

## Update Energy Law: E-mobility

The third part of our Client Briefing takes a look at the developments in the field of e-mobility, which is an essential pillar of the EU's and Germany's strategy to address the climate change.

Despite the important role of e-mobility, the legislators do not consider themselves to be in a position to force the phase-out of "petrol/diesel" directly. Instead, the transition shall result from the automotive industry's incentives and the customers' buying intention. In order to promote this, a large number of **accompanying measures** have been launched, such as financial incentives to buy, obligations to develop a nationwide charging infrastructure and improvements to the role of charging point operators. In Germany, for example, the target is to register seven to ten million electric vehicles by 2030.<sup>1</sup>

A **uniform definition** for "electric vehicles" does not yet exist. At European level, for example, it is stated that an "electric vehicle" is "*a motor vehicle equipped with a powertrain containing at least one non-peripheral electric machine as energy converter with an electric rechargeable energy storage system, which can be recharged externally*"<sup>2</sup>; whereas at national level it is stated that an "electrically powered vehicle" is a "*pure battery electric vehicle, an externally chargeable hybrid electric vehicle or a fuel cell vehicle*".<sup>3</sup>

### 1. European regulatory framework

There is no **strict regulatory framework** for e-mobility on EU level. Instead, various regulations were adopted in recent years, among others dealing with "targets", "battery storage", "charging infrastructure" and "support programs". The most important rules and regulations are summarized below:

Regulation (EU) No 1316/2013 established the **Connecting Europe Facility**. The facility aims to support the conditions, methods and procedures for providing financial assistance to, inter alia, projects of common interest in the field of transport and energy infrastructures. An amendment to the facility shall, among other things, pave the way at achieving near-zero-emission mobility. It was initiated in 2018, but is still in the legislative process and might enter into force on 1 January 2021.<sup>4</sup> The facility plays an important role in the context of post-Corona measures (see point 2.).



<sup>1</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 76.

<sup>2</sup> Art. 2 Nr. 2 Directive 2014/94/EU, other than that, for example Art. 3 Nr. 33 Regulation (EU) No 168/2013 for "Hybrid electric vehicles".

<sup>3</sup> Art. 2 para. 1 Electric Mobility Act (Elektromobilitätsgesetz).

<sup>4</sup> See on the state of proceedings: [https://eur-lex.europa.eu/procedure/EN/2018\\_228](https://eur-lex.europa.eu/procedure/EN/2018_228).

Directive 2014/94/EU of 22 October 2014 on the **Deployment of Alternative Fuels Infrastructure** contains minimum requirements, covering inter alia (i) the establishment of charging infrastructure for electric vehicles, targets in relation to the number of charging points and their technical standard, (ii) the relationship between charging point operator / customer or charging point operator / distribution system operator, and (iii) requirements for user information.<sup>5</sup> The directive is relevant for the set-up of the charging infrastructure in national law.

As early as 2015, measure no 7 of the **SET-Plan**<sup>6</sup> described how the EU can become globally competitive in the battery sector with the aim to promote e-mobility. The opening up of the world market for battery technology continues to be a focus at European and German level.

In 2016, the EU Commission issued a communication titled a **European Strategy for Low-Emission Mobility**<sup>7</sup>, which sets the goal of reducing transport-related greenhouse gas emissions by at least 60% compared to 1990 by the middle of the century and moving towards zero emissions.<sup>8</sup> In the field of e-mobility, it envisaged to eliminate "*barriers to charging of electric vehicles across the EU*", "*foster the creation of an EU-wide e-mobility services market*" and "*facilitate the integration of e-mobility, by encouraging charging at times of cheap electricity when demand is low or supply is high*".<sup>9</sup>

Pursuant to Art. 1 of the **Renewable Energies Directive (RED II)**<sup>10</sup> of 2018, RED II aims to prescribe rules for the use of energy from renewable sources in the transport sector. However, only Art. 25 provides specific guidelines: each Member State must commit fuel suppliers to ensure that the share of renewable energy in final energy consumption in the transport sector is at least 14% by 2030 (minimum share). This is based on an indicative target path set by each Member State.

