

# **Regulatory reforms and trade associations: the case of the electricity supply industry in the United Kingdom and Germany**

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## 1. Introduction

During the last two decades, *globalisation* and *neoliberalism* formed the twin building blocks of economic policy-making in the OECD world. In Western Europe, the workings the *European Community (EC) institutions*<sup>1</sup> even reinforced their impact. Prior research has shown that these three factors caused major reforms of the established national models of sectoral organisation and regulation in the EC member states (e.g. Majone 1996). Nowadays, their impact is particularly felt in the network bound utility sectors, such as railways, telecommunications, gas, electricity and water supply, which were previously marked by a high degree of stability and continuity. Focusing on the electricity supply industry in the United Kingdom (UK) and the Federal Republic of Germany, I will stress the consequences of neoliberal regulatory reforms and the Europeanisation of policies for national trade associations. I will argue that the neoliberal reforms and the Europeanisation of policies confront the national associations with pressures that bear heavily on their internal workings and their external relations: For this purpose, I will distinguish between *three general dimensions of the associational landscape*:

- organisational aspects,
- the functional scope of the associations' activities, and
- the associations' roles as interest intermediaries, subdivided into
  - relations towards state actors,
  - relations towards other interest organisations, and
  - internal negotiations.

With regard to the national associations, all of the regulatory reforms have some *consequences in common*. First, they often cause major *organisational changes* such as the foundation of new associations which compete with or even replace prior formats of co-operation. However, the exact causes for these changes are not invariable: I will trace the organisational responses to the role of state actors inducing or even forcing organisational changes and to a pluralist reaction of the sectoral actors to the political initiatives. Second, the patterns of co-operation within the associations are put under great strains: The neoliberal reforms strengthen the competitive forces among their members and the transnationalisation of negotiations in the EU system entail a loss of control over the national associations' delegates at EU level. In their *international negotiations*, the national associations take recourse to established organisational

practices and partly intensify their control mechanisms in order to contain this disruptive mixture of problems. Concerning *state-sector-relations*, the transformation of the relevant politico-administrative target structure into a European multi-level system can strengthen the leverage of leading ministries over the sectoral actors as the German reform indicates (e.g. Grande 1994) even though this hinges upon certain conditions.

Beyond these broad commonalities, the regulatory reforms and the transnationalisation of the associational landscape in the European Union have *divergent effects*: First, the regulatory reforms have different consequences in different national contexts because their scope and contents differ: Thus, the radical regulatory reform in the UK greatly restricted the *functional scope* of the the British association due to the extensive mode of state regulation. In contrast, the German regulatory reform enhanced the functions of the German sectoral association because internal negotiation pressures forced the state actors to rely heavily on patterns of sectoral self-regulation. Second, Europeanisation of policies may have very different implications for the *role of the national associations as interest intermediaries*. While the Europeanisation of sectoral policies increased the standing of the British sectoral associations vis-à-vis both state actors and sectoral firms, it reduced the German peak association's role in the sectoral formation of interests. I will trace this differential impact to differences in the associations' national embeddedness, in their internal cohesion, and in their coalition patterns on the EU level.

The paper is structured in the following way: The second section briefly conceptualises the relevance of globalisation, neoliberalism and the European Community for the governance of economic sectors. The third section gives an outline of the sectoral evolution in the United Kingdom and Germany. The fourth section summarises the regulatory reform on the EU level and draws attention to its impact on the sectoral trade associations. The conclusion condenses the argument.

## **2. Globalisation, neoliberalism and the European Community as a regulatory state**

In general, *globalisation* is regarded as a process which increases world-wide interdependencies and subjects the decisions of actors to the influence of factors working all around the globe (Kohler-Koch 1996). However, due to its process character, the assessments of 'globalisation' do greatly vary: Not only is the relevance of empirical findings contested but

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<sup>1</sup> The paper relates only to the first pillar of the European Union.

also the normative assessments and the conclusions for political actions vary (e.g. Berger/Dore 1996). This holds also for the patterns of economic globalisation (Hirst/Thompson 1992; Mayer 1996) which must not be regarded as a uniform process but impinge differently on different sectors and countries. However, the regulatory reforms of the electricity supply industry cannot be traced to immediate functional pressures arising from the globalisation of markets or from the dynamic evolution of technologies. In a marked contrast to the developments in telecommunications and information technology, the electricity supply industry was largely confined to national markets and its technological evolution was rather continuous if not stagnant. But beyond the often noted *functional pressures* arising from the internationalisation of markets and technologies (e.g. Mytelka 1991), globalisation has also *important cognitive effects* leading to the emergence of world views related to the growing transnationalisation of economic activities (e.g. Kohler-Koch 1996: 105). The perception of a globalised economy and world-wide competition impinges upon the leading ideas of state and economic actors about state economy relations and modes of sectoral regulation. Combined with the perceived failure of Keynesianism in the 1970s (e.g. Hall 1993), it has triggered a search for new economic policy doctrines and policy formulas.

Since the early 1980s, this new openness for alternative economic policy doctrines resulted, in conjunction with national-level factors such as conservative party governments in the United States, Germany, and Britain (e.g. Bierstecker 1992; Lehmbruch 1989), in the hegemony of *neoliberalism*. Rooted in a variety of theoretical strands, the neoliberal programme is nevertheless guided by one leading idea: „the competitive market system, left to its own devices, free of government interference, will produce superior results, in terms of efficiency and social justice, than alternative systems of economic organization“ (Helm 1989: 12). On a micro-economic level, the politics of privatisation, liberalisation and deregulation formed the core of the neoliberal reform agenda, even though they often necessitated re-regulatory efforts (e.g. Majone 1996). It was this new openness for new policy doctrines and recipes that proved highly relevant for the electricity sector. The sector was also included into the change of economic discourse.

