



[FREE TRANSLATION]

**OPINION N°2023-A0-05 DATED NOVEMBER 07, 2023
ON A DRAFT LAW OF THE COUNTRY RELATING TO THE DEPLOYMENT
ELECTRIC VEHICLE CHARGING INFRASTRUCTURES**

The Polynesian Competition Authority,

Having regard to the letter dated October 09, 2023, registered on October 10, 2023 under number 23/0022 A, by which the President of French Polynesia referred to the Polynesian Competition Authority (hereinafter "the Authority") for an opinion on a draft law of the country relating to the deployment of electric vehicle charging infrastructures (hereinafter "IRVE");

Having regard to the Polynesian Competition Code and in particular article LP. 620-1 ;

Having regard to the other documents in the file;

The rapporteur, the general rapporteur and the representatives of the Polynesian Energy Directorate heard on the basis of the provisions of article LP. 630-5 of the French Competition Code at the meeting of November 07, 2023;

Is of the opinion to respond to the request presented in the sense of the following observations:

INTRODUCTION

1. The draft text submitted for the Authority's consideration aims to provide a framework for the deployment of IRVEs whose maximum charging power exceeds a threshold to be set by decree in the Council of Ministers. It also introduces a system of prior authorization for IRVEs exceeding this maximum power threshold. Lastly, the draft law makes IRVEs connected to the grid and commissioned before the date on which the law comes into force subject to declaration.

I. FINDINGS

A. THE SITUATION OF THE HYBRID AND ELECTRIC VEHICLE SECTOR IN FRENCH POLYNESIA

1. MODES OF TRANSPORT USED BY POLYNESIAN HOUSEHOLDS

2. According to data from the Institute of Statistics of French Polynesia, 68% of Polynesian households, i.e. 168,000¹ people, commute daily to work or to take their children to school.
3. The car is the most widely used means of transport, accounting for 60.7% of trips (approximately 92,367 users: passenger or driver). Public transport (bus or ferry) accounts for 17.2% of trips, and walking for 11.2%. Motorized two-wheelers (motorcycles or scooters) are used by 6.4% of working or school-age people. Other modes of transport (bicycles, horseback, pirogue or personal boat) account for 4.5% of trips².
4. The total share of trips outside the commune of residence for work or school purposes is 54.4%. Cars and two-wheelers are preferred for work and school trips outside the commune of residence.
5. Tahiti's urban area, between Punaauia and Arue, accounts for 80.6% of the island's activity, leading to a sharp increase in traffic on the main roads during peak periods. According to the ISPF, between 2,500 and 5,000 people commute daily on the Papara-Paea and Papenoo-Mahina stretches for work.

¹ <https://data.ispf.pf/docs/default-source/publi-pf-bilans-et-etudes/pf-etudes-01-2019-usage-de-la-voiture.pdf?sfvrsn=4>

² https://www.ispf.pf/content/uploads/1331_Deplacements_domicile_travail_51b5b6a5d6.pdf

around 1%. In 2022, 179 electric vehicles were registered out of a total of 9,877 vehicles, representing around 2% of the vehicle fleet. Between January 1^{er} and September 30 2023, the share of electric vehicles tripled compared with 2021, representing 3% of the total number of vehicles registered over this period.

9. On the other hand, the adoption of electric mopeds is much faster than that of cars. While up until 2021, the annual number of registrations varied between 0% and 1% of the total number of registered vehicles, from 2022 onwards, the number of electric mopeds is growing very fast, accounting for 14% of the total number of registered mopeds. Between January 1^{er} and September 30 2023, the proportion of electric mopeds doubled compared with the previous year, representing 32% of registered mopeds. This sharp increase can be explained by the arrival on the market of electric motorized two-wheelers (electric scooters), whose price and use now seem to be attracting customers, and by the reform of road traffic with the regulation of electric bicycles and scooters⁵, which has made it compulsory to register these vehicles.
10. The public authorities have already introduced measures to support the deployment of IRVEs in French Polynesia. New vehicles powered totally or partially by electricity are exempt from registration tax (article LP 322-1 of the French Tax Code) and value-added tax (34^o of I of article LP 340-9 of the French Tax Code). Similarly, transactions involving the components of these vehicles, such as spare parts, accessories and charging stations specific to them, are also exempt from VAT.

B. THE IRVE SITUATION IN FRENCH POLYNESIA

1. PRESENTATION OF THE DIFFERENT TYPES OF CHARGING STATIONS AND THEIR USES

11. A charging station is defined by article 2 of the order implementing the country's bill on the deployment of IRVEs. This definition incorporates the definition from decree no. 2017-26 of January 12, 2017⁶: "*a fixed device connected to an electrical supply point, comprising one or more recharging points and which may incorporate, in particular, communication, metering, control or payment devices*". A charging point can be defined more generally as a device for recharging the battery of an electric car.
12. Point 10 of Regulation (EU) 2023/1804⁷ states: "*A recharging station is a physical installation for recharging electric vehicles. Each recharging station has a maximum theoretical output power, expressed in kW, and at least one recharging point that can serve a single vehicle at a time. The number of charging points at a charging station determines the number of vehicles that can be charged at that station at any given time. When more than one vehicle is recharging at the recharging station at any given time, the maximum output power is divided between the individual recharging points, so that the power supplied to each individual recharging point is less than the output power of that recharging station. A recharging park is made up of one or more recharging stations located in a specific place, and includes, where applicable, the reserved parking spaces adjacent to them*".
13. Charging stations are equipped with special sockets that allow electricity to be transferred from the station to the car's battery⁸. There are several types of recharging station, ranging from home stations

⁵ By-law no. 118 CM of June 28, 2022 amending resolution no. 85-1050 AT of June 24, 1985, as amended, concerning general regulations on road traffic police.