The **Buildings Directive**<sup>11</sup> of 2018 names requirements to establish or ease the supply with charging points. In addition, by January 1, 2023 the EU Commission needs (i) to report to the European Parliament and the Council on the possible contribution of the EU's buildings policy to the promotion of e-mobility and (ii) to propose respective measures.

The 2019 **Internal Electricity Market Directive**<sup>12</sup> sets out requirements for the integration of e-mobility into the power grid in Art. 33. According to that, Member States have to provide a regulatory framework to connect publicly accessible and private charging points to the distribution network. Within this scope, the distribution system operators are required to cooperate in a non-discriminatory manner with undertakings that own or develop, manage or operate charging points for electric vehicles. Distribution system operators are generally not allowed to own charging

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<sup>5</sup> Directive 2014/94/EU of 22 October 2014 on the deployment of alternative fuels infrastructure, Art. 1.

<sup>6</sup> EU Commission: Accelerating the transformation of the European energy system through an integrated Strategic Energy Technology Plan (SET-Plan), COM(2015) 6317 final, 2015.

<sup>7</sup> EU Commission: A European strategy for low-emission mobility, COM(2016) 501 final.

<sup>8</sup> EU Commission: A European strategy for low-emission mobility, COM(2016) 501 final, p. 2.

<sup>9</sup> EU Commission: A European strategy for low-emission mobility, COM(2016) 501 final, p. 7 und p. 11.

<sup>10</sup> Directive 2018/2001/EU of 11 October 2018 on the promotion of the use of energy from renewable sources.

<sup>11</sup> Directive (EU) 2018/844 of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency.

<sup>12</sup> Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU. For implementation in Germany, see Part 4 below.

points for electric vehicles or to develop these charging points themselves. However, revocable exceptions to this prohibition apply if certain conditions are met.

Finally, the **Green Deal**<sup>13</sup> provides, among other things, that (i) the EU Commission, in addition to national measures, shall support the establishment of public charging stations where coverage gaps exist (especially long-distance traffic and sparsely populated areas), (ii) the introduction of emission-free and low-emission vehicles shall be accelerated, and (iii) stricter limits for air pollutant emissions from vehicles with combustion engines shall be proposed, possibly combined with the application of European emissions trading to road traffic.

In addition, EU-wide **Fleet Targets** intend to increase the share of electric vehicles in the market. Regulation (EU) 2019/631 sets a target of 95g CO<sub>2</sub>/km for new passenger cars in 2020 and aims to reduce the average emissions of the fleet by 37.5% by 2030 compared to 2021. The exact caps are determined separately for each car manufacturer and can only be met by increasing sales of electric vehicles. The system is based on an emission value of 0g CO<sub>2</sub>/km for electric vehicles, which means that the average emissions of the car manufacturer's fleet as a whole can be significantly reduced by adding electric vehicles. In addition, electric vehicles receive so-called "Super Credits". For example, an electric vehicle is counted as two vehicles with combustion engine in 2020, as 1.67 vehicles with combustion engine in 2021 and as 1.33 vehicles with combustion engine in 2022. If the car manufacturer exceeds the agreed caps, it must pay a so called excess emissions premium per gram and vehicle. This payment shall provide incentives to sell electric vehicles.

## 2. Adaptation of the European regulatory framework

The EU Commission's communication **Europe's Moment**<sup>14</sup> takes into account the "key role" of the transportation sector for value chains and economies. In order to create jobs, the production and use of sustainable vehicles and alternative fuels should be promoted. "Connecting Europe", "InvestEU" and other funds are built up to co-finance the creation of one million **charging points**, help cities and businesses to renew their **fleets** with clean vehicles, promote the development of sustainable **transport infrastructure** and facilitate the transition to clean urban mobility.<sup>15</sup> In addition, under the **Action Plan for Critical Raw Materials**, markets for e-mobility and batteries, among other things, should be strengthened to prevent dependence on non-energy raw materials.<sup>16</sup> However, the documents do neither provide any details on the aforementioned topics nor on their implementation.

