Alert: Electromobility infrastructure

6 February 2018

The development of electromobility infrastructure in Poland

The Act on Electromobility and Alternative Fuels (“Act”) was passed by the Sejm and Senate and signed by the President. The Act is expected to enter into force as early as the end of February. The Act establishes the general rules of creating the electromobility infrastructure (and infrastructure for other vehicles powered with alternative fuels) in Poland. The following goals should be achieved by implementing the instruments specified in the Act:

<table>
<thead>
<tr>
<th>Year</th>
<th>2020</th>
<th>2025</th>
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<tbody>
<tr>
<td>Normal power charging points</td>
<td>6,000</td>
<td>-</td>
</tr>
<tr>
<td>High power charging points</td>
<td>400</td>
<td>-</td>
</tr>
<tr>
<td>Electric vehicles (“EVs”) on Polish roads</td>
<td>50,000</td>
<td>1,000,000</td>
</tr>
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To reach those goals, the Government plans to establish a Low-Carbon Transport Fund (“FNT”) which should provide financial support at the level of approx. PLN 4,650,000,000 within the years 2018-2027.

Basic principles

The Act differentiates between: 1) private charging stations; and 2) charging stations accessible to all users of EVs, hybrid vehicles, zero-emission buses and other motor vehicles (“public stations”); and establishes the complex legal regime behind the development and operation of public stations.

With respect to the private and public stations, the Act requires that each station:

1) is equipped with software allowing re-charging services to be provided;
2) includes: (i) parking spaces corresponding to the number of charging points; and (ii) the installation linking the charging point(s) to an electricity connection;
3) meets general technical standards applicable to all charging stations; and
4) is subject to the technical examinations conducted by the Technical Supervision Office (“UDT”).
All other requirements specified in the Act pertain to public stations.

[Operators of the stations] Operators of public stations will be obliged, in particular, to:

a) ensure that the station is safe to use and make available: (i) the necessary information on the terms and conditions to use the station; and (ii) instructions how to use the station;

b) ensure that the station meets technical requirements (ensure the UDT conducts technical examinations of the station);

c) ensure that at least one service provider performs a re-charging service at the station; however, the operator of the station (except for the Distribution System Operators, “DSO”) can also act as the service provider;

d) ensure access to the station to all service providers on non-discriminatory terms;

e) purchase electricity to allow the station to be used as a charging station and conclude an agreement for distribution services with the DSO;

f) enter the planned Alternative Fuels’ Infrastructure Record kept by the UDT (“Register”) at the latest on the first day of providing re-charging services at the station; according to the Act, the Register should be established on 1 January 2019;

g) equip:

(i) the station with software that enables: (1) EVs and hybrids to connect to the station’s IT-system; and (2) the transfer of data on the location and availability of the station to the Register and on the services provided in the station (including their prices); and

(ii) each charging point with a measuring system that enables a time measurement of the energy consumption, and which provides such data in near real-time to the settlement system of the station; and

h) provide DSOs, charging service providers and energy traders with information on the amount of consumed energy.

The supply of electricity from the station’s connection point to the particular charging points installed within the station is not considered as the distribution of electricity by the operator of the station.

[Service providers] The re-charging service provider is not obliged to obtain a trading license since the re-charging service will not be classified as a trade in energy under Energy Law. The service provider cannot require that EV or hybrid users conclude a power purchase agreement to use the re-charging service. On the other hand, the service provider has to conclude:

a) a power purchase agreement with the energy trader to provide re-charging services; and

b) an agreement on access to the public station with the operator of the station.
There are a few alternative methods to settle re-charging services provided to EVs and hybrid vehicles:

(i) the provider of the re-charging service directly charges the user for the service on the basis of the amount of energy consumed at the station (or the time spent using the charging point) and the rates specified by the service provider (basic settlement model). The user of the vehicle does not need to execute a power purchase agreement either with the service provider or with the electricity supplier;

(ii) the energy consumed by the user at the station, although provided within the re-charging service, is settled between the user and their electricity supplier under the power purchase agreement (i.e. due payment is added to the invoice for energy consumption). To apply this variant, the EV (or hybrid vehicle) has to be equipped with a measurement and settlement system which is able to communicate with the charging station’s IT system and to upload to the IT system the terms and conditions of the settlement under the power purchase agreement executed by the user;

(iii) the user connects the battery of its EV (or hybrid vehicle) to the power outlet installed in the user’s household and the amount of the energy consumed in re-charging the vehicle is included in the invoice issued by the electricity supplier for the total energy consumption of the user’s household. To apply this variant, the EV (or hybrid vehicle) has to be equipped with a measurement and settlement system which is able to communicate with the system measuring the energy consumption in the particular household.
No need to obtain a construction permit] The construction of charging stations (private or public) will not require a construction permit, except for the infrastructure designated for charging public transport vehicles.