⁶ [Decree no. 2017-26 of January 12, 2017 on charging infrastructure for electric vehicles and various measures to transpose Directive 2014/94/EU of the European Parliament and of the Council of October 22, 2014 on the deployment of infrastructure for alternative fuels - Légifrance \(legifrance.gouv.fr\)](#)

⁷ Regulation (EU) 2023/1804 of the European Parliament and of the Council of September 13, 2023 on the deployment of infrastructure for alternative fuels and repealing Directive 2014/94/EU

⁸ Totalenergies.co.uk: [Everything you need to know about electric car charging stations \(totalenergies.co.uk\)](#)

(slow charging) to fast-charging stations. Recharging time varies from a few minutes to a few hours, depending on the power of the charging station and the car's capacity.

Courant	Recharge	Puissance
AC monophasé	Lente	$P < 7,4 \text{ kW}$
AC triphasé	Accélérée	$7,4 \text{ kW} \leq P \leq 22 \text{ kW}$
	Rapide	$P > 22 \text{ kW}$
DC	Lente	$P < 50 \text{ kW}$
	Rapide	$50 \text{ kW} \leq P < 150 \text{ kW}$
	Ultra-rapide (niveau 1)	$150 \text{ kW} \leq P < 350 \text{ kW}$
	Ultra-rapide (niveau 2)	$P \geq 350 \text{ kW}$

Source : Hit the road (tome 1): State of recharge in France

14. Home charging stations are generally designed for installation at home or in residential parking lots, and charging power ranges from 2 kW to 7 kW. Home charging stations enable electric car owners to recharge their vehicles at home overnight. *On the other hand*, public charging stations are installed in public places such as parking lots, shopping malls or rest areas, and have a charging capacity of up to 350 kW. They are often preferred for long-distance journeys or by electric vehicle drivers who don't have a home charging station.
15. Regulation (EU) 2023/18049 specifies the definition of IRVEs open to the public in point 11: "*Charging or refueling points open to the public include, for example, private charging or refueling points open to the public that are located on public or private property, such as public parking areas or supermarket parking lots. A recharging or refueling point located on private property that is open to the public should be considered open to the public, even in cases where access is restricted to a certain group of users, such as customers. Charging or refueling points in car-sharing schemes should only be considered open to the public if they explicitly allow access by third-party users. Charging or refueling points located on private land to which access is limited to a restricted and specific circle of people, such as office building parking lots to which only employees or authorized persons have access, should not be considered as charging or refueling points open to the public*".
16. A summary of the proceedings of the May 6, 2022 symposium on "*Electric vehicle charging*"¹⁰, shows that in metropolitan France, electric vehicle charging takes place primarily via charging stations for private use, at home or at the workplace, accounting for over 90% of recharges. However, the deployment of charging facilities open to the public on public roads or in shopping malls is essential for electric vehicle drivers without private parking spaces, for long-distance journeys or for itinerants (notably tourists who rent hybrid or electric vehicles during their stay in French Polynesia).
17. In line with the approach adopted by the European Union, the French Competition Authority (hereinafter "ADLC") has noted that there are differences between charging stations depending on their destination (private or public), the areas in which public charging stations are installed, and the type of charging station, which leads to variable charging times depending on the power of the charging station¹¹. The

⁹ Regulation (EU) 2023/1804 of the European Parliament and of the Council of September 13, 2023 on the deployment of infrastructure for alternative fuels and repealing Directive 2014/94/EU.

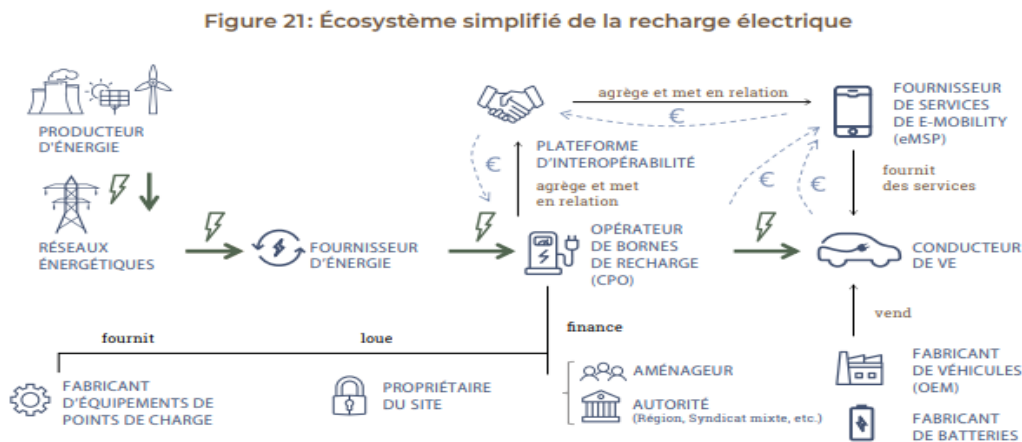
¹⁰ Study entitled "*La recharge du véhicule électrique*" LexisNexis December 2022, cote 255 (254-259).

¹¹ ADLC, Decision no. 21-DDC-172 of 1^{er} October 2021 concerning the creation of a joint venture by AGI, EDF PEI, Genak and SAFO,

higher the wattage, the shorter the charging time. It should be noted that the installation of ultra-fast charging stations requires more substantial investment than the installation of more conventional stations. In this respect, the services offered by bollard operators differ according to whether the bollards are open to the public or privately owned (geolocation tools and information on availability).