## 3. The national regulatory framework

The transport sector accounts for almost 30% of the national final energy consumption, 90% of which comes from oil in the form of petrol or diesel. Greenhouse gas emissions from this sector account for 19% of total emissions in Germany.<sup>17</sup> Against this background, the Federal Government took measures to promote e-mobility in Germany already by the **National Development Plan E-**

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<sup>13</sup> EU Commission: The European Green Deal, COM(2019) 640 final, p. 13.

<sup>14</sup> European Commission, Europe's moment: Repair and Prepare for the Next Generation, COM(2020) 456 final.

<sup>15</sup> EU Commission: The European Green Deal, COM(2019) 640 final, p. 10.

<sup>16</sup> EU Commission: The European Green Deal, COM(2019) 640 final, p. 17.

<sup>17</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 61.

**mobility** in 2009. Germany aims to become the leading provider and lead market for e-mobility.<sup>18</sup> However, the regulatory framework at national level is very fragmented.

### a. Implementation of European requirements

First of all, EU Member States were obliged to transpose the provisions of the **Directive on the Deployment of Alternative Fuels Infrastructure**<sup>19</sup> into national law by 18 November 2016. According to Art. 4 para. 10 of the directive, Member States must ensure that the prices charged by operators of publicly accessible charging points are proportionate, easily and clearly comparable, transparent and non-discriminatory. Germany has only partially fulfilled this obligation, in particular because the price regulation was not implemented when passing the **Charging Point Ordinance** (Ladesäulenverordnung – LSV). As a result, proceedings against Germany led by the EU Commission are ongoing.

In addition, according to **Annex I of the Regulation on Binding Annual Greenhouse Gas Emission Reductions**<sup>20</sup>, there is an obligation to reduce CO<sub>2</sub> emissions in the sectors not covered by emissions trading (such as transport) by 38% by 2030 compared to 2005. In excess of this target, Germany has set itself the goal of reducing CO<sub>2</sub> emissions from the transport sector by 40% to 42% by 2030 compared to 1990 in its Climate Protection Plan 2050 and has already implemented various measures to achieve this.<sup>21</sup>

### b. Further regulations

The **E-mobility Act** (Elektromobilitätsgesetz – EmoG), launched in 2015, contains measures to give electric vehicles priority in road traffic. It defines, amongst others "electrically powered vehicles" and implements privileges (e.g. for preferred parking and reduced parking fees). The financial incentive system (e.g. purchase premiums, advantages in company car taxation, special depreciation and other measures) is based, inter alia, on the **German Act on further Tax Incentives for E-mobility and Amendments to other Tax Regulations** (Gesetz zur weiteren steuerlichen Förderung der Elektromobilität und zur Änderung weiterer steuerlicher Vorschriften) as of December 2019 and on regulations on the level of the federal states, municipalities and cities.

Another focus of the legislator was the **classification of charging point operators**, as **final consumers** and not as electricity suppliers in the German Energy Industry Act. As a result, for example, certain notification obligations and requirements for invoicing are not applicable. Classification as a final consumer also applies to the Electricity Tax Act (Stromsteuergesetz – StromStG) in accordance with section 1a para 2 of the Electricity Tax Implementing Ordinance (Stromsteuer-Durchführungsverordnung – StromStV). Therefore, tax regulations for electricity suppliers do not apply to charging point operators.

<sup>18</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 77.

<sup>19</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22. October 2014 on the deployment of alternative fuels infrastructure.

<sup>20</sup> Regulation (EU) 2018/842 of 30 May 2018 on Binding Annual Greenhouse Gas Emission Reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013.

<sup>21</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 62.

The aforementioned Charging Point Ordinance on charging point infrastructure is also aimed at charging point operators and regulates the **minimum technical requirements** for the safe and interoperable construction and operation of publicly accessible charging points as well as other aspects of the operation of charging points such as access/authentication, use and payment. In addition, laws governing measurement and calibration have to be considered and regulations of municipal transport and urban development planning apply to the construction of charging infrastructure.

