



fieldfisher

Fieldfisher Brussels Energy Team
Newsletter

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Green mobility – Charging Infrastructure and
Electric Vehicles in Belgium

Introduction

The use of electric vehicles ("EVs") in Belgium is growing steadily. Yet there is a remarkable difference between the availability of charging stations in Flanders and Wallonia & Brussels. This could possibly be a consequence of the different approach of the regions and the different initiatives that are taken.

This newsletter briefly discusses the division of competences concerning EVs in Belgium (section 1), and then summarizes the permitting and regulatory aspects of charging infrastructure (section 2) and the main existing incentives for electric vehicles (section 3).

1. Division of competences

In Belgium, a federal state, different sets of regulations co-exist, based on the competences of the federal authorities and the regions (article 6,§1 of the Special Act of Institutional Reform of 8 August 1980 (BWHI)). Following this division of competence, the regions (Flanders, Brussels and Wallonia) hold the bulk of competences and responsibility regarding electric vehicles and the infrastructure of charging points.

- The competences of the regions are town and country planning, the protection of the environment, the distribution and local transport of electricity, the rational use of energy, roads and their appurtenances, communal urban and regional transport, including special forms of transport (taxi services and car rental).
- The relevant competences of the federal state concern product standards, access to the transmission grid and security of supply.

The way in which competences are divided for tax aspects in Belgium, result in a fragmentation of the tax analysis regarding charging points. For example, the federal government is the competent authority for granting tax reductions via personal taxes and benefits in kind (such as company cars). The regions, on the other hand, are competent for road tax, the kilometre levy and the tax on traffic. Each of these taxes can be structured to contain incentives to stimulate electric driving such as via the recent federal law of 25.11.2021 on fiscal and social greening of mobility that introduces a regulation on the tax deductibility of company cars and loading stations; by 2026 only emission free cars will be 100% deductible.

In the Regions, the main recent regulatory changes in relation to electric vehicles and charging infrastructure are:

- Flanders: Title XI/1 Energy Decree 8 May 2009 and Energy Decision 19 November 2010 – Electromobility: implementation of the EPB-Directive that introduced obligations for new, renovated and existing buildings, including obligations on electric vehicles charging points.
- Wallonia: Decree of 17 December 2020 altering the Decree of 28 November 2013 regarding energy performance of buildings
- Brussels: Ordonnance of 19 July 2001 regarding the organisation of the electricity market in the Brussels Capital Region

2. Charging infrastructure overview

2.1 Permits and concessions for charging infrastructure

On the public domain, public authorities usually work with domain concessions: the public authority grants a person the right to use part of the public domain on a temporary basis and in a manner that excludes the rights of others to occupy this part of the domain. When an authority wishes to install charging points on the own private domain (e.g. a parking lot), this will fall within the public procurement rules.

Flanders

No permit (town-planning and environmental) is required for the installation of a charging point on public domain following article 10, 5° of the Flemish Decree on Exemption. The charging station is considered as an ordinary belonging to the public domain. In addition, the installation of a charging station on the private domain does not require a permit. This exemption is an initiative from the government to incentivise electric vehicles.

Although no environmental permit is required for the installation of a charging point (exception in Vlare II finding its basis in category 12.3), a permission is required from the Flemish Region or one of its agencies if a charging point is to be installed on a road or appurtenances managed by the Flemish Region.

For example, the Agency for Roads and Traffic (AWV) has recently launched a call for projects for fast chargers along motorways and regional roads, with a total of 68 locations being made available. A domain licence will be issued for the utility lines (including electricity cabins) and also for the charging stations and power units and the corresponding parking spaces. The operators however still need to obtain their own environmental permit for several constructions other than the charging points.

This same Agency has also made part of its domain available to the European BENEFIC project. This is a project call launched by the Flemish and Brussels governments for the realisation of charging infrastructure.

Wallonia

No permit (town-planning and environmental) is required, except when the charging point is located outside on private domain (so not inside a building). This only concerns a town-planning permit and it can be obtained via a simplified procedure.

Brussels

In Brussels, no environmental permit is required for the installation of a charging point. There is no clear regulation on the obligation of a town-planning permit, but generally this is not deemed necessary.

2.2 Domestic policy and access to charging infrastructure

Publicly accessible charging stations are charging stations that provide access to users of electric vehicles on a non-discriminatory basis. There is a form of authentication or payment before the user can proceed with charging his electric vehicle. Such charging points are usually connected to the distribution network and operated by a Charging Point Operator (CPO), who is responsible for the financing, installation, maintenance and operation of the points. It is also the CPO that must conclude a contract with an electricity supplier who holds a supply licence. One can also distinguish the Mobility Service Provider (MSP). The MSP has an agreement with the actual user of the charging services for charging his or her vehicle in exchange for a fee. An MSP can offer charging services for its own charging

points, for which it is also CPO, or for charging points of other CPOs, by concluding agreements with other MSPs.

Flanders

The installation of a charging station requires a connection to the distribution network. The operator of the charging point can opt to build the rest of the network for the distribution of the access point on the distribution network (with EAN). The operator is then responsible for the construction, management and maintenance of the private distribution network, without having any public service obligations towards the customer, this is an exception on the ban to build and exploit a private distribution network.

An additional supply licence for the operator is not necessary. If the private distribution network crosses the public domain, the operator must obtain permission from the distribution system operator.

Wallonia

Regarding the necessity of a supply license, article 30 §6 Walloon Electricity Decree provides for an exemption of a supply license for the supply of electricity to users of public charging points, on the condition that the connection of the charging point itself is covered by a supply licence. A problem rises however when the operator is the supplier of its self-generated electricity. This operator would in theory need a supply license. The CWaPE (Walloon energy regulator) raised this issue in its advice of 29 January 2021, and suggested that in this case the operator should also be explicitly exempted from the obligation to have a supply license.

