

# Current legal framework for agrivoltaics in Germany

**Agrivoltaics** | Max Trommsdorff of Fraunhofer ISE and Jens Vollprecht, a lawyer at Becker Büttner Held, detail the legal aspects of agrivoltaics deployment in Germany.

Over the last two years, Germany's policy framework has adjusted largely to emerging technologies of using land for both agricultural and solar energy production. A prerequisite of this development is, without doubt, the pre-standard DIN SPEC 91434 which, since April 2021, provides a definition about which criteria agrivoltaic systems must fulfil to assure the primary agricultural use of the land. With this, the standard aims to clearly distinguish between agrivoltaic systems and conventional ground-mounted PV.

According to the DIN SPEC, the agricultural yield after constructing the agrivoltaic system must at least amount to 66% of the reference yield. Land loss after installing the PV system must not exceed 10% of the total project area for category I (overhead systems with a vertical clearance above 2.1 metres) and 15% for category II (interspace systems). Light availability, light homogeneity and water availability must be checked and adapted to the needs of the agricultural products.

## Direct payments

Direct payments of the EU for the cultivation of agricultural land do, in monetary terms, not play a mentionable role in most agrivoltaics projects. Nevertheless, uncertainties as to whether payments can be claimed if an agrivoltaic system is built on an area used for agriculture or not caused a mentionable delay for the development of agrivoltaics in Germany in the past.

Since 2023, § 12(5) of the German CAP Direct Payments Regulation (GAPDZV) considers land used for agrivoltaic installations eligible to receive direct payments if (1) the facility does not exclude the cultivation of the area using usual agricultural methods, machines and equipment and if (2) the facility reduces the agriculturally usable area by a maximum of 15% based on the DIN SPEC. If those conditions are

fulfilled, as a lump sum, 85% of the area is considered eligible.

## Germany's Renewable Energy Act

As the legal cornerstone of the German energy transition, the Renewable Energy Act (EEG) considers agrivoltaic systems since 2023 on a larger scale. Generally, the main advantages that the EEG grants to renewable energy systems are privileged grid connection, privileged purchase of electricity and the regulation of feed-in tariffs. Agrivoltaic systems benefit from privileged grid connection and privileged purchase of electricity as other renewable energy systems do, too. Regarding tenders for feed-in tariffs, eligible agrivoltaic systems do have access to a much larger area compared to standard ground-mounted systems since the latter are generally excluded from agricultural land. Additionally, in the case of overhead systems (category I DIN SPEC), the EEG provides a premium of 1.2 euro cent per kWh in the event of a surcharge in 2023. In the event of a surcharge in subsequent years, the premium is reduced gradually depending on the year of the surcharge.

## Tax alleviations

Until summer 2022, if a photovoltaic system was installed on an agricultural area, landowners faced the risk the area might no longer be assigned to agricultural and forestry property but to the real estate. Consequently, losing the status of agricultural and forestry property also implied the loss of preferential tax treatments combined with agricultural and forestry property e.g. for inheritance and gift taxation. With a decree in the Federal Tax Gazette for agrivoltaic systems of category I and II DIN SPEC, the area maintains its status as agricultural and forestry property with all involved tax benefits.

## Permitting

Regarding building permits, currently, agriv-

oltaics generally belong to the category of ground-mounted photovoltaic systems. Hence, according to the building regulations law, a building permit is required for their construction in most cases. Typically, an agrivoltaic system will be erected on a plot of land located outside urban areas that is not covered by a development plan. In this case, the BauGB differentiates between privileged and other projects. Privileged projects according to § 35(1) BauGB are only prohibited when they conflict with public interests. In contrast, other projects outside urban areas are generally prohibited according to § 35(2) BauGB if they affect public interests. § 35(3) BauGB lists public interests that are to be considered in this regard. If the project is not permissible outside urban areas according to § 35 BauGB, preparing a development plan – possibly with a partial amendment of the zoning map – should be considered. This, however, can be very time consuming. Since January 2023, according to § 35 (1) No. 8 BauGB, ground-mounted photovoltaic systems are privileged in a 200m wide strip on both sides of highways and at least double-track railroad lines. With regard to agrivoltaic systems, a privilege according to § 35 (1) No. 1 or No. 2 BauGB is also conceivable in the case of a service function for agriculture or horticulture. Discussions about generally privileging smaller agrivoltaic systems are ongoing. ■

## Authors

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