To increase investment, the Second National Innovation Program Hydrogen and Fuel Cell Technology offers **financial incentives for research and development** in the field of e-mobility until 2026.

Unresolved questions regarding the installation of **charging infrastructure in the private sector**, especially in multi-owner apartment compounds, continue to be an "obstacle" to expansion.<sup>22</sup> The required adjustments to the German Civil Code (Bürgerliches Gesetzbuch – BGB) and German Condominium Act (Wohnungseigentumsgesetz – WEG) have not yet been made.

### c. Changes through the Climate Protection Programme 2030

The Federal Government's climate protection program includes numerous measures to promote e-mobility, in particular:

The quota of motor vehicles with alternative and environmentally friendly technologies (including battery electric vehicles, fuel cell vehicles, certain externally rechargeable hybrid electric vehicles and vehicles powered only by biogas) shall be increased to 40% by 2025 and to 100% by 2030.<sup>23</sup> Following the requirement of **"Putting low-CO<sub>2</sub> passenger cars on the road"**<sup>24</sup>, it is therefore determined that seven to ten million electric vehicles should be registered in Germany by 2030. In order to achieve this, it is planned to extend the purchase premium paid by the Federal Government, to increase promotion for small electric vehicles and to extend the beneficial tax regime for electricity-powered company cars by 2030.

The introduction of **CO<sub>2</sub> pricing**<sup>25</sup> through a national emissions certificate trading scheme for the heating and transport sectors intends to provide an incentive to switch from emission-intensive to more climate-friendly technologies and is therefore highlighted once again in the Climate Protection Program 2030. The CO<sub>2</sub> pricing will start in 2021. The additional revenues from CO<sub>2</sub> pricing are to be used for the other support measures of the Climate Protection Program 2030 or to be returned to the citizens in the form of e.g. tax reliefs.<sup>26</sup>

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<sup>22</sup> A detailed overview contains: Pfeifer/Nowack: Der Rechtsrahmen zur Förderung der Elektromobilität unter besonderer Berücksichtigung kommunaler Handlungsmöglichkeiten in ZUR 2019, S. 655 ff.

<sup>23</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 141.

<sup>24</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 76 f.

<sup>25</sup> This was introduced at the end of 2019 by the Fuel Emission Trading Act (Brennstoffemissions-handelsgesetz).

<sup>26</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 27.

In the area of **tax incentives**, measures include a special depreciation for electric transport vehicles or trade tax relief for the rental and leasing of electric vehicles. Further, electric vehicles remain exempt from motor vehicle tax.

The planned expansion of **charging infrastructure**<sup>27</sup> provides for the promotion of commercial and private charging infrastructure in order to establish one million charging points by 2030. This shall be achieved with the help of subsidy programs until 2025 and in coordination with car manufacturers and the energy industry. For example, charging points shall be offered at all gas stations and jointly used charging infrastructure (multi-family houses, employee parking spaces) will be promoted. Regulatory measures may be applied. For this purpose, the Federal Government has published its **Master Plan for Charging Infrastructure**.

In addition, the Federal Ministry of Transport and Digital Infrastructure (BMVI) will soon initiate a procurement procedure for the construction and operation of **1000 fast-loading charging points**. The procurement procedure marks a shift away from the allocation of subsidies to companies for the development of charging infrastructure at economically lucrative locations to a user-oriented, state-coordinated and state-financed development of charging infrastructure at pre-selected locations.<sup>28</sup>