In the same way that globalisation and neoliberalism catalysed regulatory reforms on the national level, they furthered the process of market integration in the European Community (e.g. Sandholtz/Zysman 1989: 103-106; Moravcsik 1991). Indeed, it is particularly the EC which is associated with the emergence of a regulatory state (Majone 1996: 55): Due to its

budget restrictions, it has primarily to rely on regulatory policies. These restrict the range of eligible policies available to the member states (e.g. Hancher 1996: 55). As a consequence of the growing EC activities in the field of utilities, Tony Prosser and Michael Moran have indeed identified the beginnings of „*Community model of utilities*“ (1994: 149) which transforms the pre-existing national models and is characterised by:

- the prohibition of exclusive rights for utilities,
- the separation of regulatory and operational activities,
- demands for more transparency in the relation between member states and utilities,
- the formulation of more transparent conditions for market access in the regulated sectors,
- and the delimitation of the ‘public service’ concept, which may warrant exemptions from EC market integration.

Because the growing competencies for the EU institutions simultaneously change the relevant political space or the institutional „target structure“ (Almond) of the national actors, they also lead to the Europeanisation of the national-sectoral regimes. The ‘interlocking’ of the European and the national political levels create new conditions for both the national state and sectoral actors. The transformation of the *relevant* institutional structure into a multi-level system (Marks 1996) was of major importance for the electricity supply industry which was deeply embedded in national markets and national practices of economic regulation. It provided a major challenge to both the internal and external settings of the national actors. This meant that the Europeanisation of policies led to major organisational reforms and also to a re-orientation of strategies on the national level.

To sum up, as a consequence of globalisation, neoliberalism and the policy making powers of the European Community, in the 1990s the national electricity associations and utilities in Western Europe found themselves under a twin pressure: Not only did the prospect of sectoral *regulatory reforms imply a radical change their market environments*. But also reverberated the *Europeanisation of policies the institutional set-up* they were used to for a long time.

### **3. The sectoral evolution in the United Kingdom and in Germany**

Compared to other sectors, the electricity supply industry displays some technological and economic features: Electricity cannot be stored and must be generated in parallel with consumption. Its supply is highly capital intensive and based on networks regarded as natural monopolies. Generation, transmission and distribution require a high degree of technical and

organisational coordination. Due to these factors, the supplying of electricity was largely exempted from competition to ensure the provision of a secure and economic supply. As a *quid pro quo*, the ESI was heavily regulated by state actors. Therefore, close ties emerged between state actors and sectoral firms and associations.

Nevertheless, the sectoral characteristics did not determine the sectoral structures or the sectoral state-economy relations. Rather, they were mediated by the pre-eminent economic doctrines and by the institutional settings in the United Kingdom and in Germany. State power is much more segmented and decentralised in Germany compared to the UK. Peter Katzenstein labelled the German state even as „semi-sovereign“ to characterise the high degree of decentralisation and interlocking in the German political system. In a marked contrast, the British state is highly centralised and state power is highly concentrated. In the UK, there are hardly any institutional veto points outside of government and pressures for compromise are much lesser than in Germany (e.g. Grande 1989: 355). Thus, sectoral reform capacities are much higher in the UK than in Germany.

### **3.1 The United Kingdom**

#### **3.1.1 The evolution of the British electricity supply industry: From decentralised interaction to top-down competition**

Until the Second World War, the United Kingdom's sectoral regime evolved in decentral patterns of interaction and consisted of a variety of state and private firms (e.g. Hannah 1979). In the context of the *post-war consensus*, the centralisation of state power in Britain allowed the outright nationalisation of the whole sector (e.g. Hannah 1982). From 1948 until 1990, a vertically integrated state utility co-ordinated the supply of electricity. In the *nationalised British sector*, the Central Electricity Generating Board was mainly responsible for the generation and transmission of electricity. Twelve public corporations in England and Wales distributed electricity to the consumers in their regions. These public corporations formed the main policy instruments of the British state actors who quite regularly interfered into the pricing and investment decisions of the sectoral firms. In contrast, a more detached pattern of economic regulation respecting the firms' investment choices was not very important as a policy instrument. The sectoral association, the Electricity Council, was composed of the board directors of the CEGB and the regional suppliers as well as of some independent experts, denominated by the sponsoring minister. It had manifold functions: It was in part responsible for the economic regulation of the sector, it co-ordinated part of the sectoral research and development programme and also the financing of the sectoral investments. But mainly, it was

supposed to act as an interlocuter between the state ministries and the public corporations. However, on part of the sectoral actors, it could hardly play this role as the dominant economic position of the CEGB enabled this public corporation not only to approach the sponsoring ministers directly but also to often dictate the Council's work (Hannah 1982: 196). In the end, the Boards also came to regard the Electricity Council as an attempt of state actors to manipulate the formation of sectoral interests.

The Conservative government under Margaret Thatcher included the electricity supply industry in its privatisation programme in the late 1980s. The preponderance of *neoliberalism* in the Conservative Party was adequately captured in the former energy minister Nigel Lawson's well-known dictum: „The Conservative Party has never believed that the business of Government is the government of business“ (quoted after Heald/Steel 1982: 333). The centralisation of state power in the UK and its neoliberal ideological zeal led and enabled the successive Conservative governments to implement a comprehensive privatisation programme: Until 1995, they sold firms in state ownership worth more than 50 bio GBP (Cook 1995: 1).

While, in general, the British government followed the models of the previous privatisations in telecommunications and gas, there was one major difference in the electricity supply industry:<sup>2</sup> The sector became more decentralised than the other privatised utilities: On the one hand, the already decentralised structure of the 12 regional electricity companies was maintained. On the other hand, the CEGB was now also split up and succeeded by four companies: Of the three generation companies, National Power and PowerGen were privatised in 1990 while Nuclear Electric remained in public ownership due to the „impossibility of selling the nuclear stations“ to private investors (McGowan 1995: 133). Despite the splitting up of the CEGB, the market shares of the three companies indicate that there is still a high degree of concentration in the production of electricity: In 1995, National Power accounted for 32,61% of generation, PowerGen produced 24,17% of the electricity, and Nuclear Electric accounted for 22,33% of generation.<sup>3</sup> (Monopolies and Mergers Commission 1996). Initially, the transmission company - National Grid Company - was jointly owned by the RECs and only privatised in 1997. While the distribution and transmission networks are still regarded as natural monopolies,

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<sup>2</sup> Alex Henney provides an excellent account of the British privatisation (1994).

