

How the Electricity Feed-In Law (Stromeinspeisungsgesetz) Came to Be Passed by the German Parliament, Enabling Renewable Energies to Establish Their Position in the Market

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The 1990 German Feed-In Law, allowing the sale into the grid of electricity generated from renewable energy sources, came into force on January 1, 1991. This piece of legislation emerged from within the framework of a political constellation unparalleled in the history of the country's electricity production and supply industry. That this had been at all possible was first and foremost due to the efforts of the Labour MP Dr. Hermann Scheer (SPD) who, having recognised the unique opportunity at hand, resolutely brought together and united the key players involved – a group of MPs from all parties – thus harnessing the forces across the great political divide.

Prior to this, Germany had witnessed many dramatic and decisive events taking place at home and abroad: the two oil crises of 1973 and 1979 respectively, which had shocked the industrial nations and highlighted Germany's need to become less dependent on energy imports; the anti-nuclear movement's demonstrations in the 1970s and 1980s, which ultimately led to the founding of the Green Party; the German government's 1980 commission of inquiry on the use of nuclear energy; the aftermath of the 1986 nuclear accident in Chernobyl and the Labour Party's (SPD) resolution of that same year to phase out nuclear energy within the space of a decade; the collapse of the German Democratic Republic and the subsequent integration of that state into the Federal Republic of Germany.

The outstanding contribution made by the extremely well organised South German hydroelectric power industry in cooperation with the region's forest and sawmill owners – and above all their parliamentary representative at the time, the Conservative MP Dr. Engelsberger (CSU) – deserve special mention at this point.

However, had it not been for Hermann Scheer, one of the most important figures in the field of renewable energy policies, this multi-party parliamentary initiative would never have materialised, let alone been so successful – circumventing, as it did, the influential party whips in the process! It was he who had founded the solar energy association EUROSOLAR (The European Association for Renewable Energy) in 1988, in defiance of the unambiguous objectives of the powerful German Mining and Energy Workers' Union lobby within his own party. This organisation was one of the first to actively push for the 100% replacement of fossil and nuclear energy by renewable energy sources.

We must bear in mind that, given the existence of the unrelenting three-line whip (obligation to take the party line), any politician who dared to “take a chance on more democracy” – to quote Willy Brandt's famous expression from the year 1969 – would find himself accused of high treason. Yet this “treason” is exactly what Hermann Scheer had organised. **The “Inspector General for Water and Energy”, a constitutional relic dating back to July 29, 1941, but nevertheless still valid to this day – i.e. the “Führer” principle¹ – now found itself jeopardised to a high degree by the more contemporary and diametrically opposed principle of democracy.** This was a strategically skilful move at a time when the managing directors and top lawyers of the electrical utilities in the West were busy trying to seize possession of (i.e. privatise) the former East German electricity sector.

In 1990, with the legislative period drawing to a close and pressure mounting, the German government cooperated with the big energy companies in an attempt to destabilise the initiative behind the Feed-In Law.

At our first meeting at the Ministry of Economic Affairs in Bonn in May 1990, we – the wind energy, solar energy and bio energy “cranks” – found ourselves at the long negotiating table face to face

with the united forces of the energy supply industry. Behind them stretched a huge photograph of an open cast lignite mine, which occupied the entire wall. Seated on the left were officials of the Ministry of Economic Affairs and on the right members of parliament and representatives of the hydroelectric power sector.

At that memorable meeting we were informed that negotiations about the future of the Feed-In Law would only be continued if Manfred Lüttke, the representative for the hydroelectric power industry in the federal state of Baden-Württemberg, packed his bags and left. Immediately, Erich Haye, Dr. Ivo Dahne and I made it quite clear that, if this was the case, we were going to get up and go too. Amidst the euphoria that accompanied German reunification, with its high ideal of “living at peace and in freedom” at last, neither the energy supply industry nor the German government – who, following a parliamentary resolution, were meant to present a legislative proposal before parliament – could have allowed themselves to push things too far. This would only have caused antagonism ahead of the celebrations with “our brothers and sisters in the East”. Moreover, the energy supply industry in the West was completely tied up with its endeavours to appropriate the East German energy supply industry, which involved the scandalous “GDR power supply agreements”, the wording of which has still not been disclosed to this day. In any case, the representatives of the energy supply industry felt confident that, sooner or later, they would be able to rid themselves of the Feed-In Law.

