Regulatory Challenges:
The Politics of Electricity Liberalisation in the EU, Ukraine and Russia (1990 - 2010)

Universität Hamburg
Fakultät Wirtschafts- und Sozialwissenschaften

Dissertation
Zur Erlangung des Grades der Doktorin der Philosophie
am Fachbereich Sozialwissenschaften
der Universität Hamburg
(gemäß der PromO vom 24. August 2010)

vorgelegt von

Katsiaryna Illiushchenia
aus Starie Dorogie (Belarus)

Hamburg 2014

Vorsitzender: Prof. Dr. Cord Jakobeit

Erstgutachter: Prof. Dr. Rainer Tetzlaff

Zweitgutachter: Prof. Dr. Detlef Nolte

Datum der Disputation: 28. Juli 2014

Acknowledgements

During the process of writing this thesis I received support, intellectually, morally and personally, from a number of persons. First of all, I would like to thank the staff and professors of the institutes that hosted me, namely the Institute for Political Science of the University of Hamburg, the Europa-College Hamburg, the Research Centre for East European Studies of the University of Bremen, the Kiev National University and, finally, the High School of Economics in Moscow. These institutions provided me with indispensable social and intellectual capital and offered a forum to discuss the issues this study confronts. The graduate colloquiums at the Research Centre for East European Studies of the University of Bremen and the Institute for Political Science of the University of Hamburg offered me an inspiring research environment of intelligent and creative young researchers.

I could not have written this thesis without the constant support of both my supervisors, Prof. Dr. Rainer Tetzlaff and Prof. Dr. Cord Jakobeit. My deep thanks go to both for their indispensable support and intelligent comments. Their motivating ideas and thoughts resulting from their own research areas and their open-mindedness motivated me to finalize the thesis.

Besides the academic circles, I am deeply indebted to Ukrainian experts from NGOs in Kiev who gave their time and attention and responded to my questions related to my empirical research. In particular, I want to thank Volodymyr Omelchenko from the Razumkov Centre, Dmytro Shulga from the International Renaissance Foundation, Arthur Denisenko from the National Ecological Centre of Ukraine, Ildar Gazizullin from the International Centre for Policy Studies, Roman Nitsovych from the Ua-Energy, Nataliya Andrusevych from the Society and Environmental RAC, Zoriana Mishchuk from the ENENGO "MAMA-86" and Michael M. Gonchar from "Nomos".

The most important backing came from my family. In this context I would like to deeply thank my parents, Ludmila and Vasilij Illiushchenia, and my sister Veronika.

Last but not least, I am grateful for the financial support of the Konrad Adenauer Foundation that has bolstered this project from the beginning.

Table of Contents

List of Tables and Figures
List of Tables

List of Figures

List of Abbreviations

ACER	Agency for Cooperation between National Energy Regulators (in the EU)
CEDEC	European Federation of Local Public Utilities
CEER	Council of European Energy Regulators
CHPP	combined heat and power plant
CIS	Commonwealth of Independent States
DG	Directorate General (unit of the European Commission)
DSC	distribution sales company
EC	European Communities
ECC	Energy Consultative Committee (in the European Union)
ECJ	European Court of Justice
ECT	Energy Community Treaty
ECU	Energy Company of Ukraine
EdF	Electricité de France (state monopoly company on electricity)
EIUG	European Innovative Users Group
EMCEF	European Mine, Chemical and Energy Workers' Association
ENTSO	European Network for Transmission System Operators
EP	European Parliament
EPSU	European Federation of Public Service Unions
ERGEG	European Regulators' Group for Electricity and Gas
ETSO	Association of Independent Network Operators (in the European Union)
EU	European Union
Eurelectic	European Grouping of the Electricity Supply Industry
FEC	Federal Energy Commission (in Russia)
FGC	Federal Grid Company (in Russia)
FIG	financial industrial group
FST	Federal Service for Tariffs (in Russia)
GOELRO	State Committee for the Electrification of Russia (in the Soviet time)
GWh	gigawatt-hour
HHI	Herfindahl-Hirschman Index for measuring concentration in the electricity market in terms of capacity