2. THE ELECTRIC RECHARGING ECOSYSTEM

18. Decree n°2017-26 of January 12, 2017¹² defines the electric charging ecosystem, which comprises a multitude of players including:
- **mobility operator:** provider of mobility services for electric vehicle users, including access to recharging. It offers a charging card, with or without a subscription, giving access to one or more charging points in a given geographical area;
 - **the interoperability platform:** an operator that provides services for roaming recharging, facilitating, securing and optimizing transactions and data exchanges between recharging infrastructure operators and mobility operators. It provides services for roaming charging, while facilitating, securing and optimizing data exchanges;
 - **infrastructure operator:** a person who operates a recharging infrastructure on behalf of a developer under a contract, or on his own behalf if he is the developer. He is responsible for the proper operation and maintenance of the charging stations under his responsibility;
 - **the developer:** owner of a recharging infrastructure until it is put into service, or the person offering a recharging service, owner or lessee of the infrastructure once it has been put into service.



Source: Hit the road (tome 1) "Overview of recharging in France".

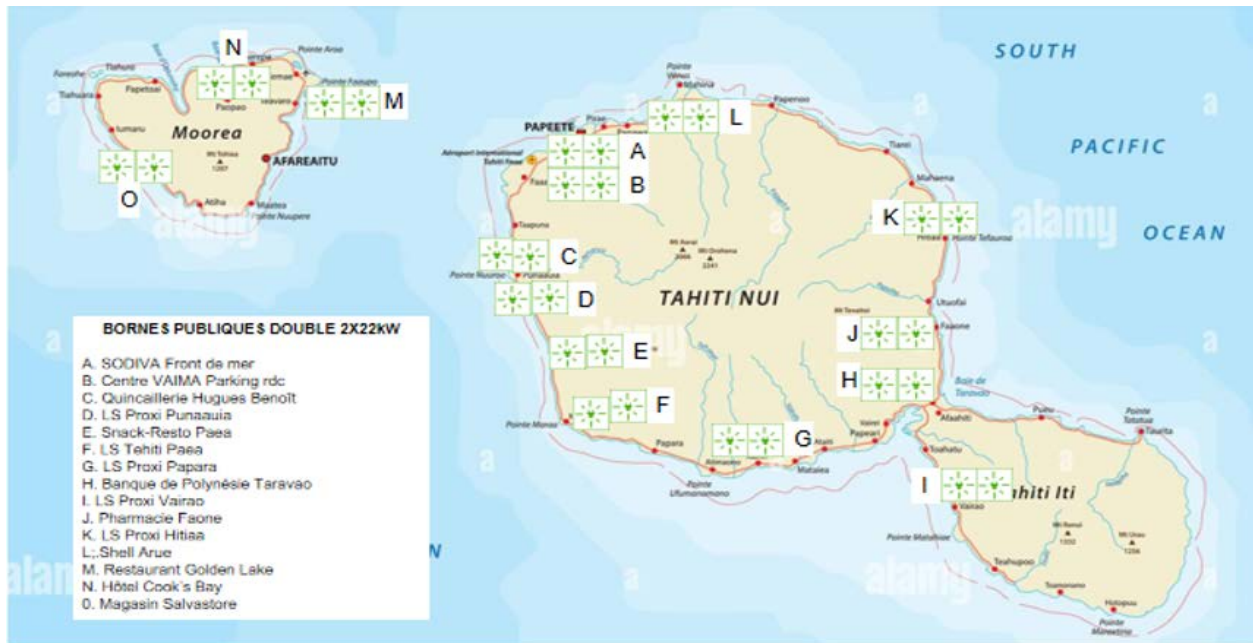
3. MAPPING OF CHARGING POINTS FOR PUBLIC USE

19. To date, the island of Tahiti has twelve charging stations open to the public (twenty-four charging points), while Moorea has three stations (six charging points). According to the sector player, three

¹² Decree no. 2017-26 of January 12, 2017 on charging infrastructure for electric vehicles and carrying various measures to transpose Directive 2014/94/EU of the European Parliament and of the Council of October 22, 2014 on the deployment of infrastructure for alternative fuels.

additional charging stations are due to be installed, two of them by December 2023, and one is awaiting authorization to be installed on public land. No IRVE has yet been installed in the rest of Polynesia.

20. Mainly located in retail or restaurant parking lots, public charging stations offer a faster recharging service than home charging stations, and can be used as an additional means of recharging if extra kilometers are driven during the day. In view of the size of the region, the IRVEs open to the public are often installed as emergency charging stations.¹³



4. COMPARATIVE SITUATION WITH NEW CALEDONIA

21. In 2021, there will be around 200 electric vehicles in New Caledonia, and sales of these vehicles will account for 1% of all vehicles sold in 2021, compared with 10% in mainland France. To support the development of electric vehicles and ensure uniform coverage throughout the territory, a call for projects was launched for local authorities, municipalities and businesses wishing to invest in the deployment of charging stations open to the public. A budget of 80 million CFP francs was earmarked for this purpose, with the aim of installing 150 public charging stations within six months and 18,000 by 2030.
22. As part of the Schéma pour la transition énergétique de la Nouvelle-Calédonie (STENC), the Congress of New Caledonia has adopted a deliberation concerning the regulation of electric vehicle charging infrastructures on January 12, 2021.
23. The purpose of the deliberation is :
 - to define **the procedure and criteria for granting operating authorizations** to be issued by the Government of New Caledonia for any electric vehicle charging infrastructure open to the public, in line with the development objectives set out in the multi-year investment program (PPI).
 - specify **the technical characteristics of charging infrastructures** (sockets, connectors, power modulation device, badge reader). These specifications have been defined in collaboration with industry professionals

¹³ Minutes of the hearing of a charging station operator on October 25, 2023.