Due to the developments taking place concurrently, only one alternative remained open to the electrical utilities: They would either have to eradicate the Feed-In Law or else take over the entire East German electricity sector. After all, there was a danger that the co-generation plant (combined heat and power) virus might spread westwards into the Federal Republic.

Via the Network for the Decentralised Use of Energy, which we had set up in November 1990 through the People’s Chamber, the highest organ of state power in the former East Germany, we succeeded in instigating judicial review proceedings at the Federal Constitutional Court against the “GDR power supply agreements”, which had been drawn up by the electrical utilities in the West with the intention of taking over the entire network. These companies would not have been willing to run the risk of initiating parallel proceedings against the Feed-In Law, for fear that both lawsuits might be dealt with at the same time – in which case it would have become only too apparent that the fundamental structure of the German power industry dates back to the year 1941, when the NS-Regime was at its most brutal.

Our success: The impending lawsuit forced the electrical utilities to hand back part of their assets to some local authorities. On October 27, 1992 – in several respects an important date in the history of the Constitutional Court – it came to oral proceedings. Not at the Constitutional Court in Karlsruhe, however, but at the railway repair works in Stendal instead. Not only was the venue itself out of the ordinary: the court surprised us all **by introducing a settlement proposal**² – an anomaly in its history. **By so doing, it managed to prevent the necessary reappraisal of the laws governing the German energy sector, created during the Third Reich.** The court’s president, Roman Herzog – who was later granted the office of Federal President in recognition of this settlement proposal – saw to it that the proceedings “ran dry” by allowing the case to continue for too long. And so the goal was achieved: **One by one, the 164 East German plaintiffs withdrew their charges**, after receiving “lucrative” offers from the West German energy supply industry, in keeping with the rule of mechanics whereby machinery will only function if it is well oiled – in other words, after allowing their own palms to be sufficiently greased.

Rupert Scholz, chief negotiator for the German parliament in the constitutional commission made up of both the Bundesrat (upper house, representing the federal states) and the Bundestag (lower house), acted in a similar manner: He did his utmost to stop the German constitution of May 23, 1949 from being transformed into one for the whole of reunified Germany. Not at all in keeping with article 146 which states that “this basic law shall cease to apply on the day on which a constitution freely adopted by the German people takes effect”.

Many people were probably asking themselves: Where on earth would we be then? Should it be revealed at this early stage that Theodor Maunz, who taught both Rupert Scholz and Roman Herzog, had written commentaries for Gerhard Frey's *Deutsche Nationalzeitung* (formerly *German National and Military Newspaper*) right up until his death in 1993 and that the German Reich still lives on in legal terms? Should all the wonderful takeover and bankrupting opportunities in the acceding territory (i.e. the five new federal states) be lost on account of a new and transparent constitution? Should a growth in power and revenues be sacrificed at the altar of such fantastical notions as "sustainability" and "democracy"?

The German Renewable Energy Association (Bundesverband Erneuerbare Energie) Is Founded to Safeguard the Feed-In Law

The Renewable Energy Association was founded in 1991 as an umbrella organisation for small and medium-sized operating companies, in order to safeguard and strengthen the Feed-In Law. The management and top lawyers in the energy supply industry were unable to extend their influence over the rapidly developing renewable energy sector protected by this law, as long as they had not successfully warded off the legal proceedings against the "GDR power supply agreements" and taken possession of the energy production and supply network of the former GDR. At the beginning of September 1994, the last obstacles had been overcome and **the Feed-In Law came under immediate attack**. Only after some considerable effort and by standing shoulder-to-shoulder and closing the ranks right down through society was it possible to curb the onslaught. However, the delaying tactics employed by the large electrical utilities cost small and medium-sized operating enterprises a fortune, with some unable to survive financially as a result. This is how these large companies promote, protect and continue to breed new centralistic structures within the energy sector.