IAEA	International Atomic Energy Agency
IFIEC	International Federation of Industrial Energy Consumers
ISO	Independent System Operator
ITO	Independent Transmission Operator
LTC	long-term contract
MEP	Member of the European Parliament
NCC	National Control Company (system operator in Russia)
NDC	National Dispatch Centre (in Ukraine)
NEC	national energy company
NERC	National Electricity Regulation Commission (in Ukraine)
NGC	National Grid Company (in Russia)
NOREM	Wholesale Electricity and Energy Market (in Russia)
OGK	federal wholesale generator (in Russia)
PGC	power generating company
PPA	power purchase arrangement
REC	Regional Energy Commission (in Russia)
RUIE	Russian Union of Industrialists and Entrepreneurs
SC	sales company
SO	System Operator
SOGC	State Oil and Gas Committee (in Ukraine)
SPF	State Property Fund
TGK	wholesale territorial generator (in Russia)
TNC	transport network company
TPA	third-party access
TPP	thermal power plant
TSA	Trading System Administrator
TSO	Transmission System Operator
UAH	Hryvnia (Ukrainian currency)
UES	unified electricity system
UNEG	Unified national electricity grid (in Russia)
UNICE	Union of Industrial and Employers' Confederation of Europe
VIK	Verband der Industriellen Energie- und Kraftwirtschaft (Germany)
WBG	World Bank Group
WEM	Wholesale Electricity Market

1. Introduction
1.1 Aim of the Study and State of the Research

This study discusses the outcomes of the reforms which liberalised the electricity industries in Western and Eastern Europe through analysis of institutional conditions as well as public policy in different national settings. Deregulation of infrastructure sectors such as electricity, telecommunications, aviation, railways, etc. and substitution of the monopolies with the competitive market models has been one of the most significant trends in the world economic policy since the 1980s. The major philosophy behind the deregulation of the traditionally monopoly-dominated infrastructure sectors was the economic belief that free competition between infrastructure companies would lead to large efficiency gains, lower prices for all groups of consumers, economic growth, increased welfare and, as a result, a more competitive position of national companies in the globalized international economic arena. Thus, Barte (2005, p. 6), who wrote a study about electricity deregulation policy-making in the EU, argues that "the context, be it globalization, technological change or socio-economic factors, has a decisive impact on key actors whose interests can be understood as rational responses to the context". Hirsh (1999) uses the same explanation of the regulatory change in the electricity industry in his study about the deregulation of the American electric utility system:

> By the end of the century, however, technological change discredited the central tenets of the consensus and contributed to the downfall of utility elites. Change manifested itself as technological stasis, the end of previous trends towards increasing thermal efficiency and economies of scale in standard generating hardware. By itself, the reversal of historical patterns would not have contested the rationale for utilities' natural monopoly status unless other producers could generate electricity at comparable costs. But in other embodiment of technological change, independently owned cogeneration units and small-scale renewable energy facilities evolved rapidly, and they produced electricity as cheaply (or more cheaply) than could utilities (Hirsh 1999, p. 262).

Western and Eastern European countries have followed the world trend in the liberalisation of national electricity industries. Countries in the EU agreed to liberalise the national electricity markets in 1996. The first EU electricity directive introduced an accounting separation of electricity generation, transmission and distribution assets as well as the possibility to choose between three models of the liberalised electricity market organization –single buyer, negotiated third-party access and regulated third-party access. Ukraine decided to introduce

reforms into the power engineering sector in the middle of the 1990s, taking the British model of power sector restructuring as an example for the reform. The president's 1994 and 1995 decrees, in conjunction with the 1997 Law on Electricity, introduced the accounting unbundling of electricity assets, as well as the pool model of the organization of the electricity market. Russia, as well, introduced the liberalised model to the organization of its electricity market. In accordance with the corresponding decrees of the president, the accounting separation of electricity generation, transmission and distribution assets, as well as the pool model of the organization of the electricity market, were introduced in 1992. Therefore, under the impact of globalization tendencies the EU counties, Ukraine and Russia have decided to liberalise their national electricity markets.

