECHARGING SERVICES. HOWEVER, EU LEGISLATION POSES SEVERAL CHALLENGES FOR NATIONAL GOVERNMENTS



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Electromobility has been by far one of the “hot-test” topics in the energy and local government sectors in the last few months. On one hand, this new trend is perceived by the Polish Government as one of the keys to the country’s development in the next decade. On the other, the huge smog problems experienced last winter only reinforce the need to develop clean transport technologies.

Currently, Poland has not yet introduced any comprehensive regulations that would cover electromobility issues. However, according to the Government, a draft of the electromobility bill should be announced for public consultations this spring. In the meantime, the key goals for electromobility in Poland are presented in the Electromobility Development Plan, as approved by the Government on March 17, 2017.

There is no doubt that Poland is obliged to implement the Directive 2014/94/EU of the European Parliament and of the Council of October 22, 2014 on the deployment of alternative fuel infrastructure (AFI Directive). Under this directive, Member States shall ensure that an appropriate number of recharging points accessible to the public are put in place by December 31, 2020, in order to ensure that electric vehicles can circulate at least in urban/suburban agglomerations and other densely populated areas, and, where appropriate, within networks determined by the Member States. It is worth noting; however, that the AFI Directive does not determine in detail how the concept of electromobility should be implemented in given Member States. In other words, the legal framework and (if any) support schemes for electromobility should be developed by Member States independently. A number of the AFI Directive requirements should be noted:

- Member States shall ensure that operators of recharging points accessible to the public are free to purchase electricity from any electricity supplier.
- All recharging points accessible to the public shall also provide for the possibility for electric vehicle users to recharge on an ad hoc basis without entering into a contract with the electricity supplier or operator concerned.
- Member States shall ensure that prices charged by the operators of recharging points accessible to the public are reasonable, easily and clearly comparable, transparent and non-discriminatory.

- Member States shall ensure that the legal framework permits the electricity supply for a recharging point to be the subject of a contract with a supplier other than the entity supplying electricity to the household or premises where such a recharging point is located.

The above AFI Directive provisions do not specify how the “recharging service” should be regulated at national level. This might be challenging for national authorities, as various factual and technical options should be taken into account.

For example, sole “recharging” may involve not only a service of charging a given electric vehicle but also exchanging a battery in such a vehicle. Both formulas would need a separate legal framework (the former actually involves the sale of electricity, whereas the latter would mean an exchange of the battery).

Lawmakers should also distinguish between the situation in which recharging takes place at home (charging in a garage directly “from a socket”) and when a service is provided at a recharging point accessible to the public.

Recharging electric vehicles at home, in fact, could take place under the same conditions as any purchase of electricity under current circumstances. However, if separate measuring of vehicles should be allowed or separate tariffs for electricity should be introduced, current Energy Law would require significant amendments.

In the case of recharging services at public recharging points, a new law should solve numerous legal dilemmas. First of all, the notion of a “recharging service” should be defined. As noted above, such a “service” involves the trade of electricity (which currently requires an electricity trading license issued by the President of the Energy Regulatory Office). Also, if we consider preferential tariffs for such electricity, new legal tools should be introduced. In particular, the new law should allow the customer to choose the seller of the electricity at the recharging point. One could also imagine the purchase of electric vehicles with pre-paid electricity (the seller of the car covers the cost of electricity for the first two years of use for example). Another issue is the position of local distribution system operators in electromobility projects. It should be noted that the draft of the new Electroenergy Directive (as part of the planned “Winter Package”) assumes that Member States may allow distribution system operators to own, develop, manage or operate recharging points for electric vehicles only if some specific requirements are fulfilled (in particular, that other parties following an open and transparent tendering procedure, have not expressed their interest to own, develop, manage or operate recharging points for electric vehicles).

Finally, it should be remembered that electromobility is a rapidly developing area. As a consequence, even the AFI Directive emphasizes that national legislation needs to ensure that technological innovation is facilitated. The legal framework for electromobility development should be flexible enough to take into account future standards for new technologies that may currently be beyond our imagination. ●