Public stations along the TEN-T roads] The location of public stations along the TEN-T roads within each 5-year perspective will be specified by the General Directorate for National Roads and Highways ("GDDKiA") after consulting the respective DSOs and operators of traveler’s road-side service facilities (Pol. MOP). The first plan indicating the proposed location of the public stations should be submitted by GDDKiA to the above-mentioned consultations within 6 months from the date of the Act's entry into force.

Role of the DSOs] Apart from the obligation to construct the public stations within the regulatory period (see comments below), the DSO in respect of the electromobility market will:

(i) be able to use charging points and energy storage facilities as demand-side management measures;

(ii) issue connection conditions to charging stations under specific rules;

(iii) agree on draft construction plans prepared by the municipalities and consult the plans for the charging stations along the TEN-T roads; and

(iv) have to prepare, on the basis of the construction plans, connection programs specifying the technical conditions to connect public stations to the grid.

Requirements regarding new buildings] Any parking zones in or nearby new public utility buildings and new multi-residential buildings should be equipped with charging points with a power output of at least 3.7 kW.

Development of the infrastructure until 31 December 2019

Until the end of 2019, free market principles will govern the development of electromobility infrastructure. By 2020, both DSOs and other entities may construct and operate charging stations on equal terms; however, DSOs – contrary to other entities – will not be able to act as charging service suppliers. Within that period, no entity will be obliged to construct or operate charging stations and the construction of charging stations will be incentivized through the financing granted by the FNT or NFOŚiGW.

Verification and regulatory period

Verification] By 31 December 2020, the following statutory targets should be met as regards the minimum number of charging points within public charging stations (“Targets”):

(i) 1000: municipalities with a population exceeding 1,000,000 and the number of registered vehicles not less than 600,000;
(ii) 210: municipalities with a population exceeding 300,000 and the number of registered vehicles not less than 200,000,

(iii) 100: municipalities with a population exceeding 150,000 and the number of registered vehicles not less than 95,000; and

(iv) 60: municipalities with a population exceeding 100,000 and the number of registered vehicles not less than 60,000

It is estimated that by the end of 2019, at least 32 municipalities in Poland will have met the Targets. The respective municipalities will assess and reveal if they have met the Targets as at 31 December 2019 in special reports that have to be drafted by 15 January 2020. If the Targets are not met by the end of 2019, each of the municipalities will: (i) prepare a draft plan to construct public stations by 15 March 2020 (“construction plan”), (ii) agree the draft construction plan with the DSOs acting in the area of the municipality, and (iii) finally adopt the construction plan, indicating i.a.:

(i) the number and location of the public stations together with the number of the charging points to be installed within each of the public stations; and

(ii) the construction schedule for public stations.

[Obligation to construct public stations] DSOs will have to construct the public stations indicated in the construction plans. The construction costs and the connecting of public stations to the grid (contrary to operational costs) will be the justified costs of the DSOs to be taken into account when calculating distribution tariffs.

The first operators of public stations, who will be obliged to act also as re-charging service providers, will be indicated by the President of the Regulatory Energy Office. After one year, the operators designated by the regulatory authority should be replaced by operators selected within the tenders organized by the DSOs

**The Low-Carbon Transport Fund**

The Polish Government is currently working on a draft act amending the Act on Biocomponents and Liquid Biofuels dated 25 August 2006 (“Draft”) which establishes a special purpose state fund named the ‘Low-Carbon Transport Fund’ (Pol. FNT). The FNT will be managed by the NFOŚiGW and will offer support for a wide range of activities connected with alternative fuels.

Projects involving the development of new charging stations will be supported:

(i) in the form of non-returnable subsidies, preferential loans, or capital funding;

(ii) up to 100% of the qualified costs; and

(iii) until the end of 2025.
Expected impact

The Act establishes a 2-year trial period in which potential investors can establish their position on the electromobility infrastructure market relatively easily, in particular with the help of FNT subsidies. On the other hand, if by the end of 2019 the pace of disseminating electromobility technologies in Poland and the development of the electromobility infrastructure under free-market rules is too slow, the DSOs will probably take control over the market due to their statutory obligations and privileges.

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