Since attack can sometimes be the best form of defence and with a new political constellation brought about by the change of government in 1998, the German **Renewable Energies Act (Erneuerbare-Energien-Gesetz)** – in full the **Act on Granting Priority to Renewable Energy Sources** – promoting large-scale generation of electricity from various renewable energy sources, was passed and implemented in 2000, as successor legislation to the Feed-in Law. Once again it was essentially Dr. Hermann Scheer MP who, now a member of the ruling party, promoted the campaign and protected the law right up to his death in 2010, while those "responsible" within the government had to be dragged to the ball, as was the case with the successful lawsuit at the European Court of Justice, concerning the approval of the "subsidies" granted under the Feed-In Law.

Up until the end of the 1990s, the front line in the battle had been clearly defined: on the one side, decentralised renewable energy and on the other, centralistic fossil and nuclear energy sources. Since then, however, the political demands of the population have forced those in favour of centralised structures to become active within the decentralised renewable energies sector – even if only to provide themselves with a devious alibi. In the eyes of the centralised energy supply industry, which had grown so mighty in the spirit of Kaiser, Siemens and Deutsche Bank, the current political state of affairs cannot possibly last much longer. Meanwhile, the industry acts according to the American slogan: "If you can't beat them, join them!" When the Feed-In Law was replaced by the Renewable Energies Law, the energy sector itself **succeeded in becoming a beneficiary of the "subsidies" available for the supply of renewable energies**.

Those wishing to see and contribute to a just and sustainable ecological and social development in Germany, would be advised to sever ties with the unscrupulous profiteering which is being carried out behind the camouflage of deceitful labels such as "sustainable" and "renewable". Otherwise their own credibility might one day be shattered and they could find themselves completely worn out and exposed to the ridicule of the established fossil and atomic energy sector. During their term of office, Chancellor Gerhard Schröder's red-green coalition government strengthened the dictatorship of the electricity supply industry significantly, under the guise of the so-called "liberalisation" created by Chancellor Kohl. And all this took place under the protection of Schröder's accomplice, Economic Affairs Minister Werner Müller (independent in political terms perhaps, but certainly not with regard to corporate interests). The energy supply sector is now

demanding subsidy guarantees for its coal-fired power stations and monopoly guarantees for its new generation of large power plants and high-voltage transmission lines.

The Ongoing Destruction of Our Public Services and the Very Basis of Our Existence

Shortly before the legislative period 1998-2002 came to an end – and while all the protestors were on holiday – this German government shamelessly ruined their political record with regard to energy policy. Chancellor Schröder and his Economic Affairs Minister Werner Müller (a former E.ON employee and eligible for a company pension) flouted the decision reached by the Monopolies Commission and the Federal Cartel Office and gave the go-ahead for the takeover of the Ruhrgas AG company by E.ON. The explicit aim of the merger was to limit competition in the German gas market. E.ON was to rise up to become a global player, financing its international conquests by means of guaranteed revenues, in other words by charging “unjustified and excessively increased” prices to its customers in Germany. At the same time, the concept of the multi-utility company as the ideal provider of services was being praised to the skies – “from the power station to the wall socket, from the borehole to the gas cooker and from the source to the water tap”. But already in 2002, gas prices in Germany were far higher than those of other EU nations.