- set **the conditions for operating the infrastructure and paying for recharging:**
 - A charging infrastructure must use a supervision system that enables data exchange between charging points, as well as real-time monitoring of their status, to guarantee that all electric vehicle users have access to all available charging points. This system will also be used to modulate the time of day at which electricity is injected into the charging stations, in order to give priority to photovoltaic energy;
 - each operating unit will have a unique identifier assigned by the government, enabling charging stations to be located on a map and associated with technical information (address, type of charging, number of charging points, power delivered, etc.);
 - the characteristics, operating procedures and price of the recharging service must be indicated and visible. Users may pay on a pay-as-you-go basis or use the service on a subscription basis.
24. Several similarities between New Caledonia and French Polynesia can be observed. In 2021, the rate of electric vehicle registrations in French Polynesia was identical to that in New Caledonia, as seen *above*. In the same year, the population of New Caledonia was 270,860, compared with 279,550 in French Polynesia. As in Tahiti, the car is also the main mode of transport used in New Caledonia, accounting for 68%¹⁴ of the population (compared with 60.7% in Tahiti), with walking accounting for 19% and public transport for 11%. Commuting flows are largely concentrated around Nouméa (both within the city and between Nouméa and other communes), which accounts for over 75% of the active population.
25. However, a number of differences can also be noted, particularly with regard to the size of the territories and the road networks. In New Caledonia, the road network extends over 5,600 km and comprises territorial, provincial and communal roads (IEOM NC). In Tahiti, the ring road is 113 km long and the Route de dégagement Ouest (RDO) is 6 km long. In contrast to Papeete, where parking spaces are at a premium, Nouméa has 3,400 parking spaces available, and less than 25% of users report parking problems in the greater Nouméa area. In addition, commuting distances and times are compatible with the use of electric vehicles (the average duration of a business trip is 24 min). These factors will help optimize the deployment of charging stations in New Caledonia. In partnership with the AFD, the Caledonian Energy Agency has drawn up a master plan for a network of charging stations for electric vehicles.

C. THE DRAFT LAW OF THE COUNTRY SUBMITTED FOR THE AUTHORITY'S OPINION

1. PROJECT OBJECTIVES

26. The draft law submitted for this opinion aims to create a legal framework for the installation and deployment of electric vehicle charging infrastructures in French Polynesia. For the (hereinafter "DPE"), the bearer of the draft text submitted for review, overseeing the development of electric vehicles is one of the guiding principles of energy policy and follows on from the country's law no. 2019-27 of August 26, 2019 instituting an energy code.
27. At the hearing, the DPE reaffirmed these objectives, specifying that the regulations apply to plug-in hybrid or electric vehicles in the broadest sense (cars, scooters, trucks, buses). The deployment of IRVEs in French Polynesia is an important factor in encouraging the purchase of this type of vehicle.

¹⁴ Master plan for a network of charging stations for electric vehicles in New Caledonia.

28. However, until now, the concession contracts for electricity distribution in French Polynesia have posed major obstacles to the installation of IRVEs connected to the grid and open to the public. Electricity distribution, which is a public service, is the subject of a concession contract between the distributor (EDT) and each conceding authority (French Polynesia and Sécosud on Tahiti and the islands, where each commune is the conceding authority).
29. In this context, article 19 bis of the North Tahiti concession contract, used as a model contract by all other concessions, prohibits the retrocession, free of charge or against payment, to a third party of electricity drawn from the grid, without the prior agreement of the grid operator and the conceding authority. The DPE states that "*this prohibition hinders the development of IRVEs in French Polynesia*"¹⁵.
30. The aim of the draft law is therefore to enable the deployment of IRVE installations, subject to proper management of public electricity network capacity, to promote the use of electric vehicles in French Polynesia.

2. MAIN PROVISIONS OF THE BILL

(a) SCOPE OF THE REGULATIONS

31. The country's bill, submitted to the Authority for its opinion, applies to IRVEs put into operation from December 1^{er} 2023 and whose maximum charging power exceeds a threshold determined by order of the Council of Ministers.
32. **Article LP 1** defines a "recharging infrastructure" as "*all the equipment, such as power supply circuits, recharging stations or points, control and management boxes, and devices enabling data transmission and, where applicable, supervision, control and payment, which will be required for recharging*".
33. The explanatory memorandum specifies that this bill excludes from its scope low-power recharging infrastructures, intended for domestic use and for which effective control is not feasible given the current state of metering technology. Also excluded are recharging infrastructures connected before the date of entry into force of the regulations.
34. However, infrastructures that have already been connected and would have required authorization under the conditions set out in the present law will be required to declare their activity within six months of the entry into force of the law. The aim is to enable "*monitoring of the infrastructures that have the greatest impact on the network and production units*".
35. In addition, **article LP 2** considers that the installation and operation of a recharging infrastructure does not fall within the scope of public service activities, and recognizes the freedom to install and operate such systems in compliance with the law. The aim is to leave it up to private operators to carry out such projects.

(b) RISKS ASSOCIATED WITH IRVE DEPLOYMENT

¹⁵ Minutes of meeting with the Polynesian Energy Department on October 18, 2023.

36. **Article LP 4** introduces a scheme for the development of recharging infrastructures in French Polynesia, in line with the capacities of the grid and production units. Carried out in consultation with the various players concerned, *"the aim of this plan is to identify, by geographical zone, the capacities of the grid and production units, in order to establish a maximum cumulative power of charging infrastructures authorized to be connected to the grid in this zone"*. The DPE, bearer of the draft text, pointed out that IRVEs have different powers, ranging from a few kilowatts to several hundred kilowatts, and some can have a major impact on the electricity grid, even saturating it if too many are connected.
37. For this reason, the installation and operation of recharging infrastructures connected to the electricity grid, whose maximum recharging power exceeds a threshold defined by decree in the Council of Ministers, will be subject to a system of prior authorization issued by French Polynesia (**article LP 5**). The explanatory memorandum specifies that the authorization requirement applies to recharging infrastructures connected directly or indirectly to the grid, and excludes fully autonomous recharging infrastructures. It also states that *"the aim is to be able to control the deployment of charging infrastructures in terms of their impact on the stability, safety, capacity and security of the network"*.
38. The DPE indicates that to date, the maximum power threshold above which authorization will be required has not yet been determined. This threshold will appear in the implementing decree, which is still being drafted. In any case, she adds that the aim of the new measure is above all to regulate high-power charging stations that have a major impact on the power grid. Thus, only high-power IRVEs will be concerned by this scheme, i.e. DC IRVEs with fast or ultra-fast charging (see table point 18).