However, the implementation of these first steps towards liberalisation, as well as further reforms that are required for the establishment of truly liberal electricity markets varied to a large degree between Western and Eastern European countries. Thus, during the 1990s and 2000s, the EU countries agreed to establish fully competitive national electricity markets and introduced competition into the power generation, effective separation of electricity generation, transmission and distribution assets as well as the right of all groups of consumers to freely choose their electricity suppliers. In 2003, Russia introduced a law regarding the establishment of a fully competitive wholesale electricity market and abandoned the state monopoly of the electricity industry in 2008. Up to this point, a hybrid form of the functioning of the electricity market had been established in this country, with generation companies owned by the largest firms, which were few in number and under control of the state. Finally, despite the 2002 adopted concept of the fully competitive electricity market, Ukraine failed to replace the old hybrid form of electricity market organization, which combined the monopoly and the pool models and had been implemented at the end of the 1990s, with more liberal models. These differences in outcome are puzzling because initial reform directions in all countries were similar. The purpose of the study is to address this conundrum.

There is already a large amount of literature that discusses the policies of electricity sector deregulation in the countries of Western Europe (Vickers and Yarrow 1991, Schmidt 1998, Bergman et al 1999, Eising 2002, Bartle 2005, Jamasb and Politt 2005, Anderson 2009, et al.). There are three major lines of argumentation in this literature on the way of explaining the liberalisation of electricity industry on the EU level. Some studies use the intergovernmental explanation and argue that the Member States were major policy-makers within the European arena and that they decided on the scope and character of deregulation policies in the electricity sector. Thus, Levi-Faur (1999, p. 182) argues that the European electricity regime that was

established after the adoption of the first electricity directive was intergovernmental because the standards were set by intergovernmental bodies and there was mutual recognition of certification and tests among the Member States. Furthermore, the regime allowed the governments to make their own choices, not only in the areas that were covered by the first electricity directive on the European level, such as ownership of electricity assets and electricity tariffs, but also with regard to critical questions which were not covered, such as control over third-party entry into national electricity markets (Levi-Faur 1999, p. 190).

A constructivist reading disagrees with the logic of intergovernmentalism and emphasizes preference changes of the Member States during extensive and consensus-oriented Council negotiations. Thus, Eising (2001, 2002) argued that intergovernmentalism could account for neither the unanimous agreement of the Member States on the first and second electricity directives nor the fact that some Member States liberalised their markets entirely, rather than only partially, as the EU directives required. Instead, Eising (2002, p. 87) argued that strategic interaction of the Member States unfolds in the normative context created at the European level. Such a normative and institutional context alters the actors' endowments and opportunities and facilitates their policy-learning by increasing the amount of information available about policy consequences. Eising (2002) pays particular attention to the vertical differentiation within the Council system that consists of working groups and the negotiations between the heads of states and governments and implies that the decision criteria can be broadened to overcome issue-specific rigidities.

Finally, the third line of argumentation highlights the autonomous actions of supranational institutions created at the EU level, in first line of the European Commission, European Parliament and the European Court of Justice, as well as the effects of the EU institutional sphere on national positions and preferences. Thus, Eising and Jabko (2001, p. 746) argue that the EU changed the institutional context of actors' interactions because the Member States were placed in the position of negotiating over the electricity liberalisation agenda that was set by the European Commission and collectively negotiated within the Council of Ministers. Moreover, the configuration of interests at the EU level inevitably differed from domestic-level patterns of interest representation and opened up certain policy options and foreclosed others during the negotiations on electricity liberalisation. The resulting opportunities and constraints shaped the preferences and the strategies of state actors. This happens due to the EU's "thick" institutional environment that partly operates outside the formal decision-making framework of the treaties and leads to informal understandings that facilitate the convergence of actors' preferences (Eising and Jabko 2001, p. 747).