<sup>3</sup> In 1996, Nuclear Electric was further segmented. While the uneconomic Magnox power stations remain in public ownership in Magnox Electric plc, the rest of the nuclear power stations and also those of Scottish Nuclear were integrated into a new holding company, British Energy, which was then privatised. In 1995,

competition was introduced into the generation and supply sections of the sector. In 1995, independent power producers already achieved a share of 10,10% in generation. In contrast to the prior regime of the sector, vertical integration was greatly limited and thus had to be substituted by contractual schemes and a complex trade mechanism, the Electricity Pool. Today, some ownership linkages between generators and RECs and the quasi-backward vertical integration between RECs and the 'independent' power producers overlay this privatisation scheme.

As in the other privatised utility sectors, a new regulatory authority was installed (Office for Electricity Regulation - Offer) headed by the Director General of Electricity Supply (DGES). In fact, the sector was not only privatised and liberalised, but became also heavily regulated - which only leaves a narrow functional scope for the sectoral association - the Electricity Association (see below). This means also that privatisation has changed the role of the British government to a large extent. During the nationalised regime, the Department of Energy formed the sectoral sponsor ministry and had multiple roles with regard to the industry: It was the banker, promoter and regulator of the sector. Now, the de-coupling of economic regulation from policy formulation allows the Department of Trade and Industry to take a different role with regard to the industry: „The broad distinction is that the government is responsible for preparing the legislation and other instruments which establish the regulatory framework and for appointing the regulator, while the regulator is responsible for carrying on the business of regulation within that framework“ (DTI, in: House of Commons. Trade and Industry Committee 1997: para. 22). Thus, the ministry is freed of the day-to-day interaction with the sectoral firms and of potentially disruptive regulatory issues.

### **3.1.2 The British privatisation and the restructuring of the associational landscape**

The brief account of the regulatory reform proved that the British sector was radically transformed. This holds also for the associational landscape. To a large extent, the British state actors themselves shaped the associational organisation of the sector. Only on the part of the industrial consumers and small generators, a more pluralist pattern emerged. In short: in the United Kingdom, *the state organised society*.

Throughout the duration of the nationalised regime, the *Electricity Council* had formed an instrument for the co-ordination between the sectoral public corporations on the one hand, and

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the share of Magnox reactors in generation amounted to about eight per cent while the rest of Nuclear Electric's power stations accounted to about 15% of generation in England and Wales.



their sponsor ministry, on the other hand. During the privatisation process, the regional electricity companies and the designated successors to the CEGB were suspicious with regard to the formation of a new sectoral association. Overrun by the state's privatisation scheme and fearing the revival of old cleavages within the sector and between state and sector, they did not want another body for the intermediation of interests. Nevertheless, to get support for its regulatory reform, the Conservative government had promised to the sectoral trade unions that in the immediate wake of the privatisation process no employees of the Electricity Council would be dismissed. Therefore, it imposed the foundation of the *Electricity Association* as a successor to the Electricity Council upon the sectoral firms. Due to these beginnings, at first the EA was hardly able to represent the sectoral position. It was „not a real contact partner in the beginning“ for the British government (Int. Department of Trade and Industry). The large sectoral firms (National Power, PowerGen, National Grid Company, Nuclear Electric) opened up their own Government Affairs divisions and bypassed the EA: „For important issues we would not use the Electricity Association. We don't need the EA“ (Int. National Grid Company, similarly: National Power).

As the German VDEW, the Electricity Association represents almost the whole sector. Due to the great degree of sectoral concentration, the EA has only 22 members. Apart from the immediate and later successors to the CEGB - the generators, the national Grid Company and the regional electricity companies - it also organises the utilities from Northern Ireland and Scotland. Only the independent generators characterised by a quasi-vertical integration with the RECs and the renewable generators are not represented.

In the years following privatisation, the *EA-members radically restructured the association*: First, they cut down the number of employees from more than 800 in 1990 to about 180 in 1996/97 by reducing the scope of the *associational functions*. The research and technology activities were divided from the EA and the sectoral firms may now themselves decide if they want to join these activities. The pension fund of the sector was also separated from the trade association. Second, the sectoral firms reorganised the *financial relations* within the association. Much more than in the German associations, the financing of the EA now depends on market-like transactions and the provision of services for its members. While in the German Vereinigung Deutscher Elektrizitätswerke, finance is provided to almost 100% by the member firms' subscriptions, in the EA such subscriptions only amount to 30% of the association's financial resources. About 70% of its finances are provided by bilateral service contracts with

the sectoral firms. This means that the sectoral firms pay only jointly for the sectoral representation of interests while they have to pay individually for all services. Thus, the Electricity Association can hardly offer 'selective incentives' to its members in order to gain organisational autonomy but often finds itself competing with consultation firms. Third, the member firms largely took hold over the *representation of sectoral interests*. At first, the EA staff had to report on almost every single meeting with state actors. The member firms restricted the representation of interests via the association to generic sectoral issues in which they held similar or parallel interests. The high degree of sectoral economic regulations has important consequences for the internal negotiations: Because the fundamental questions of market access, price formation and network access are fixed tightly by law the utilities and the EA are hardly left room to manoeuvre. As in the German sectoral association, joint positions are usually not arrived at by majority decisions but by consensual decisionmaking.

In a marked contrast to foundation of the Electricity Association, the establishment of the *Association of Electricity Producers* in 1987 was a pluralist attempt of small independent generators to attain a better market access in the nationalised regime. The founding members were not even informed about the privatisation plans of the British government (Int. AEP). As a result of sectoral privatisation its membership greatly increased. The AEP now has about 100 firms, research institutes, and associations as members. Firm members range from small renewable generators to the CEGB successors. The association is also an important forum for renewable generators.