Concerning the larger grids, no similar exemption as in Flanders exists regarding the ban on private distribution grids. One exemption to this ban however, is the provision of electricity as part of a larger service (article 15bis, §1 Walloon Electricity Decree). The CWaPE qualified the charging via charging points as a service instead of as the supply of electricity. Following this broader qualification as a service, charging stations can be considered as an exemption to the ban on private distribution grids and are therefore not in need of a supply license.

Brussels

BRUGEL (the Brussels energy regulator) has advised that the offering of charging services does not qualify as the supply of electricity in the strict sense, but as a broader service ("Guide to the interpretation of the public service obligations of suppliers in the Brussels-Capital Region"). For this reason is a supply license, as defined in article 21 of the Brussels Electricity Ordonnance, not required for the operator of a charging station. However, BRUGEL did not communicate on the possibility to extend the network and create a larger grid. Since no exemption on the general ban on private distribution grids exist, it is assumed in legal doctrine that article 24 Brussels Electricity Ordonnance applies, which obliges the distribution grid operator, by way of as a public service obligation, to adopt and implement the necessary technical measures to allow the electricity supply via these charging points.

The Brussels-Capital Region works with an exclusive partner for the supply, installation and operation of publicly accessible charging stations with an exclusive service concession. Through this concession, 100 charging points (with 2 charging points each) must initially be installed. This network will then be expanded according to the "charging point follows car" principle (at the request of residents and operators). It is planned that between 19 October 2021 and 18 October 2022, the distribution network operator will organise the calls for tender for the concession of public spaces that allow the installation of charging stations.

3. Electric Vehicles: key subsidies and fiscal incentives

3.1 Incentives for corporates

Firstly, regarding charging infrastructure, companies can count on an increased cost deduction for investments in publicly accessible charging stations between 1 September 2021 and 31 August 2024. These investments are 200% deductible and 150% deductible from 1 January 2023 to 31 August 2024.

Belgium does not offer any specific incentives for manufacturers for producing EV batteries or other components required to power alternative fuelled vehicles in Belgium. Belgium however does take part in a subsidy scheme approved by the European Commission for 2,9 billion euros. 12 Member States collaborate to a second pan-European research and innovation project along the entire battery value chain, including battery recycling and sustainability.

Regarding fuel production/supply, for EVs, there are no specific provisions for the electricity used to power vehicles, as the electricity is generated from mixed sources and supplied via the national grid. However, in the regions, different systems exist for parties to share their (renewable) electricity and create energy communities that make it more beneficial to do so. In these energy communities, it is possible to include charging stations for electric vehicles.

To conclude with, Flanders introduced a subsidy project in the form of a call, for which the theme is the rollout of (semi-)public charging infrastructure for normal and high power for electric cars at locations outside the public domain or within the public domain, where the private legal entity has a right in rem on part of the public domain. The maximum subsidy per project is 300.000 euros. This allows for reimbursement of investments for the placement and smart connection of charging infrastructure at 20% of the cost with a maximum of 1.000 euros per charge point equivalent realized.

3.2 Incentives for consumers

Between 1 September 2021 and 31 August 2024, both owners and tenants of a property can benefit from a tax reduction on the investment when purchasing and installing charging stations. Belgium introduced a degressive tax reduction: 1 July 2021 to 31 December 2022 - 45% tax reduction; 2023 - 30% tax reduction; 2024 - 15% tax reduction.

Belgium has also recently adopted a regime regarding the deductibility of electric company cars, which consists of different steps:

1. In 2026, only emission-free (electric or hydrogen) company cars will be 100% deductible.
2. New cars purchased before 1 July 2023 will retain their old tax regime.
3. For non-emission free cars (diesel, petrol, hybrid, plug-in hybrid, CNG, LPG), purchased between July 2023 and December 2025, the tax deductibility will decrease over time. The maximum deductibility for these cars will be 75% in 2025, 50% in 2026, 25% in 2027 and 0% in 2028.
4. In 2026, a zero-emission car will be 100% deductible, but this deductibility will also decrease gradually. It will go up to 95% in 2027, 90% in 2028, 82.5% in 2029, 75% in 2030 and 67.5% in 2031.
5. Company cars that are used to transport "cargo", will not be affected for the time being, and will therefore remain fully deductible. However, it is not inconceivable that these cars, too, will soon undergo green tax changes.


In addition, calculation of the benefit in kind for the private use of a 100% electric or hydrogen company car is reduced to the lowest rate.

In Flanders, fully electric cars and hydrogen-powered cars are exempt from tax on entry into traffic (BIV) and road tax (VB). In Wallonia and Brussels, for a 100% electric or hydrogen-powered car the tax on entry into traffic is fixed at 61.5 EUR (the minimum *taxe de mise en circulation*). For a 100% electric or hydrogen-powered car the road tax is fixed at 83.56 EUR (the minimum *taxe de circulation*).

In addition, some local authorities (cities and municipalities) give a subsidy to individuals when buying or leasing a new electric car (e.g. in Ghent, this premium amounted to 4.500 euros in 2021, provided, e.g. the use of the car in a shared-car project. It is not clear whether this premium will be extended to 2022.)

To conclude with, Flanders has introduced a subsidy scheme on home batteries that store the electricity generated from solar panels. This is beneficial in combination with a loading station for an electric vehicle, since it would be possible to charge the car with electricity generated from the solar panels and stored in the home battery. This subsidy scheme runs until 2024. The other regions have not introduced a similar grant.

4. Reach out to our team:



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