By contrast, the electricity sector restructuring in Eastern Europe has not yet been the subject of a broad comparative analysis. Most of available empirical literature such as Ryding (1998), Hirschhausen and Vincentz (2000), Lovei and Skorik (1999), Polamarchuk at al (2001), Aslund (2002), Aron (2003), Polamarchuk and Voropai (2005), Gore et al (2012) discusses difficulties of restructuring and liberalising electricity industries in Eastern European transformation countries but they did not explain the policy outcomes. Only the minority of studies attempt an *explanation* of the policy outcomes of the liberalisation reforms in the power engineering sector without, however, providing a systematic analysis in a comparative regional perspective. Thus, the study of Hirschhausen and Opitz from the Deutsches Institut für Wirtschaftsforschung took an institutional approach to studying power utility restructuring in East European and CIS transformation countries and argued that the radical systemic and institutional change in Eastern Europe and the worn-out state of the post-socialist infrastructure explained the failure of electricity liberalisation in these countries in the 1990s (Hirschhausen and Opitz 2001). Wengle (2012) in the examination of Russia's electricity sector restructuring during the 2000s argues that the patterns of market institutions that have emerged in Russia's liberalised electricity sector during this period cannot be adequately explained by seeing the state as captured by oligarchic interests. She developed the term "post-Soviet developmentalism" to explain the specific policy outcome of electricity liberalisation policy in Russia in the 2000s. According to Wengle, new market institutions that emerged in Russia as an outcome of electricity liberalisation policies rested on certain types of bargains between the government and Russia's powerful economic conglomerates and were, therefore, the result of the Russian state enlisting conglomerates for its developmental agenda (Wengle 2012, p. 76).

Different analytical approaches to studying the deregulation reforms of electricity industries in Western and Eastern European countries have concentrated on different problems and discussions. This leads to the conclusion that these analyses were conducted in a separate way and that no broad and systematic discussion of liberalisation trends in infrastructure industries in Europe where most of the countries have chosen the similar path to reform but had very different policy outcomes has been produced. For all these reasons, this study, first, employs the single theoretical perspective for studying policy processes of restructuring the infrastructure industries in Western as well as Eastern Europe. Second, this study introduces a systematic discussion of electricity liberalisation processes in EU countries, Ukraine, and Russia between 1990 and 2010.

1.2 The Research Question and the Research Outline
1.2.1 The Research Question and Analytical Concepts

This study attempts to produce a systematic policy analysis of the restructuring of the electricity sector in the EU and countries of Eastern Europe (Ukraine and Russia) between 1990 and 2010 (compare in Table 1.1).

Table 1.1 Research Designs of Policy Network Analysis and Policy Analysis

	Dependent Variables	***Independent Variables***	
		Stable	***Changeable***
Policy Networks Analysis	Behaviour/ Strategies	Policy Issues/ Outcomes of policy-making	Power, Positions, Resources
Policy Analysis	Policy Issues/ Outcomes of policy-making	Structures/ Institutions	Interests/ Behaviour

Source: Schubert 1995, p. 225.

The research inquiry of the study is: *How does the political context (which consists of political structures and institutions in which politics occur and policy actors' interests and behaviours) explain considerable differences in the outcomes of electricity liberalisation policy-making in Western Europe (the EU-example) and Eastern Europe (the comparative example of Ukraine and Russia)?*

The main argument of the study is that differences in institutions and policy structures from one side and in interests and behaviour of relevant policy-making actors from the other side account for differences in policy outcomes across states. Accordingly, formal and informal political and social institutional settings shape the preferences and actions of main decision-making actors. Country-specific institutional settings primarily define the degree of access, which different actors have to policy-making. In turn, the changing preferences of policy-making actors have an impact on the actions of other policy-making actors and cause their preferences to change.