The privatisation also changed the associational organisation of the industrial energy consumers and generators: Until the privatisation of the sector, the industrial consumers were only organised in the CBI Energy Policy Committee that is an important forum for communication between consumers and producers. However, the Electricity Association is not present in the committee but only the large sectoral firms (Int. CBI) which reflects the central position of large firms in the CBI's membership. The privatisation process also induced the formation of several associations for industrial consumers: In 1989, based on prior informal patterns of co-operation, ten energy intensive industries formed the Energy Intensive User Group UK (EIUGUK). which functions as a „talking shop“ for its members and provides mainly a forum for them to present their position (Int. EIUGUK). Moreover, medium-sized to large industries founded the Major Energy Users' Council (MEUC) which organises about 160 large water and electricity consumers. The MEUC is a member to the EIUGUK so that both

bodies cooperate intensely and regularly formulate joint position papers. Finally, in 1995 the Utility Buyers Forum broke away from the MEUC to represent the interests of the medium-sized firms more strongly.

During the nationalised regime, the British government set up and sponsored specific household consumer committees in the supply areas of the regional electricity companies. This system was maintained in the privatised regime. The twelve Electricity Consumers' Committees are part of the sectoral regulatory institutions and their staff is picked by the Office of Electricity Regulation. The representation of the household consumers is thus financed and organised by the state's regulatory institutions. This tight coupling leads to the question if the consumers' interests are formulated independently from the regulatory institutions or if it has consequences for the committees' positions.

In sum, the privatisation process greatly transformed the organisation and the patterns of sectoral interest intermediation. The comprehensive scope of the reform and the re-organisation of the associational landscape are indicative of the reform capacity of the British state. On the one hand, the British government directly influenced the organisation of the sectoral associations by octroying the Electricity Association upon the sectoral actors and by continuing the system of household customer committees into the post-nationalised regime. On the other hand, a pluralist pattern of associational restructuring can be noted in the case of the generators' association and in the case of the industrial consumers.

### **3.2 The sectoral evolution in West-Germany:**

In a marked contrast to the British sectoral development, the evolution of the German electricity supply industry displays a remarkable degree of stability (MacGowan 1995: 140). Since early in the 20<sup>th</sup> century, it consists of a multitude of public, private and mixed ownership companies, whose activities are coordinated by contracts and associations. As a result of the federal structure of the German state, public ownership is dispersed across the Bund, Länder and the municipalities so that public law and economic regulation are much more important policy instruments than in Great Britain. The organisational segmentation and interlocking of policy formulation and economic regulation is indicative of the semi-sovereignty (Katzenstein 1987) of the German political system and precluded major sectoral reforms. On the federal level, the Federal Economics Ministry is responsible for the formulation of competition and energy policy while the Federal Cartel Office and the states' Economics Ministries are responsible for the implementation of economic regulation. The international variations in the

patterns of sectoral evolution and in the sectoral structures indicate that sectoral features do not determine the patterns of sectoral governance, but that they are mediated by national level institutional factors.

For the governance of the German sector, four mechanisms are of primordial importance: firms, ownership linkages, associations and contracts which perpetuate the exclusion of competition. The *Association of German Electricity Supply Companies* (Vereinigung Deutscher Elektrizitätswerke, VDEW) is very comprehensive. In 1995, it had 740 member companies responsible for about 99% of all electricity supply. In addition, sub-sectoral associations institutionalise specific intrasectoral cleavage lines and perpetuate sub sectoral orientations. The nine large utilities which make up the *Association of Grid Companies* (Deutsche Verbundgesellschaft, DVG) own most of the transmission grids and control inter-regional and foreign trade. In 1995, they accounted for 79% of electricity generation and for 33% of the distribution to the final consumer (Schiffer 1997: 163). This means that, despite the large number of firms, the sector is highly concentrated in generation and transmission. The size of the 'Verbundunternehmen' varies from large municipal firms, such as HEW AG Hamburg, Bewag Berlin to the two largest German utilities, the PreussenElektra AG and the RWE Energie AG. A network of interlocking ownership links the large utilities and the regional utilities (Klöcker 1985) and extends vertically into the coal and nuclear industries.<sup>4</sup> The 80 regional companies which are mainly organised in the *Association of Regional Energy Utilities* (Arbeitsgemeinschaft Regionaler Energieversorgungsunternehmen, ARE) accounted for about 10% of electricity generation, and 36% of distribution.<sup>5</sup> They depend heavily for their electricity deliveries on the large utilities. Ownership linkages also result in close cooperation between the ARE and the DVG. The almost 800 members of the *Association of Municipal Utilities* (Verband Kommunaler Unternehmen, VKU) accounted for 11% of generation and 31% of distribution. The VKU maintains interlocking directorates with the other municipal federations and has close relations with the gas and water association (Bundesverband Gas und Wasser) which also organises a multitude of municipal utilities. Compared to the ARE which has roughly the same economic weight the VKU is highly influential. First, its political weight rests on the position of the local authorities in the German public administration, 'local self-administration' (kommunale Selbstverwaltung) being

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<sup>4</sup> Until reunification, the RWE AG controlled about 80% of German light coal production.

<sup>5</sup> Several regional companies are integrated into the RWE Energie AG and are not members of the ARE.

constitutionally guaranteed. Second, and most importantly, due to the local party governments the local public enterprises have close ties with the different parties.

Among the different associations, there are well established 'channels of communication and conflict resolution' (Padgett 1990: 183). In general, the VDEW represents the whole sector and takes „the lead both in dealings with governments and the public representation of the sector“ (Padgett 1990: 179). The subsectoral associations and the large utilities emphasise that they act only unilaterally when the VDEW does not or cannot. Nevertheless, the high degree of the firms' interest differentiation across several dimensions - ownership, sub-sector group, size, function, primary energy base - renders the formulation of common positions on various issues difficult (Interviews ARE, VDEW, VKU, DVG, RWE Energie AG). The representative status of the VDEW is undermined by sub-sectoral associations as well as by the large utilities. Their investment power gives them considerable political weight and allows them to shape discussions which affect the whole sector as the transformation of the East German governance regime has proved (Richter 1996).