(c) REVIEW OF AUTHORIZATION REQUESTS

39. **Article LP 5** also stipulates that complete applications for authorization will be processed according to the *"queuing"* principle, i.e. *"processed in order of submission"*, in order to *"avoid any discrimination or arbitrary decision"*. The DPE specifies that this is the same principle as the queue for connection to the electricity grid for consumers in mainland France. This means that a first operator requesting connection to a site open to the public will not harm a second operator wishing to connect to a nearby site.
40. Authorization to install and operate an infrastructure may be refused if the connection of the infrastructure to the public electricity network *"is likely to affect the stability, safety, capacity and security of the network concerned, as well as that of associated installations and equipment. Authorization may be subject to reservations. In particular, it may be conditional on the infrastructure operator respecting time slots during which electric vehicle charging is limited to a certain power or prohibited. This limitation is strictly proportionate to the requirements of stability, security, capacity and safety of the electricity system concerned. The Minister in charge of energy may refuse to issue the authorization if the charging infrastructure project is incompatible with the objectives set out in the Council of Ministers decree mentioned in article LP.4."*

(d) ADMINISTRATIVE OBLIGATIONS AND PENALTIES

41. In the case of infrastructures with maximum charging capacities below the threshold set by decree, and for all stand-alone infrastructures not connected to the grid, the explanatory memorandum specifies that they *"will only be subject to certain obligations, notably in terms of technical characteristics or tariff transparency (...)"*.
42. With regard to electric recharging infrastructures open to the public, **article LP 6** introduces an obligation to make available to the public information on the maximum power of the recharging infrastructure, the unit power of each delivery point, access to recharging, and operating procedures.
43. **Article LP 7** stipulates that each recharging station open to the public must prominently display the characteristics and price of the recharging service. This article also imposes non-discriminatory payment

terms and prohibits sales linked to a subscription contract with the infrastructure operator, in order to preserve the user's freedom of access to all charging stations open to the public.

44. In the event of failure to comply with the provisions of the present regulations, **article LP 8** provides for three types of administrative sanction (suspension of authorization to operate the infrastructure, withdrawal of authorization and administrative fine), imposed after formal notice. In the event of a repeat offence within three years, the maximum fine may be doubled.
45. **Article LP 9** exempts IRVEs, as defined in article LP 1 of the present draft, from the stipulations of current contracts limiting the retrocession of energy to a third party, whether free of charge or for consideration.

II. COMPETITIVE ANALYSIS

A. THE APPLICABLE ANALYSIS GRID

46. When it is asked to give an opinion on a draft text, the Authority endeavors to assess the extent to which the text's provisions restrict or improve the competitive operation of the sector concerned. A competitive market optimally allocates available resources, maximizes consumer welfare and boosts the competitiveness of the sector concerned, by promoting innovation, lower prices, diversification of supply and higher quality goods and services, including taking into account advances in sustainable development for the benefit of users and consumers. Competition is a factor of productive and allocative efficiency. However, competition is not an end in itself. It is a tool in the service of economic efficiency.
47. Very often, regulatory texts address concerns of general interest that go beyond competition alone, and involve government intervention that has an impact on the functioning of the economy. In such circumstances, the role of the Autorité is to inform the party requesting the opinion (the government in this case) of the effects on competition of the planned public intervention, and to recommend, where appropriate, the measures to be taken to reconcile the objectives of general interest and economic efficiency.
48. In its approach, the Authority is therefore seeking to assess the extent to which the provisions of the text submitted for its review would or would not be likely to restrict the competitive operation of the electric vehicle charging infrastructure sector, and more generally that of electric vehicles in French Polynesia.

B. ANALYSIS OF THE PROVISIONS OF THE BILL

- (a) **AMONG THE PROVISIONS OF THE DRAFT COUNTRY LAW SUBMITTED FOR OPINION, THE AUTHORITY NOTES THAT SOME OF THEM ARE LIKELY TO RESULT IN RESTRICTIONS OR DISTORTIONS OF COMPETITION BETWEEN PLAYERS IN THE IRVE SECTOR AND COULD BE AMENDED: CHARGING INFRASTRUCTURE DEVELOPMENT PLAN AND PRIVATE OPERATOR INITIATIVE (ARTICLES LP 2 AND LP 4).**

→ **IRVE installation left to private initiative (article LP 2 of the country's bill)**

49. Article LP 2 of the draft law qualifies the installation and operation of a recharging infrastructure as a commercial activity, operating in a competitive market. The DPE has confirmed that the aim is to leave

it up to private operators to initiate projects for the installation and operation of IRVEs, within the limits of the capacities of the electricity grid and production units.

