

Legislation, Licensing and Fiscal regime for oil and gas exploration and production in Germany

In Germany the Legislation, Licensing and Fiscal regime are in the responsibility of the local State Authorities for Mining of the federal states. Further information can be found on the following websites:

- <http://www.lbeg.niedersachsen.de> for Lower Saxony, Hamburg, Bremen and Schleswig-Holstein
- <http://www.bezreg-arnsberg.nrw.de/bergbau-und-energie> for Nordrhein-Westfalen
- <http://www.bergamt-mv.de> for Mecklenburg-Vorpommern
- <http://www.sachsen-anhalt.de/LPSA/index.php?id=15849> for Sachsen-Anhalt
- <http://www.lbgr.brandenburg.de> for Brandenburg and Berlin
- <http://www.rp-darmstadt.hessen.de> for Hessen
- <http://www.saarland.de/7809.htm> for Saarland
- <http://www.lgb-rlp.de> for Rheinland-Pfalz
- <http://www.lgrb.uni-freiburg.de/lgrb> for Baden-Württemberg
- <http://www.stmwivt.bayern.de> for Bayern
- <http://www.tlba.de> for Thüringen
- <http://www.bergbehoerde.sachsen.de> for Sachsen

Legislation and Licensing

There is a long tradition in Germany concerning the right to explore and produce minerals. The oldest known legal basis can be found in the so called “Ronkalische Konstitution” from Emperor Friedrich Barbarossa dated from year 1158. Over a period of 700 years the mining right was with the local sovereign. In 1865 a new mining law was issued and the sovereign lost his nearly exclusive right concerning the mineral resources, allowing anyone to explore or produce minerals. However, this changed in 1900 when licences for important minerals (like coal or potash) could only be issued by the state.

Hydrocarbon licensing falls under a Mining law passed in 1865, but after the Second World War the jurisdiction in minerals matters was decentralized to the 11 states in the Western Part of Germany and centralized to the government in Berlin in the Eastern Part of Germany.

In the Eastern part of Germany the most important minerals (like salt, oil, gas or ore) were expropriated by the state in 1947, and only state companies or national owned enterprises had the right to explore and produce. The companies or enterprises carried out their work based on yearly targets that were specified by the state.

The exploration and production of hydrocarbons in the Germany is today regulated under the Federal Mining Law from 1982. There are three different kinds of licences: “Erlaubnis” (exploration licence), “Bewilligung” (production licence), and “Bergwerkseigentum” (mining proprietorship). An exploration licence is required for those wishing to explore for hydrocarbons in a defined area. A production licence must be granted to those wishing to produce hydrocarbons. The exploration licence and the production licence are the predominantly used licences in Germany. A mining proprietorship is similar to the production licence for producing hydrocarbons but with other rights.

The licensing system in Germany is organised on a state rather than on a federal level. Based on this, the responsible agency granting licences differ from state to state. More than 90% of Germany's gas and oil production is from the states of Lower Saxony and Schleswig-Holstein where the local State Authority for Mining, Energy and Geology, Hannover, is responsible for granting licences (<http://www.lbeg.niedersachsen.de>).

There are no formal licensing rounds in Germany. Individuals, corporate bodies or commercial partnerships can apply for licences at any time. Within these applications the field proposed for exploration or envisaged for production must be specified, a work program has to be proposed and evidence of financial resources must be provided. In addition, the application for a production licence has to include information about the reservoir and a technical evaluation that demonstrates that the discovery can be developed.

The exploration licence covers an initial five-year period with possible renewals of maximum three-year duration. Every year the licence holder has to inform the relevant mining authority about their progress on the working program. The licence shall be revoked if, for reasons for which the licence holder is responsible, the exploration has not commenced within one year after the licence was granted or if the systematic exploration has been interrupted for more than one year.

The production licence is, in general, granted for a period that is determined by the applicant based on reservoir content, basic technical conditions, and economic calculations. The term of fifty years may only be exceeded if it is considered to be indispensable on account of the investments normally required for carrying out the production activities. The licence is revoked if the production has not commenced within a term of three years after the licence was granted or if the systematic production has been interrupted for more than three years. This will not apply as long as reasons of an efficient technical or economic planning make it necessary to delay the commencement or resumption of the production in the field or if interruption was caused by other reasons outside the responsibility of the licence holder.

According to Article 9 of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994, Germany publishes an annual report with information on the conditions for granting and using authorizations for prospecting, exploring and producing hydrocarbons.

Royalty

In Germany, royalties are determined at the state level and not at the federal level. Based on the federal mining law, the local government can set the royalty rate in a range from 0% to 40% based on the market value.

Royalties in 2009: The royalty for the gas and oil production from the only producing offshore field was set by the government of Schleswig-Holstein to 15% for gas and oil or condensate. The same government set the royalty for oil and gas production from a near shore field to 15%. The government of Lower Saxony has set the royalty for onshore gas production to 36% and for onshore oil production from seven defined fields to 17% Royalty for oil production from all other fields was set to zero.

Royalties are levied on the market value of oil and gas at the time of production. Royalty is calculated on a quarterly basis, payable four weeks after the preceding quarter. The license holder is allowed to offset field-handling charges against royalty payments. These comprise transport costs from well to treatment plant, preliminary treatments, and the disposal of wastewater.