Large industrial consumers and generators are represented by the Association of Industrial Energy Consumers and Generators (Verband Industrielle Energie- und Kraftwirtschaft, VIK) which organises about 70-80% of industrial energy consumption and about 90% of industrial energy generation. Via their sectoral peak associations, many VIK-members are also represented in the Confederation of German Industry (Bundesverband der Deutschen Industrie, BDI), which provides a communicative forum because it also includes the members of the DVG. In 1979, under pressure from the Federal Economics Ministry and the Federal Cartel Office, the VDEW negotiated a sectoral association agreement with the VIK and the BDI. It lays down the principles governing the trade of electricity between utilities and industrial firms, and has been amended four times.

Summing up: In the UK, the change of economic policy doctrines caused and the centralisation of state power allowed two full-blown sectoral reforms. In Germany, the decentralised structure of the state and multiple negotiation pressures forestalled such efforts, and the evolution of the sector was much more continuous.

#### **4. The Europeanisation of the electricity supply industry**

##### **4.1. The regulatory reform at EC-level**

Until the mid 1980s, the EC hardly played a role in the formulation of energy policy (Andersen 1993: 138). Due to the member states' emphasis on their national autonomy in this policy area,

the role of the Commission's Energy Directorate General (DG XVII) was mostly restricted to the formulation of studies and forecasts. Only the Internal Market Programme encouraged the extension of the liberalisation rationale to the utility sectors which had previously been excluded from competition. But despite the hegemony of market integration, the European the Community institutions and the member states only agreed upon the sectoral reform after fierce and protracted negotiations between. These negotiations provide important evidence that the involvement in EC negotiations systematically alters the member states' preferences and transforms national resistance to a Commission proposal into support for an EC solution.<sup>6</sup> To be certain, the directive finally agreed upon contains several flexibilisation elements to take regard of member state interests and allow for implementation in different national settings: Below a certain threshold for industrial consumers (100 GWh/year), the member states may define themselves which consumers are eligible. They may also choose among different competition models. Nevertheless, at its core the directive requires the member states to open their national markets in a stepwise process: Between 1999 and 2003, they must gradually open their markets from around 25% to around 33% of national consumption. Thus, with the exception of the British sector, the European regulatory reform fundamentally altered the market environment of the utilities and radically changed their politico-administrative environments.

#### **4.2 The Europeanisation of the associational landscape**

Until the late 1980s, the associational organisation of the electricity supply industry displayed a remarkable stability. From early on, the utilities had co-operated in international technological associations and conferences to develop uniform standards and organise the cross-border exchange of electricity. But now, the prospect of liberalisation was a fundamental challenge to the established sectoral practices. Until the Commission initiatives, the utilities were deeply embedded in their national settings and had developed close ties with the national political actors. To them, the Commission proposals meant a threatening new policy that aimed at the overhaul of the sectoral arrangements at the national level. The overwhelming majority of the utilities wanted to preserve their national regimes and associated the prospect of liberalisation with substantial costs and the reshuffling of the established governance regimes. They also did not longer perceive their economic and political clout on the national level and their close

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<sup>6</sup> For the institutional mechanisms leading to the change of member state preferences, see Eising 1998.

relations to the national political actors as sufficient to defend their interests. As a consequence, the international associational arrangements were *re-organised*.

Accordingly, based on prior co-operation in a rather technical international association UNIPEDE (Union Internationale des Producteurs et Distributeurs d'Energie Electrique) high-ranking representatives of major utilities from the EC member states developed plans for an EC association.. Now, they came to regard UNIPEDE as inadequate to put forward counter-proposals to the Commission offensive. In 1989, the *European Grouping of the Electricity Supply Industry (EURELECTRIC)* was set up, to organise national associations as well as utilities. This initiative was also welcomed by the Commission Energy Directorate General (DG 17) which wanted a comprehensive European interest organisation as a genuine interlocutor in order not to have to enter into negotiations with every single member state association or utility. As a consequence of this organisational reform, UNIPEDE's organisation was heavily reformed and its functional tasks were severely curtailed. In 1998, even its organisational basis was removed from Paris: It was relocated to Brussels to form a joint Secreteriat with EURELECTRIC.

In addition, in 1992 local public energy suppliers from five member states formed the *Confédération Européenne des Distributeurs d'Energie Public Communaux (CEDEC)* under the strong leadership of the German VKU. It vehemently opposed the Commission's proposals and emphasised the public service duties of utilities because of its members' linkages with the localities (Interview CEDEC). In contrast to most of the EURELECTRIC and CEDEC members, some utilities perceived the Commission initiative as an opportunity to reform their old regimes: Several rather small electricity distributors hoped to benefit from the EC regulatory reform and to improve their market position by reducing the dependence on their monopoly suppliers. In 1991, predominantly Spanish and French distribution companies formed the *Groupeement Européen de Sociétés et Organismes de Distribution d'Energie (GEODE)*. The GEODE members wanted to obtain rights to generate electricity themselves and to purchase it from generators of their own choice. In a similar move, Dutch distributors had already initiated legal cases against the trade monopoly of the Dutch transmission company in the 1980s.

Of these three associations, EURELECTRIC has the advantage of being very comprehensive. It represents about 95% of the EC's electricity utilities. But as in many other EC associations, this goes hand in hand with a disadvantage: Its membership is very heterogeneous. The

national differences rendered the formulation of a common position and an active representation of interests difficult. Therefore several large utilities, such as Electricité de France, RWE AG and VEBA/Preussen Elektra AG, and some national associations such as the VDEW and the British Electricity Association, set up their own offices in Brussels. The British large firms did not open offices in Brussels but operated either directly from their headquarters or used consultancies. Throughout the liberalisation process, EURELECTRIC was restricted to a defensive position because of the *cleavage lines* within the association. Initially, the internal conflict was mainly based on the institutional differences of the member states' sectors and ran between the „continental“ and the *British members* of the association. The large majority of its continental members advocated the value of the status quo (EURELECTRIC 1991) while its British members supported the Commission proposals from the outset because the British sector had already been liberalised. But gradually, the debate on the EC level raised the awareness of an uneven distribution of costs and benefits of the regulatory reform not only among the EURELECTRIC members but also within the national sectors. As a consequence, *genuine economic interests* came to the forefront of the internal negotiations and forestalled the formulation of joint position papers also among the continental members.

