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ChargeUp Europe's contribution on Spain's notification concerning the Draft Amendments to Order ICT/155/2020, of 7 February 2020, regulating the metrological control of the state of certain measuring instruments[1].

Spain intents to change the rules for measuring instruments and systems with a function for the measurement of active electrical energy when used for electric vehicle charging applications. The proposed rules are significantly different from those of the MID (2014/32/EU). Moreover, the conformity assessment module H1 is permitted by the MID, but not by the Spanish proposal. The conformity assessment module G is permitted by the Spanish proposal, but not by the MID.

In the European Union, requirements for devices and systems with a measurement function for active electrical energy (and other functions covered by Article 2(1) MID) are harmonised by the MID (2014/32/EU). For practical purposes, the European Commission issued the standardisation mandate M/541 on 15 December 2015. This mandate requests the European standardisation organisations to prepare one or more standards, with reference to MID Annexes I and V, specifically for the applications covered by the proposed Spanish rules. As specified in M/541, these standards shall, as far as possible, be formulated in such a way as to be self-sufficient, i.e., so as to be applied, and to give presumption of conformity with essential requirements. From this, it is clear beyond doubt that the measuring instruments with a function for the measurement of active electrical energy ("active electrical energy meters") are within the scope of the MID, also when used in the applications covered by the Spanish proposal.

Therefore, Spanish proposal violates the MID.

The MID has been used for many years for electric vehicle charging applications, without any problem.

In its comment to the Swedish notification 2022/0680/S, the European Commission confirmed the applicability of the MID: "The Commission acknowledges the objective of the guidance to facilitate the electrification and, for this purpose, the reliance on the applicable essential requirements of the Directive 2014/32/2014 for the AC and DC meters.

[1] https://technical-regulation-information-system.ec.europa.eu/en/notification/25987

However, the Commission disagrees with the idea behind the authorities' statement: 'The guidance contains recommendations on how recharging points shall be designed in terms of metrology to allow them to be used in public applications' which would suggest that the Directive does not apply to the charging stations as public applications. It should indeed be recalled that Directive 2014/32/EU 'applies to active electrical energy meters intended for residential, commercial and light industrial use' (Annex V) and that it 'should apply to all forms of supply, including distance selling' (Recital 6).". This confirms clearly that electric vehicle charging stations (Annex XX of the Spanish) proposal are covered by the MID as far as their measurement function of active electrical energy is concerned.

In addition to the measurement function, electric vehicle charging stations incorporate functions for control and billing purposes. In relation to the MID, those functions must be treated the same way as a remote (telemetric) data-transmission device which is connected to a hot-water meter. In 2014, the ECJ rul ed "Article 34 TFEU and Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments must be interpreted as precluding national legislation and practice according to which a hot-water meter which satisfies all the requirements of that directive and is connected to a remote (telemetric) data-transmission device is to be regarded as a measuring system and, as a result, cannot be used for its intended purpose so long as it has not been subject, together with that device, to a metrological verification as a measuring system." Since, Directive 2004/22/EC is replaced by 2014/32/EU, without any change of relevance to this decision.

It is without relevance that in electric vehicle charging applications, the indirect measurement technique is commonly used to determine the energy delivered at the transfer point (connector). Annex V MID notes: "Note: Electrical energy meters may be used in combination with external instrument transformers, depending upon the measurement technique applied. However, this Annex covers only electrical energy meters but not instrument transformers." Considering the principles of the NLF, it is clear that the mention of external instrument transforms in this note is not a requirement limiting the permissible use of the indirect measurement technique to a choice of instruments of a particular technology such as traditional, inductive instrument transformers. Therefore, the indirect measurement technique can be used with traditional, inductive instrument transformers or other external devices of the same function, such as electronic instrument transformers or cables.

Concerning the technical content, the Spanish rules diverge extensively from the MID. The divergence favours unfair competition and reduces the consumer protection. For instance, for the electric current, the minimum operating range is significantly reduced with respect to MID. As a result, during normal use of charging stations, the current will be outside the rated operating range for extended periods. This divergence is of very high relevance to consumers and consumer protection. Annex XX item 2.5 (Table 2) defines MPEs without any relevance to consumer protection and the protection of the fairness of trade. Those lead to a situation where, in violation of Article 7(1) MID, fully MID compliant active electrical energy meters are banned from the Spanish market. Furthermore, Table 4 defines MPEs for active electrical energy meters for DC applications only for part of their operating range. This allows manufacturers to misleadingly specify large operating ranges for the current, while the consumer protection is limited to 25 % Imax to Imax, regardless of the manufacturer's specifications. It is worth noting that, already today, charging stations often operated below 25 % Imax. This weakens not only the consumer protection, but it also encourages unfair competition between manufacturers. Various other provisions of Annex XX violate the provisions and concepts of MID extensively.

Therefore, Annex XX of the Spanish proposal violates EU legislation. Once in force, it will impede the free movement of goods on the Union market. The cost of Member State specific product modifications will increase the cost of the Green Deal. In the end, it will have to be paid for by the consumers. It will also lead to legal uncertainty, since any product complying with the Spanish proposal violates the MID and will

have to be removed from the Spanish market once Spain is forced to comply with the MID, e.g. when manufacturers with MID compliant products attack the Spanish decision to violate Article 7(2) MID in court.

All of this will impede the roll-out of charging infrastructure on which the Green Deal depends and for which Regulation (EU) 2023/1804 was issued last year.