50. In addition to this principle of private initiative in the installation and operation of IRVEs, article LP 4 of the draft law of the country requires French Polynesia to draw up a charging infrastructure development plan. In particular, this plan must "*set development targets for electric vehicle recharging infrastructure, by recharging capacity, by geographical area and, where applicable, according to technical characteristics, by order of the Council of Ministers*".
51. The Authority welcomes the approach taken by the country's bill to leave the initiative to the private sector to develop the IRVE activity, which will enable the development of a fledgling activity by promoting competition.
52. In this respect, however, it should be noted that the Polynesian territory presents particular characteristics with regard to the development of electric vehicles and IRVEs, due to the fact that almost all road traffic in French Polynesia is concentrated on the island of Tahiti, and its road network is not very extensive. Tahiti's ring road is 113 kilometers long, while the average battery life of an electric car is over 300 kilometers.
53. An industry player has confirmed that electric vehicle drivers in French Polynesia give priority to recharging their vehicles at home or at work. He added that the public charging stations installed by his company are considered "*emergency*" charging stations by drivers. French Polynesia is therefore not facing the problem of IRVE coverage and recharging "*deserts*" with the same acuity as in mainland France or New Caledonia.
54. However, the Authority notes that the economic equilibrium of private operators appears uncertain in the short term, due in particular to :
 - the low volume of electric vehicles registered (2% of all vehicles registered in 2022);
 - the cost of supplying and installing charging stations, which varies according to the power of the infrastructure and the technology used;
 - the uncertain profitability of these investments; and
 - the scarcity of available land, particularly on the islands of Tahiti (especially in the city center, where parking space is under considerable pressure and can be a real obstacle to the deployment of charging stations) and Moorea.
55. This phenomenon could act as a brake on the development of charging stations open to the public, and lead to a lack of private initiative in the development of IRVEs open to the public.
56. A study published in LexisNexis magazine in 2022 on "Electric vehicle recharging"¹⁶ highlights the lack of private initiative in the development of IRVEs. This shortcoming "*is less related to the number of charging stations deployed in a given area, than to insufficient access to charging stations in certain localized areas, such as less urbanized areas, where profitability is uncertain*". Thus, the transition to electric mobility implies a new distribution of roles between players: "*whereas the deployment of combustion engines has always been a matter for manufacturers, the development of electric mobility is becoming a matter for local authorities*".

→ **The creation of a scheme for the development of recharging infrastructures (article LP 4 of the country's bill)**

¹⁶ Study entitled "*Electric vehicle charging*" LexisNexis December 2022.

57. In this context, the development plan for charging stations open to the public provided for in article LP 4 could take into account a number of variables, in addition to network capacity, to encourage the development of IRVEs open to the public.
58. At this stage, the text's sponsor has only identified the risk of grid saturation linked to the deployment of high-power charging stations as the major difficulty that would justify a development plan for charging stations open to the public in French Polynesia.
59. To remedy this risk, article LP 4 stipulates that French Polynesia will draw up a plan, in consultation with the main players in the sector, with the aim of identifying the capacities of the network and production units by geographical area, in order to determine the maximum cumulative power of charging infrastructures that can be connected to the electricity network without saturating it.
60. In the current wording of the draft text, the capacity limits of the power grid and the resulting restrictions on access to the power grid are described in very general terms. Technical capacities are to be defined by decree of the Council of Ministers. During the Authority's examination of the bill, this plan was still being drawn up and had not been forwarded to it. In its absence, it is difficult to give an opinion on the objectives pursued and their impact, if any, on competition. It is possible, however, to sketch the broad outlines.
61. This restriction of supply, which would take the form of a refusal to authorize the installation of an IRVE in a given geographical area, would appear to be fully justified by the general interest motive of preserving the "*stability, security, capacity and safety of the network concerned, as well as that of the associated installations and equipment*¹⁷."
62. However, this restriction, if justified in principle, must nevertheless remain proportionate to the objective pursued, i.e. as far as possible limited both in space (by geographical area, for example) and time. To avoid distorting competition, the restriction must also apply to all market players without discrimination.
63. In the Authority's view, the development plan should precisely determine the capacity of the electricity grid by geographical area, in order to estimate the maximum number of high-powered IRVEs that the grid is capable of supporting locally. This is all *the more* true in the context of a potentially significant increase in demand, due to the scheduled end of combustion engine car sales in the European Union from 2035, which is encouraging manufacturers to turn to new technologies, including electric vehicles. In the absence of a clear, precise development plan accessible to the entire sector, the first players to position themselves could *de facto* foreclose the market, due to limited network capacity in a given geographical area.
64. Furthermore, given the current lack of return on investment in IRVEs, and the problems associated with network capacity, the Authority recommends that the development plan provide for the progressive deployment of IRVEs by geographical area.
65. In addition to the risk of grid saturation associated with the deployment of high-power charging stations, the development plan could look at the choice of location for charging stations, depending on the communes, transport flows and the needs of the population. Without creating a network of charging stations across the country, the deployment of charging stations should be considered on a local scale, and for this reason, the development plan could involve local authorities. The German competition authority, the Bundeskartellamt, in its sector inquiry into the supply and marketing of public charging infrastructure for electric vehicles, considers that public charging stations should be set up on a local scale.
66. Consequently, the Authority recommends that local authorities be involved in the IRVE development project. The aim is to assess each community's needs as accurately as possible, so that the right charging technologies can be deployed in the most appropriate areas. The city of Papeete, which concentrates

¹⁷ 3^{ème} paragraph of article LP. 5 of the draft country law.

most of the island's activity, will not have the same needs in terms of public charging stations as a more isolated commune like Hitia'a.

67. The development plan could take into account Polynesia's specific geographical features and population distribution, in collaboration with local authorities, with the aim of offering a high-quality, innovative and competitively-priced IRVE network that would encourage consumers to gradually switch to electric vehicles.
68. However, although the DPE believes that a rapid switch from thermal to electric vehicles would not result in any gains in terms of French Polynesia's carbon footprint¹⁸, the Authority considers that no factual evidence has been produced to support this view. It considers that, as no impact study has been produced, environmental and public health benefits could just as easily result (reduction of noise pollution, reduction of carbon dioxide emissions in cities, etc.).

Recommendations:

With regard to the development plan, it is proposed to :

1. define clear and transparent IRVE development objectives for each geographical area, and make them public, in order to guarantee competitive access to these areas for all players without discrimination. Determining the rate of IRVE coverage should be based on the development objectives for electric vehicles, as well as on the most appropriate public and private locations;
2. implement a gradual rollout of IRVEs in line with the capacities of the electricity grid and production units in the various zones; and
3. involve local authorities in drawing up the development plan, in order to identify the needs of each commune.