Despite their largely similar responses to the Europeanisation of policies, both national associations differ greatly in their *assessment of their access to the EC institutions*. While the British Electricity Associations regards the EC system as more accessible and possibly even „more transparent than the British system“ (Int. EA), the German VDEW bemoans that it only learns of Commission initiatives once they are labelled as COM-documents. These contradictory assessments are to some degree surprising because both associations organise almost their whole national sectors and have a great economic weight in their member states. Moreover, in absolute terms the German sector clearly outweighs the British sector and might therefore have even better access than the British sector. Thus, organisational attributes and sectoral economic weight do not explain these different judgments. I will trace these contradictory assessments to *differences in (1) the cohesion of the sectoral actors, (2) in the role of the associations as coalition partners of the EC institutions, and (3) in the national policy styles*.

First, the impact of the EC liberalisations differed sharply in the two member states. While the British sector had already been liberalised, the German regime required major adaptations. Thus, the sectoral firms in Britain supported the EC liberalisation in almost every aspect, and,



therefore, the Electricity Association could represent the whole British sector on the EC level. In a marked contrast, the European reform opened up major cleavages within the German sector. While the municipalities and their associations rigidly defended their local monopolies, the large utilities gradually opted for the liberalisation of the sector in order to intrude into the municipal firms' markets. Therefore, the VDEW could only to a limited extent represent the German industry and had only a narrowly defined mandate on the EC level. This problem was even reinforced by the action of the sub-sectoral groups on the EC level: The German localities were present on the EC level via CEDEC and the large utilities relied on their own offices in Brussels. In addition, the three largest firms (Bayernwerk AG, RWE Energie AG, PreussenElektra AG) also coalesced on the EC level.

Second, the associations' roles as coalition partners for the EC Commission and the European Parliament contrasted greatly: On the one hand, the VDEW was not only internally divided but also opposed the Commission proposals. On the other hand, the Electricity Association was one of the very few sectoral actors which supported the move towards competition. Thus, it formed a major coalition partner for the Commission which else could only rely on the support of small and in their national systems rather impotent distributors in France, Spain and the Netherlands. Therefore, the European Commission granted a privileged access to the supportive Electricity Association and even to GEODE whose representativeness and economic weight are rather negligible. In a marked contrast, the Commission temporarily even denied access to EURELECTRIC which represents almost the whole sector.

Finally, before the EC initiative, the standing of the national associations on the national level had greatly differed. The German state actors who are open towards large and encompassing economic associations regarded the Vereinigung Deutscher Elektrizitätswerke as an important sectoral interlocuter. In contrast, not only had the British state actors pursued the privatisation of the sector in a top-down manner characteristic of the potential of the British government for secrecy and closure. Following privatisation, the British EA could only play a marginal role in the representation of the sectoral interests because it had been imposed upon the sectoral firms. Deliberately, the association's office in Brussels should only function as a „listening post“ and was not granted any autonomy in the representation of interests. Only as a consequence of the central role of the EA in the European debate, the function of the office was upgraded to „act for us in confidentiality“ (Int. National Power). Thus, to some degree, the European debate has evened out the differing starting positions of the sectoral associations.

In the United Kingdom, the upgrading of the Electricity Association was reinforced by changing practices of interest intermediation on part of the British government. Traditionally, in Great Britain, the role of associations is considered as being less important than the role of firms in the intermediation of interests. The United Kingdom was often regarded as a company state (Grant 1993). However, in recent years, already starting under the Conservative government, the Department of Trade and Industry tries to reassert its previous sponsorship role (DTI 1995: Ch. 4) to strengthen sectoral competitiveness. In the context of this concept, the DTI also demands a greater role for associations. On the hand, the government considers associations as agents for the diffusion of „best practices“. On the other hand, the administration hopes that encompassing associations are also able to formulate comprehensive sectoral positions and let sectors speak with one voice (DTI 1995: Ch. 4.57).

Thus, both the Confederation of British Industry as well as the Electricity Association confirm that the DTI has changed its patterns of consultation in recent years: „The government wants comprehensive in depth views by encompassing associations rather than multiple views from different small associations“ (Int. CBI; DTI; EA). In order to strengthen the comprehensiveness of the sectoral associations, the DTI has even suggested to fusion the Electricity Association with the Association of Electricity Producers (AEP). However, this attempt failed even if the two associations now co-operate extensively by informal ways and means.

### **4.3 Multi-level settings and national associations**

The previous section provided evidence that the sectoral actors re-organised the associational landscape to represent their interests at both the European and the national levels of government. These *organisational change* and the new embeddedness in a multi-level system of governance have important consequences for the processes of sectoral opinion formation: First, the national representatives in the EC association need some room for manoeuvre in order not to forestall conceivable compromises at the EC level which entails a loss of control of the regular members over the sectoral delegates at EC level. This means that national delegates on the EC level may undermine national positions in order to pursue their own interests. The sectoral actors are acutely aware of this problem which is of particular salience if their positions differ greatly.

This problem is exacerbated by the dynamic character of the EC policy debates and the often technical character of EC policymaking. Due to the temporary speeding up of decision making

procedures, position papers must often be provided very quickly. Thus, the staff of the national associations as well as the leading firm executives in the relevant committees often work directly with the EC institutions and associations without further consultation of other members. Thereby, the heads of committees and working groups gain a dominant position with regard to the other members. Because the EC policies often involve a great degree of technical or economic complexity, the firm delegates gain even more leverage: In such issues, the staff of the national associations is often unqualified to represent the sectoral interests in the European association.