In general, the Federal Government aims to remove legal barriers to the expansion of electric charging points. This includes, among other things, the accelerated grid connection of charging infrastructure in the Grid Connection Ordinance (Niederspannungsanschlussverordnung – NAV), the creation of legal certainty in the calculation of charges and the controllability/load management of charging infrastructure for grid-supported charging.<sup>29</sup> As power peaks – times when many electric vehicles are charged simultaneously – change the requirements on the **distribution networks**, the Federal Government wants *"the distribution system operators [to] invest in the intelligence and controllability of the grids and expand their grids with foresight [...] so that the distribution grid can also supply the targeted number of electric vehicles in a high-quality manner"*.<sup>30</sup> In addition, the Federal Network Agency, as part of the amendment to the Electricity Grid Access Conditions (Netzzugangsbedingungen), conducted a consultation on the **"E-Mob" Grid Usage Contract** for charging points in summer 2020. The contract is intended to enable a change of the supplier at the charging points in order to stimulate competition.<sup>31</sup>

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<sup>27</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 78 f.

<sup>28</sup> <https://www.bmvi.de/SharedDocs/DE/Pressemitteilungen/2019/100-scheuer-ladeinfrastruktur-kommt.html>.

<sup>29</sup> Federal Government: Climate Protection Programme 2030 of the Federal Government to implement the Climate Protection Plan 2050, 2020, p. 79.

<sup>30</sup> Climate Protection Plan 2030, p. 19.

<sup>31</sup> The consultation version of the "E-Mob" grid usage contract is available at: [https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1\\_GZ/BK6-GZ/2020/BK6-20-160/netznutzungsvertrag\\_e-mob\\_konsultationsfassung.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK6-GZ/2020/BK6-20-160/netznutzungsvertrag_e-mob_konsultationsfassung.pdf?__blob=publicationFile&v=1)



#### 4. Adaptation of the national regulatory framework

The Corona Pandemic has not changed the Federal Government's expansion plans. However, the implementation of the Climate Protection Program 2030 should be continued and accelerate the structural change in the automotive industry and the establishment of sustainable value chains.<sup>32</sup>

A number of individual measures are envisaged in the **Corona Key Issue Paper**<sup>33</sup> for this purpose. These include a stronger orientation of **motor vehicle tax** towards CO<sub>2</sub> emissions (No. 35a) and doubling the federal premium for the promotion of environmentally friendly electric vehicles as an **innovation premium** (No. 35b). In the commercial sector, **fleet exchange programs** for social services, craftsmen and small and medium enterprises are promoted (Nos. 35d and e). A **bonus program** for investments favors car manufacturers and suppliers until 2021, research and development is to be supported with one billion euro (no. 35c). In addition, investments of 2.5 billion euros are to be made in the expansion of modern and safe **charging point infrastructure**, the promotion of research and development in the field of e-mobility and battery cell production, including additional locations (No. 35f).

Finally, the legislation process for the **Building E-mobility Infrastructure Act** (Gebäude-Elektromobilitätsinfrastruktur-Gesetz – GEIG)<sup>34</sup> is ongoing. It intends to create the conditions for accelerating the expansion of the cabling and charging infrastructure for e-mobility in the building sector and implements the provisions of the Buildings Directive (see previously under 1. European regulatory framework).

#### 5. Conclusion and outlook

E-mobility is one of the most promising developments at European and national level. The financial and legislative efforts of the EU and Germany to promote e-mobility are immense. They offer manufacturers in the battery cell and automotive industry and the supply industry access to a wide range of funding.

Whether the hoped-for market diffusion of e-vehicles can be achieved in this way will depend to a large extent on whether the other market barriers - incomplete charging infrastructure, limited ranges, higher prices compared to vehicles with combustion engine - can be effectively removed.

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<sup>32</sup> Coalition committee: Corona-Folgen bekämpfen, Wohlstand sichern, Zukunftsfähigkeit stärken, 3. Juni 2020, Nr. 35.

<sup>33</sup> Coalition committee: Corona-Folgen bekämpfen, Wohlstand sichern, Zukunftsfähigkeit stärken, 3. Juni 2020, Nr. 35.

<sup>34</sup> Building Electromobility Infrastructure Act (Gebäude-Elektromobilitätsinfrastruktur-Gesetz), see <http://dipbt.bundestag.de/extrakt/ba/WP19/2597/259792.html>.

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