

# Participation of municipalities in wind farm profits: Tax revenues at municipal level in Germany

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## About us



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BBH is known as “the” law firm of public utilities. But we are far more than that – in Germany and also in Europe. The decentralised utilities, the industry, transport companies, investors as well as political bodies, like the European Commission, the Federal Government, the Federal States and public corporations appreciate BBH’s work.

- 4 Accredited professionals: approx. 250; total staff: approx. 550
- 4 Offices in Berlin, Munich, Cologne, Hamburg, Stuttgart, Erfurt and Brussels

## Dr. Martin Altrock



Dr. Altrock provides comprehensive advice on legal issues surrounding renewable energy, including the further development of the legal framework as well as the future storage possibilities and cross-sectoral use of electricity, e.g. in the areas of mobility and heat.

- ⊗ Born in Kassel in 1968
- ⊗ 1989-1995 studies of law in Heidelberg and Leiden (NL)
- ⊗ 1996-1997 studies of administrative sciences at the German University of Administrative Sciences Speyer
- ⊗ 1995-1997 legal traineeship at the Higher Regional Court (OLG) of Karlsruhe
- ⊗ 1997-2000 research associate and 2001 doctorate at Heidelberg University
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# Agenda

1. The issue: Public acceptance of wind farms
2. Options for municipalities to participate in wind farm profits  
– overview and success factors
3. Financial participation in wind farm companies
4. Creaming off profits through public levies

# 1. The issue: Acceptance problems

1. We need a substantial expansion of wind farms in the near future if the energy transition is to be successful.
2. Decreasing acceptance of wind farms?
  - § Negative external effects mainly for the local residents: Noise, shadow casting, visual impairments, disco effect
  - § Questions of distribution: Profits often remain with the project developer (and wind farm operator) and land owners and tend to rarely reach the local population; in addition: local costs such as rising grid charges
  - § Moreover: Costs of the energy transition pose a problem in terms of acceptance by the society at large (solution: e.g. redesign of the surcharge mechanism under the Renewable Energy Sources Act (EEG): partial funding through tax money?)

## 2. Options for municipalities to participate in wind farm profits – overview and success factors

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- 4 Municipalities in which a wind farm is located may participate in the profits generated by the wind farm in various ways:
- 4 Option 1: Shareholdings (shares), incl. the participation in opportunities and risks of the business
- 4 Option 2: Participation of a purely financial nature, e.g. silent investor, limited exposure to opportunities and risks
- 4 Option 3: Financial participation in the company profits through creaming off profits, e.g. in the form of public levies
- 4 Success factors:
  - § Transparency of the measure: It must be obvious that the benefit to the municipalities/persons concerned is due to the specific wind project (signposting,...)
  - § Noticeability of the measure and a certain duration: The economic benefit must have an impact; repeated awareness intensifies the effect

## 3. Financial participation in wind farm companies

### 1. Current legal framework:

- § Section 36g EEG (citizens' energy companies – *Bürgerenergiegesellschaften*): Subsection 3 sentence 4 no. 3(b) sets out:
  - § “the municipality in which the planned wind energy installations are to be erected, or a company in which this municipality is the sole shareholder, holds a 10% financial stake in the citizens' energy company, or the corresponding municipality or a company in which this municipality is the sole shareholder has been offered a financial stake of 10% of the citizens' energy company [...]”
- § Citizens' Participation Act (*Bürgerbeteiligungsgesetz*) of Mecklenburg-Western Pomerania:
  - § According to this Act, investors and project developers must offer 20% (10%/10%) of the shares to municipalities and their residents within a radius of 5 km of the wind farm. Alternative options are reduced electricity tariffs for the region concerned, compensatory levies to be paid to the municipalities or special, secured savings deposits for citizens.
  - § The Act is currently under review by the Federal Constitutional Court (*Bundesverfassungsgericht* – BVerfG) (ref.: 1 BvR 1187/17).