To come to grips with the control of delegation, the two associations follow specific *organisational practices*. While in the VDEW, these practices are based on established routines, the embeddedness in the EC negotiations has even contributed to the evolution of certain practices of delegation in the British Electricity Association. First, in both associations, the *neutrality of the staff* vis-à-vis different firms and sub-sectoral cleavage lines is regarded as being crucial. The staff of the VDEW and the Electricity Association is often attributed a mediating role in these issues. Second, beyond the formal representative criteria, it is considered as very important that the *heads of the committees must be loyal to the overall sectoral interests* and rather not speak for their own firm or for a particular sub-sectoral group. Thirdly, the associations *search for consensual positions* that all of their members can accept and which delimit the scope for negotiations on the EC level. Such concepts have an important two-fold function. Internally they help maintain the unity of the association and stop disintegrative trends. Externally, they demonstrate the unity of the sector to the political actors and to other sectors. However, here the practices of the two sectoral associations diverge: Its long practice of interest intermediation has led the German VDEW to search always for consensual positions even if these only reflect the ‘least common denominator’. In case of deviating positions on contested issues, the sectoral peak association only refers to such differences but does not name them explicitly. In a marked contrast, the EA clearly names the „supporting and dissenting views“ in case of conflicting positions to allow for a clear assessment of problems rather than formulate a vague position paper (Int. EA). Fourthly, in both countries the proportional representation of sub-sectoral groups in the associations’ committees and work shall contain the undermining of sectoral positions: In the Electricity Association, this is mainly confined to the EA committees and working groups. Representation at EC level is monopolised by the large utilities and the associational staff. In Germany, the

nomination of VDEW delegates at EC level also aims at a proportional representation of the sub-sectoral groups at the EC level: Each of them is represented within either of the three EURELECTRIC working sections. Finally, both associations deviate in the degree of control that is enforced upon the firm delegates at EC level: In the Electricity Association, a staff member of the association is often present in the EC level negotiations as a „watch dog“ to control the firm executive representing the British sector while such a practice does not exist in the German association.

#### **4.4 The Europeanisation of policies and the change of national state-sector relations**

The Europeanisation of policies does not mean that the national route of representing interests becomes obsolete for the sectoral actors (see also Sidenius 1999). The representation of interests on the EC level does not fully replace national level action. As in other policy areas and sectors, the national firms and associations responded to the prospect of Community policies in four ways: First, they set up new EC associations. Second, the national associations from the UK and Germany are themselves present in Bruxelles. Third, the firms and the sub-sectoral groupings also represented their interests vis-à-vis the Community institutions. Finally, the sectoral actors also represented their interests vis-à-vis the national state actors.

The heterogeneity of the member states' electricity sectors and their different interests made the national route of interest representation all the more important even the member states no longer hold a veto position in the EC level negotiations. Thus, the Europeanisation of sectoral action did not lead to the disintegration of the national patterns of sectoral interest intermediation (e.g. Sidenius 1999). The salience of the issue meant that the number of contacts between the sectoral associations and firms and the national leading ministries even increased. Thus, for the sectoral actors, the national leading ministries were still the main contact partners in the European debate (Int. VDEW, VKU, RWE Energie AG, DVG, Electricity Association, National Power, PowerGen). It is particularly during the period of Council negotiations that the Federal Economics Ministry and the Department of Trade and Industry become the main targets of their lobbying efforts. The national ministries also consulted the sectoral actors themselves to gain information and expertise for the preparation of their Council meetings. However, in both countries the concertation efforts were largely confined to the sectoral actors, the industrial energy consumers and the national peak associations of industry.

In the United Kingdom, the Department of Trade and Industry initiated a working group consisting of the Electricity Association, the Association of Electricity Producers, the Confederation of British Industry and the large sectoral firms (Int. DTI.). Both the state and the sectoral actors largely supported the EC liberalisation. The mutual consultations during the EC negotiation process intensified the relations and strengthened consensual orientations. According to the Department of Trade and Industry, the European policy debate transformed the Electricity Association into „a major contact partner of government“ (Int. DTI). The sectoral firms also regard the EA now as „the first source of information on Europe“ (Int. Eastern Electricity). Compared to the prior regime and the immediate post-privatisation experience, the relations are now considered as being closer, more consensual and much more informal than during the era of the nationalised industry. In short: *In the UK, the state-sector relations are more integrated today due to the Europeanisation process.*

In Germany, the Bundesministerium für Wirtschaft was at the center of the national negotiations. As in the UK, both the state and the sectoral actors initiated the contacts. But unlike the UK, the patterns of interest intermediation were not as strongly centralised and not particularly consensual: The high salience of the liberalisation, the cleavage lines within the German sector and the semi-sovereign set-up of the German state led the utilities to use multiple channels of influence: Other ministries were as well involved as the Office of the Chancellor, the Bundestag, the Bundesländer and the political parties. During the liberalisation process, two main coalitions emerged. On the one hand, the regional and inter-connected utilities were afraid that, due to their close contacts to the state actors, the municipalities would de facto be exempted from competition (Int. DVG). They also regarded the EC liberalisation as an opportunity to attack the control of the municipalities over the local supply areas. Such an opening of the municipal areas of supply was unlikely to come about in a national reform. Consequently, both the ARE and the DVG demanded that the municipalities be included in the liberalisation process. The pro-liberalisation coalition included the Federal Economics Ministry, the Federal Cartell Office (Bundeskartellamt), the Free Democratic Party and the industrial energy consumers. On the other hand, the localities and their firms and associations mobilised the Social Democratic Party and the respective Länder governments as well as the Office of the Chancellor and the Federal Ministries of the Interior, Finance and the Environment to defend their local monopolies.