Aristotle, who perceived that form is a more decisive factor than substance, would also have recognised that **concentrating our attention on renewable energy sources alone will do nothing to ease the burden on our environment without the necessary structural changes within the energy sector**. Those in favour of a centralised system know all too well that people with no knowledge of the past have no future. After all, there used to be numerous decentralised electricity producers both in Germany and Japan, but these were brutally eliminated and expropriated and are now more or less forgotten. And the centralists are sure to gain control of the present situation too. If, in the decentralist camp, we have no leaders with a knowledge of the history of our electricity production and supply networks, then the ripe fruits of all our labours are simply going to fall into the laps of the proponents of centralism. Hence their strategy to first of all undermine the long-established hydroelectric power sector because after that it will be easy for them to gain control of the wind energy sector with its lack of historical awareness.

Those in favour of centralism cannot forget for one moment that it was the decentralised hydroelectric power industry under the leadership of Manfred Lüttke, vice-president of the German Renewable Energy Association, who bestowed on them the incredibly successful and – for their intents and purposes – highly dangerous Feed-In Law of December 7, 1990, written down clearly on a single sheet of standard-size paper! In 2002, Chancellor Schröder’s old government was literally washed back into power by a very narrow majority as a result of both the severe flooding caused when the River Elbe ran at an all-time high and the threat of war in Iraq. The advocates of centralism among the realists in the Green Party subsequently informed the Renewable Energy Association that a new generation was now in power and that the time had come for the older generation to remove themselves quietly, important though their role may have been in the past. The association should now open itself up to the financial market, to factory farming, monocultures and offshore wind power.

Having served on the board at the Renewable Energy Association from its founding on December 14, 1991 until April 2007, I feel obliged to point out the reasons why it was founded in the first place and the aims it originally pursued. I continue to support those aims and promote them as a directive for the association’s policies in the future. From 1962-1968, I worked at the Institute for Experimental Nuclear Physics at the Nuclear Research Centre of the Institute of Technology in Karlsruhe. I can still picture quite clearly the terrible responsibility – and the helplessness – of those who, having designed the atomic bomb as an instrument with which to contain National Socialism, were later forced to witness the devastation and suffering caused by their well-meant invention after the bombing of Hiroshima and Nagasaki. This example illustrates what the chemical industry and energy sector – with their close ties to the state – are capable of if they are not kept under control.

The energy supply industry is ruthlessly transforming the concept of renewable energy sources, as a strategy to preserve the provision of our essential public services, into the exact opposite – the business of death and destruction. The word “sustainable” serves only as a wrapping to conceal the true nature of the products they put on the market and the destruction of our natural surroundings caused by their unethical business practices. Their ultimate aim is to make the public subservient to the oligopolies.

In the federal state of Brandenburg – an hour’s drive from Berlin – whole areas, which were once green pastures and thriving landscapes, are turning into desert. Lusatia was formerly a lignite mining region and so-called government “revitalisers” are now describing how savannah areas are beginning to appear there. And this in Lusatia, of all places, whose name derives from the Sorbian word *luzicy* meaning “swamps” or “water-hole”. Only a century ago, this was one of the most water-rich and fertile areas of Central Europe! **This progressive destruction is ultimately the work of eight decades of German policy in the energy and chemical sectors.** Seen in moral and cultural terms, this is quite clearly wrongdoing of immeasurable proportions, **protected by the dominant sciences jurisprudence and economics, now bereft of any real content.** This destruction is an expression of what happens when the ruling doctrine of the day is moronically repeated in parrot-fashion. It was people with no awareness of the past who strengthened the old power and economical structures in the course of the last 65 years. Instead of analysing and reappraising these structures, they transfigured and camouflaged them. With their legal expertise, they defended the Kaiser’s Mining Act of 1871 and Hitler’s central constitutional institution “Inspector General for Water and Energy”³. To this very day, these forces have been able to prevent genuine liberalisation with regard to energy policy, as well as the establishment of an effective supervisory and regulatory authority.