### 3. Financial participation in wind farm companies

2. Wind energy dividend (*WindEnergieDividende*) in Hessen
  - § Municipalities benefit from 20% of the annual lease payments to the Hessian Forestry Administration
  - § Requirement: A wind turbine in the Hessian forest is located no more than 1 km from the municipal boundary or no more than 2 km from a densely built-up residential area which itself does not benefit from the wind turbine
3. In addition: Voluntary options for participation, e.g. project developers forming a citizens' energy company, investment offers to local residents or municipalities, fund solutions, scheme by which employees of companies owning/operating a wind farm may participate in the wind farm (*Mitarbeitermühlen*),...

## 4. Financial profit-sharing: Possibilities for municipalities to cream off profits



1. A Germany-wide special levy for new wind farms could be introduced into the EEG
  - § One-off payment upon commissioning
  - § Regular payment during operation
  - § Entitled parties: Municipalities – based on their territorial share in the area enclosed by a circle around the respective wind farm, the radius of which equals the 20-fold overall height of the wind farm
  - § If required, earmarking: Citizens' projects in the municipality in which the wind farm is located
  - § In case of non-compliance: No entitlement to payments under the EEG

*(IKEM/BBH proposal, project of Agora Energiewende, 1/2018)*

- Legal risks:
  - Financial constitution: Admissibility of a special levy (prohibition of delegating tasks)
  - Distribution of competences between the federation and the federal states: Admissibility of a federal act providing for the allocation of financial payments to municipalities in the federal states

## 4. Financial profit-sharing: Possibilities for municipalities to cream off profits



2. Levy for the use of a resource, i.e. undesignated outlying areas (*Außenbereich*) (proposal of *Stiftung Umweltenergierecht*)
  - § Wind farm operator pays a fee in return for using the undesignated outlying area
  - § Fees for the use of a resource are currently in force in the area of water supply as well as waste and waste water disposal; limitation by the principle of cost recovery
3. Levy for the disgorgement of benefits to cream off land value gains resulting from land use planning
4. Compensatory levy in the Federal Immission Control Act (BImSchG):
  - § Municipalities concerned receive payments from wind farm operators for impairments due to wind farm emissions which have not been fully compensated by the incidental provisions of the BImSchG licence

## 4. Financial profit-sharing: Possibilities for municipalities to cream off profits



### 5. Trade tax (*Gewerbesteuer*)

§ Special breakdown ratio under *sec. 29 subs. 1 no. 2(a) Trade Tax Act* (GewStG) between the municipality in which the wind farm is located (currently 70%) and the municipality where the company operating/owning the wind farm has its office (currently 30%) could be further shifted in favour of the municipality in which the wind farm is located; moreover: regulation on preferential treatment in the context of distributing tax revenue between municipalities (*kommunaler Finanzausgleich*).

### 6. Property tax (*Grundsteuer*)

§ Municipalities in which the wind farms are located may also participate in the profits on the basis of the property tax. The financial burden would be borne by landowners. Municipalities may benefit from this approach if the land on which a wind farm is built no longer has to be classified as undeveloped land or if the rateable value (*Einheitswert*) of the plots hosting wind farms is increased.

## 4. Financial profit-sharing: Possibilities for municipalities to cream off profits



7. Concession fee: Payment obligation of wind farm operators using municipal land: In the future, the concession fee could be payable not only for withdrawing electricity from the grid but also for *feeding it into* the grid
8. Licensing of wind use: The legislator could establish the right to wind exploitation as a separate property right; granting of licenses (i.e. concessions) and advantages through the concession fee (*proposal of the research project DZES, Jelena Bäuml*)
9. Green electricity tariffs: Wind farm operators finance cheaper green electricity tariffs that are made available to the citizens/municipalities concerned by selected energy suppliers
10. Voluntary instruments for creaming off profits: Voluntary payments by wind farm operators to municipalities; these payments could be financed through EEG funding (increase of the value to be applied; proposal put forward by the German Wind Energy Association (BWE))

Thank you  
for your attention.

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