Throughout the debate on both the EC and the national level, the *Federal Economics Ministry* deliberately tried to to enlarge its autonomy vis-à-vis the other national actors: First, it played „two-level-games“ (Putnam 1988) and tried to put forward negotiation pressures in the EC reform as an argument to open the German sector up to competition . It even put forward draft proposals to unilaterally liberalise the German sector. However, as a result of the resistance of the other ministries, the BMWi could not pursue its national reform plans and its attempts at submitting compromise proposals at the EC level during the German Council presidency were also thwarted by the other ministries (Int. BMF, BMI, BMU, BMWi.). Only the gradual negotiations within the Council allowed for a compromise at the EC level. Second, these multi-level negotiations were complemented by attempts to exploit the differences in the positions of the sectoral actors. Unlike the British Department of Trade and Industry, the BMWi consulted the sectoral actors also unilaterally to expand its negotiation power. Thirdly, in reducing the scope of the proposed national legislation for the implementation of the directive, the Federal Economics Ministry managed to avoid the necessity of the consent of the Bundesrat which, at that time, was dominated by the Social Democratic Party and the Greens.

Thus, in a marked contrast to the British pattern, the German regulatory reform was not initiated at the national level but was closely embedded in the European Commission's liberalisation initiative at the EC level. Prior attempts at reforming the industry in Germany had largely failed despite neo-liberal reform proposals (e.g. Emmerich 1978; Gröner 1975). As a consequence of the agreement on the European level, the the Federal Ministry of Economics could pursue the German reform. By introducing changes to the German competition law and the energy law, the German reform abolishes the long standing contractual arrangements which ensured the territorial and functional monopolies of the utilities. In several aspects, its scope goes beyond the EC reform. First, it does not restrict the range of eligible consumers. This means that, in general, household consumers as well as industrial consumers and distributors are now eligible to choose their supplier. However, as - in a marked contrast to the British reform - no provisions are taken that ensure the market access of domestic customers, competition will be limited to industrial consumers and electricity distributors. Second, it does not foresee a transition period. The market was opened fully in one step.

The account of the German decision making process indicates that arguments emphasising two level games and the self-binding practices of state actors in multi-level negotiations to gain autonomy vis-à-vis interest groups and state actors on the national level (e.g. Grande 1994;

Wolf 1999) need several qualifications: First, a *consensus must be achieved at the EC level* as a pre-condition for a strengthening at the national level. A significant gain of autonomy can only result from an agreement at EC level because the national policy debate is then transformed into an implementation debate. Second, the *degree* to which national state actors may gain *autonomy depends also on the set-up of the national institutional systems*. While in decentralised and interlocked political systems such as Germany, state actors may gain significantly in autonomy vis-à-vis interest groups, this is rather unlikely in highly centralised political systems such as the UK where radical reforms can be pursued in a top-down manner and against powerful interest groups. Third, the degree of autonomy also hinges upon the *contents and the specificity of the EC directives*: As EC directives often leave a high degree of flexibility and significant possibilities for choice to the national actors, the controversies may well be resumed during the transposition of the directives and their implementation in the member states as was the case in Germany. Finally, depending on the constellation of preferences, the *gain of autonomy vis-à-vis other national actors* may well be *outweighed by the negotiation pressures on the EC level*: This was particularly the case in France: The French Industry Ministry wanted only a minor reform of the French electricity sector and was able to force these changes upon Electricité de France. However, the EC level negotiations required it to open up the French sector to competition in a way that the Industry Ministry was not prepared to do.

## 5 Conclusion

While the British government had already reformed the electricity supply industry on the national level, the European liberalisation caused a major reshuffling of the sectoral regimes in all of the member states. The comprehensive scope of the British reform is indicative of the reform capacity of the British state. The British government even shaped the organisation of the sectoral associations in the privatised sector by octroying the Electricity Association upon the sectoral actors and by continuing the system of household customer committees. But also a pluralist pattern of associational restructuring can be noted in the case of Association of Electricity Producers and in the case of the industrial consumers.

The *Europeanisation of policies* transformed the national configurations and actor constellations into a multi level system. In the vertical and horizontal negotiations, the leading national ministries proved to be the central actors for the processes of interest intermediation on the national level and their scope for action was partly enhanced as the German reform

illustrates. The Federal Economics Ministry was able to formulate a comprehensive regulatory reform despite the internal negotiation pressures in the German state apparatus. But this argument must be qualified: First, a consensus must be achieved at the EC level as a pre-condition for an agreement at the national level. A significant strengthening of a constrained national ministry can only result from an agreement at EC level. If it cannot be attained, the leading ministry is also blocked at national level. Therefore, the national actors negatively affected by the policy proposals try to develop arguments which forestall an EC agreement. To sum up: The agreement at EC level and the German national reform were not alone based on the institutional strengthening of the Federal Economics Ministry in multi-level-negotiations, but hinged to a similar extent on the legitimacy of the liberalisation doctrine and the decoupling of the reform from the consent of the Federal Council (and the opposition parties).

Due to the Europeanisation of policies, the capacity for action of national interest groups is no longer limited to the national level but also extends to the EC. The perceived costs of the liberalisation proposals and their clash with the national regimes caused a major restructuring of the sectoral association set-up. The utilities and the national sectoral associations influenced the content of the EC debate, and built permanent as well as temporary coalitions with the various political actors at the EC and national levels. The organisational domains of the political actors and their policy orientations formed the basis of these coalitions. Thereby, the capacity for action of the leading ministries at EC and national levels can be strongly impaired. Moreover, national interest groups can introduce elements of the EC debate into the national context, in order to improve their standing. Thus, due to demands from the German municipalities, the 'French' Single Buyer model has been included into the German reform law.

Finally, the Europeanisation processes also impinge upon the patterns of sectoral coordination. In the national associations, the position of the firms' representatives in the committees is strengthened by their negotiating mandate in the European associations. With regard to policies on which sub-sectoral groups hold divergent opinions, the representation of the national sector in the EC becomes a difficult task. In order to prevent the national representatives from undermining the sectoral position in the EC association, both the Electricity Association and the German VDEW rely on established practices of coordination and on mechanisms of personal reputation even though there are some differences in the degree of control they exercise over the firm delegates. In sum, the involvement in EC policy raises the importance of informal and personal factors in the sectoral association, and equity,



trust, and fairness are strengthened as integrative mechanisms. Paradoxically, the demands on them become higher because the competitive forces among the member firms intensify and because the embeddedness in a multi-level system entails a loss of control over the national delegates.

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