(b) PRIOR AUTHORIZATION (ARTICLE LP 5)

69. Article LP. 5 introduces a system of prior authorization for IRVEs, specifying that: "*the installation and operation of recharging infrastructures connected to the grid whose maximum recharging power exceeds a threshold set by decree in the Council of Ministers are subject to prior authorization issued by French Polynesia, with regard to their compatibility with the objectives set out in article LP. 4*".
70. Article LP 5 also states that: "*Prior authorization applications are processed according to the queuing principle, which requires the competent authority to analyze and then grant authorizations in the order of receipt of complete authorization applications.*"
71. The explanatory memorandum points out that this authorization concerns IRVEs connected directly or indirectly to the grid, and whose maximum extraction power exceeds a threshold defined by order of the Council of Ministers. It also states that "*the aim is to be able to control the deployment of charging stations in terms of their impact on the stability, security, capacity and safety of the network*".
72. With regard to the criteria for granting or refusing authorization, article LP 5 stipulates that an application for authorization may be refused if the connection of the charging station to the public electricity network would undermine "*the stability, security, capacity and safety of the network concerned*". Authorization may also be subject to reservations, such as compliance with time slots during which recharging is limited to a certain power or prohibited. Finally, the Minister for Energy

¹⁸ The electrical power required for recharging electric vehicles consumes more hydrocarbons for electricity production than filling up at a petrol station.

may refuse to grant authorization if the request "*is incompatible with the objectives set out*" in article LP 4.

73. A decree by the Council of Ministers will determine the content and procedures for issuing applications for prior authorization.
74. With regard to the examination of authorization applications, the draft text provides for complete files to be processed in the order in which they are submitted to the competent authority, on a first-come, first-served basis. According to the DPE, this method of processing would avoid any discrimination or arbitrary decisions. However, a competitive risk can be identified with this type of examination of authorization requests, especially as authorizations will be subject to the condition of sufficient network capacity and production units per geographical area. Thus, a private operator with a large land bank who decides to internalize the installation and operation of IRVEs would have a competitive advantage over other operators, and could saturate or even immediately foreclose the market by submitting applications for all its private land simultaneously.
75. In addition, with regard to applications for occupancy of the public domain, the Authority notes that article LP 5 does not take into account the procedures for allocating areas in the public domain. Thus, no distinction is made between requests for authorization in the private domain and those in the public domain.
76. However, in its "Sector survey on the supply and marketing of public charging infrastructure for electric vehicles", the BKA points out in paragraph 41 that "*a distinction must be made between so-called 'public' charging points (charging points open to the public on public land) and so-called 'private' charging points (charging points open to the public on private land). For example, access to private land can be more expensive for charging point operators (opportunity cost for landowners) than access to public land, particularly in large conurbations*".
77. In this case, there are three possible scenarios:
 - charging stations open to the public on public property (e.g. beaches and public parks, communal areas, museums);
 - charging stations open to the public on private property (e.g. service stations, shopping centers, restaurants, food stores); and
 - charging stations not open to the public on private property (e.g. homes, businesses, apartment buildings).
78. While the occupation of private property is the responsibility of the landowner who holds the real rights to the land, the occupation of public property requires an authorization to occupy the public domain, formalized by a decree issued by the Council of Ministers. In view of the time required to obtain this authorization, and the general interest objective pursued by local authorities, the Authority recommends that a distinction be made between the processing of requests for connection to the power grid on private property and those on public property. Without this distinction, local authorities run the risk of not being able to obtain authorization in the face of more responsive private operators and grid saturation.
79. Particular attention must therefore be paid to defining the method for allocating spaces in the public domain. To avoid distorting competition between operators of public charging stations, the Authority recommends that this method should not be based on the queuing principle, but should be subject to a competitive bidding procedure for spaces belonging to the public domain. This allocation method would guarantee the application of objective, transparent and non-discriminatory conditions, without undermining competition between charging infrastructure operators.
80. With regard to the granting, refusal or granting with reservations of authorizations, the Authority reiterates that the criteria for reservations, as well as the reasons for refusal, must be clearly explained in order to guarantee the transparency of the measure. In addition, the legislator must ensure that these criteria are non-discriminatory and objective, so as to leave no room for discretionary decisions.

81. In the event of refusal, it will be important to determine precisely what is meant by "*being incompatible with the objectives set out in the decree issued by the Council of Ministers*" within the meaning of article LP 5. In particular, the Authority highlights the risk of unjustified distortions of competition between authorized activities, activities with reservations, and activities that have been the subject of a simple declaration (for operators of IRVEs commissioned before the date of entry into force of the country's bill). These decisions must therefore be determined on the basis of perfectly transparent, objective and non-discriminatory criteria, lest they introduce distortions of competition between IRVE installers and operators.

Recommendations:

With regard to the rules for granting authorizations, it is proposed to :

4. distinguish between the appraisal and granting of authorizations for the installation of IRVEs on private and public property;
5. provide for a competitive bidding procedure for the allocation of spaces belonging to the public domain;
6. Make authorizations, their renewal and withdrawal subject to objective, transparent and non-discriminatory conditions; and
7. if multiple authorizations are issued to one and the same person, ensure that no dominant position or unjustified monopoly is created, which would *ultimately* harm competition and could lead to a lower-quality recharging offer at uncompetitive prices.