In studying the impact of formal and informal institutional settings and policy-making actors' preferences on policy outcomes, the study employs Mayntz and Scharpf's actor-centred institutionalism (1995, 1997) for a number of reasons. First, actor-centred institutionalism aims at interaction-oriented research to explain past policy choices and to produce systematic knowledge that may be useful for developing politically feasible policy recommendations or for designing institutions that will favour the implementation of policies in the public's interest

(Scharpf 1997, p. 43). This purpose of the framework strongly coincides with the aim of the study.

Second, actor-centred institutionalism pays attention to both the importance of the Member States of the European Union (EU) in the decision-making process, as well as the increasing role of the Brussels-based interest groups on one side, and the autonomy of European institutions in policy-making on the other side. Because of this possibility of discussing the preferences of all possible relevant policy-making actors and ascertaining their impact on one another without excluding some actors because of theoretical considerations, actor-centred institutionalism stands in a preferential position when compared to other well-known approaches in analysing policy-making at the EU level, such as supranationalism, which largely disregards the role of the Member States, and intergovernmentalism, which disregards the autonomous role of the European institutions. The framework of actor-centred institutionalism, therefore, can be applied in an equal degree to separate national states as well as to complicated multilevel decision-making systems such as that of the EU.

Third, actor-centred institutionalism places the preferences and actions of actors into specific formal and informal institutional settings by arguing that policy outcomes tend to be those "appropriate" to the institutional environment rather than those which are a rational response to technological and economic imperatives. In other words, institutional contexts, as forms of established and developed rules of the game that vary cross-nationally and intertemporally, put constraints on actors' behaviour by regulating their degree of access to policy-making (Steinmo 2008, p. 121). As Scharpf (1997) argues,

> Social phenomena are to be explained as the outcome of interactions among international actors – individual, collective, or corporate actors, that is – but these interactions are structured, and the outcomes shaped, by the characteristics of the institutional settings within which they occur (Scharpf 1997, p. 1).

Therefore, actor-centred institutionalism adds an additional analytical and explanatory category of country-dependent and time-dependent social and political institutional contexts and introduces the possibility of discussing, with greater precision, the outcomes of policies that strongly differ across countries and time frames.

Finally, actor-centred institutionalism provides a conceptual scheme for discussing the capacity of given decision-making systems for solving given policy problems. It suggests systematically combining analyses of actors' constellations with the analysis of modes of their interaction. If actors' constellations, in other words, actors' divergence or convergence in

preferences can be revealed during substantive policy analyses, the framework of actor-centred institutionalism provides the analytical categories of four modes of actors' interaction that allow structuring analysis and make cross-country comparisons (See Chapter 2 for discussion on modes of actors' interaction).

To conclude, in using the explanatory potential of actor-centred institutionalism the study attempts to explain the outcomes of electricity liberalisation in the EU, Ukraine and Russia through specific policy interactions. The purpose of the study is, therefore, twofold. From one side, it attempts to apply the framework of actor-centred institutionalism to different political systems of Western and Eastern Europe and, therefore, to broaden the applicability of the framework in discussing the problems of post-Soviet states. Second, it attempts to produce more knowledge about specific policy interactions between actors in the electricity liberalisation policy-making in the EU, Ukraine and Russia and their effectiveness. However, the study does not make more general conclusions about the capacity of different types of institutional structures to deal effectively with different types of policy problems. These general claims can, according to Scharpf (1997, p. 49), only be justified "through the successful explanation of important puzzles in empirical policy research".

The detailed research design is provided in Chapter 2.

1.2.2 Case Selection and Contribution to the Research

The purpose of the study is to analyze the reforms of electricity sector restructuring in Western and Eastern Europe within the single analytical framework. The countries from Western and Eastern Europe had common regulatory problems at the beginning of the 1990s and decided on similar initial reforms with the purpose of liberalising their national electricity markets. However, the outcomes of reforms at the end of the 2000s varied largely in degree.