For whole generations to come, the landscapes ravaged by unrestrained energy policies will stand out as conspicuous monuments to the ruthless exploitation and desire for further conquests of the RWEs, E.ONs, EnBW, Vattenfalls and Co. These supra-regional multi-utility companies are supported legally and politically by the billions of euros of tax-exempt accrued liabilities available to the atomic power industry. These multi-utility companies can use this capital income unrestrictedly, for example to buy out rivals or for breaking into new markets. At the same time, decentralised renewable power supplies are being depicted in a defamatory manner as a means of exploiting the public at large.



¹ Energie und Führerprinzip, <http://www.ulrich-jochimsen.de/EnergieFuehrerprinzip.html> (German language only - for brief information in English, see 3 below)

² Jörg Henning, *Transformationsprobleme nach der Wende am Beispiel der Stadtwerke Halle GmbH*, Forschungsberichte des Instituts für Soziologie, Universität Halle, ISSN 0945-7011

³ The Energy Industry Act of 1935 restructured the German energy sector and laid down the framework conditions for a cheap and secure energy supply, in order to prevent any detrimental effects on the national economy which competition might have. Local authority districts were controlled by the Ministry of the Interior, private companies by the Ministry of Economic Affairs. From 1938 to 1941, the German cabinet did not come together at all. At the height of Hitler's power and only one month after he launched his campaign to invade Russia, the office of Inspector General for Water and Energy was created and the government ministers hitherto responsible for the energy sector read in the newspapers that they had been replaced, first by Dr. Fritz Todt and later Albert Speer. The energy supply industry in post-war West Germany was structured according to the 1935 law, which provided for monopolies in power generation, transmission, distribution and supply. The Inspector General, however, was retained in the form of an inconspicuous footnote. This chapter has not yet been reappraised and so this relic lives on. After the war there were 11 Verbundgesellschaften (high-voltage network associations) in West Germany. Prior to market "liberalisation" in 1998, about 1,000 electrical utilities existed, 8 of which were involved in large-scale power generation and high-voltage transmission and about 80 in regional distribution. After "liberalisation", however, only 4 large companies existed in Germany.

Biography of Ulrich Jochimsen

Ulrich Jochimsen was born in Niebüll / Schleswig on June 28, 1935. He grew up in a free atmosphere, taking part in Boy Scout activities for five years. An amateur radio enthusiast, he received his licence (DJ1PZ) in 1953. After serving a three-year apprenticeship as an electrician, he became the youngest radio officer in the merchant navy in 1955 and then sailed around the world for a further three years. From 1957-1962, he studied electrical engineering in Bingen on the Rhine and spent a year as an exchange student (via the German Academic Exchange Service) at the Ryerson Institute of Technology in Toronto, Canada (1959-1960). He worked as an engineer at the Institute for Experimental Nuclear Physics at the Institute of Technology in Karlsruhe from 1962-1968. In 1966, he started his own company VIDEO-DIGITAL-TECHNIK, specialising in television studio technology. In 1973, he developed the pocket radio-telephone, i.e. mobile phone, and founded the Institute for Telecommunications Technology and Systems Research that same year. He was the only representative of the state of Hesse in the federal commission on technical communications in 1974-1975, where he presented his concepts of the BLACKBOX (a wall socket for the individualised use of the telephone in the private home, separating the user's appliance from the monopolised telecommunications network, an idea very much ahead of its time) and the mobile phone (using the higher frequency bands for individual communication). In 1976, he invented the ENERGIEBOX, a mini co-generation plant designed for use in individual homes for the decentralised production of energy and heat – as an alternative to building further nuclear power stations. He carried out a study on the ENERGIEBOX for the minister-president of Hesse from 1977-1978. Since 1978, he has been involved in the struggle for the use of decentralised renewable energies. On April 26, 2006 – the 20th anniversary of the Chernobyl disaster – Ulrich Jochimsen was awarded the Bundesverdienstkreuz (Order of the Federal Republic of Germany, similar to the British OBE). Also in 2006, he received the German EUROSOLAR prize for his ENERGIEBOX.