(c) INTEROPERABILITY BETWEEN PUBLIC CHARGING STATIONS
(ARTICLE LP 7 AL.2)

82. Article LP 7 paragraph 2 of the draft country law submitted for opinion stipulates that "*any recharging point open to the public allows access to recharging and, where appropriate, payment by any user, without the latter being required to take out a subscription with the operator of the infrastructure in question*".
83. In this respect, the Authority welcomes article LP 7 paragraph 2 of the draft law of the country, which aims to ensure that IRVE operators are required not to set up a closed recharging network through an obligation for users to subscribe, both for vehicle recharging and, where applicable, the related payment.
84. Indeed, the failure of the regulatory framework to take account of interoperability between IRVE networks and their means of payment has serious consequences for the conditions of competition between operators, and could *ultimately* have a major impact on the development of electric mobility, by complicating the recharging experience for users of IRVEs open to the public (e.g.: introduction of a compulsory subscription for each network of charging stations, incompatibility of the recharging cards of each network, refusal of certain means of payment, etc.). In this respect, the Authority makes the following observations:
85. → The first consequence is that, in the absence of interoperability between public charging stations, customers become captive to one charging network. As a result, an operator with a competitive advantage in terms of land could develop its own network of public charging stations that would not be interoperable with other infrastructure networks, weakening competing operators and hindering the entry of new competitors into the market. The result would be to strengthen the position of the dominant operator and limit mobility between public charging station operators.
86. → The second consequence of the first is higher costs and rates for services, to the detriment of electric vehicle drivers, which can lead to a loss of interest in the network of charging points open to the public.

As part of its investigation, the BKA noted a significant variation in prices for charging points of the same capacity, depending on whether access to the charging point is via an interoperability platform or not. In addition, it has received complaints from consumers about limited access to charging points and non-transparent charging conditions. BDK points out that a lack of transparency on applicable charging rates can hamper competition between interoperability platforms.

87. In mainland France, the interoperability of charging stations for electric vehicles has been mandatory since Decree no. 2021-1561 of December 3, 2021. Henceforth, the developer of a charging infrastructure open to the public must guarantee access to charging ¹⁹.
88. In this respect, the Authority recommends ensuring that access to IRVEs is guaranteed, by the operator, to all users, under non-discriminatory conditions. In particular, this condition could be presumed to be met if the infrastructure operator is connected to an interoperability platform²⁰.
89. In particular, an interoperability platform could ensure interconnection between all charging operators, enabling users of one network of charging stations to access charging stations operated by another operator via the platform. It should be noted that non-discriminatory access to IRVEs does not preclude the imposition of certain conditions in terms of authorization, use and payment.
90. In order to guarantee non-discriminatory access to charging stations for all users, the Authority stresses the essential nature of the means of payment supported by IRVEs open to the public. It is important to ensure that electric vehicle drivers are able to pay for their recharging on a pay-as-you-go basis, by card, by contactless payment and without the need to take out a subscription, on all IRVE networks. Prices can be displayed in kWh or per minute.

Recommendations:

With regard to interoperability between charging stations open to the public, it is proposed to :

8. Guarantee access to charging stations for all charging station users via an interoperability platform; and
9. enable users to pay for transactions on a fee-for-service basis, by credit card or contactless payment.

¹⁹ Article R.353-4-1 stipulates that "*the guarantee of interoperability of a recharging infrastructure open to the public is based on : 1° procedures for access to recharging and related payment methods; 2° information on the said infrastructure accessible on an open basis to all users.*"

²⁰ An intermediation platform is an operator that provides services for roaming charging by facilitating, securing and optimizing transactions and data exchanges between charging infrastructure operators and mobility operators.

(d) COMMENTS ON ARTICLE 14 OF THE DRAFT ORDER SENT TO US

91. When the case was referred to the Authority, the government of French Polynesia attached a number of appendices, including a draft decree implementing the draft law of the country under review.
92. Although the Authority has not been directly consulted on this decree, it would like to draw attention to the wording of article 14 of the draft decree, which states that "*When the recharging infrastructure is connected to the public electricity grid and is open to the public, the unit price in Pacific francs per kilowatt hour of electricity resold to customers of the recharging infrastructure may not be lower than the price applied to it by the grid operator*". This pricing obligation restricts competition and is likely to keep prices high. The Autorité points out that there is no evidence in the file to justify such a restriction in terms of a general interest objective.

CONCLUSION

93. The draft law submitted for the country's opinion aims to regulate the deployment of charging infrastructures for electric vehicles (IRVE) whose charging capacity exceeds a threshold defined by an order of the Council of Ministers. The bill establishes a prior authorization process for IRVEs exceeding this power threshold, and requires a declaration for IRVEs connected to the grid and in service before the country's law comes into force.
94. Based on its review, the Authority has reached the following conclusions:
- some provisions, although justified by general interest objectives, could be amended with regard to articles LP 2, LP 4 and LP 7 of the bill;
 - particular attention should be paid to article 14 of the draft order implementing the draft text submitted to the Authority for review.

SUMMARY OF RECOMMENDATIONS
<ol style="list-style-type: none">1. Define clear and transparent IRVE development targets by geographical area and make them public, to guarantee competitive access to these areas for all players without discrimination. The rate of IRVE coverage should be determined on the basis of electric vehicle development objectives and the most appropriate public and private locations;2. Implement a gradual rollout of IRVEs in line with the capacities of the electricity grid and production units in the various zones; and3. Involve local authorities in drawing up the development plan to identify the needs of each commune;4. Distinguish between the appraisal and granting of permits for the installation of IRVEs on private and public property;5. Introduce a competitive bidding procedure for the allocation of public spaces;6. Make the granting, renewal and withdrawal of authorizations subject to objective, transparent and non-discriminatory conditions; and7. When issuing multiple authorizations to the same person, ensure that :

- not to create an unjustified dominant or monopoly position, which would *ultimately* harm competition and could lead to a lower quality recharging offer at uncompetitive prices
 - limit the duration of these authorizations
8. Guarantee access to charging stations for all charging station users via an interoperability platform; and
 9. Enable pay-as-you-go transactions for all users, by credit card or contactless payment.

Deliberated on the oral report by Mariko Ishibashi, Rapporteur, with a contribution from Sophie Bresny, General Rapporteur, by Johanne Peyre, Chairman, and Enzo Silvestro, Philippe Guesdon and Léopold Biardeau, members of the Board.

The President

Johanne Peyre