The cases of the EU, Ukraine and Russia were selected on the basis of their variations across the independent variables provided by the framework of actor-centred institutionalism. First, institutional contexts in which the electricity reforms were conducted were different in Western and Eastern European countries. In Western European countries the reforms were conducted at the EU level. The EU's "thick" institutional context, state actors' policy-learning during the Council negotiations, and the actors' preference for interaction in the form of negotiated agreement have defined the outcomes of the national reforms in those Member States, the majority of whose policy actors did not support the electricity sector liberalisation, in first line in France and Germany. The first evidence of that policy-learning is the fact that some

Member States have exceeded the minimum requirements of the first EU electricity directive when implementing it. One prominent example was Germany, which fully opened its electricity market to competition in 1998 despite the requirement of the EU electricity directive of a 30% market opening. Likewise, France's policy preferences in electricity liberalisation at the EU level have been gradually changing as well. Thus, during the negotiations on the second electricity directive, France took the position of the majority of the Member States that the single buyer model it had preferred during the 1990s was not an effective instrument for the establishment of a liberalised electricity market. It agreed on the legal unbundling of electricity generation, transmission and distribution assets, a position that would have been unbelievable for France in the middle of the 1990s.

The case of electricity liberalisation in EU countries represents the successful story of liberalisation of electricity industries that resulted from the negotiated agreement as a prevailing mode of actors' interaction with the elements of the bargaining between the Member States that happened at the supranational level of policy-making.

Out of the East European and CIS transformation countries, Ukraine and Russia were chosen as case studies. Ukraine and Russia represent a comparative case study of the modes of actors' interaction on the electricity liberalisation policy-making. First, both of these countries have inherited the Soviet legacies in the national institutional contexts that caused a number of similar path-dependent decisions in the 1990s. At the beginning of the 1990s, neither country possessed the institutional elements that were necessary for effective governance and effective policy-making, such as rational-legal autonomous civil service, effective legal institutions that constrain actions of executive authority, or a system of institutions that hold political authority accountable vertically and horizontally (in the first line free elections, strong civil society and media as well as effective law-enforcement), all of which they slowly developed after the fall of the Soviet Union. Second, both countries decided on the same model of electricity market liberalisation in the first half of the 1990s and the impact of external forces, such as the incentive of accession to the EU, were equally minimal to them.

In the 1990s, a large number of vested interests in Ukraine and Russia, which preferred to preserve the status quo in the electricity sector of the economy, put serious constraints on the electricity liberalisation politics of the governments of both countries which attempted hierarchical direction of the reform process. Under such circumstances, the governments made the decision to bargain with business interests and regional leaders and together devised a plan that could be passed into law by the parliament. However, the bargaining and the negotiations with parliament were unsuccessful and the government's plan to introduce the liberalised pool model of the functioning of the electricity market has failed in both countries.

In the 2000s, on the contrary, there were the changes in the national institutional contexts in Ukraine and Russia, which impacted the differences in the modes of actors' interaction on electricity liberalisation policy-making and have led to different policy outcomes. In both, Ukraine and Russia, the reforms were driven hierarchically by the president and the government. However, the 2004 constitutional reform in Ukraine has diffused political powers among many actors and introduced the necessity for horizontal bargaining on the electricity liberalisation policy-making between the executive on one side and political and business elites on the other. In Russia, the changes in institutional context in the first half of the 2000s allowed the establishment of a vertical division of powers with the president and the government at the top.

Because of the institutional changes, in 2003, Russia was able to pass the law regarding the introduction of the competitive wholesale and retail electricity market, abandoning the electricity monopoly in 2008. Ukraine, on the contrary, was not able to promulgate the electricity law in the parliament. In 2007, the government reconfirmed the concept of the competitive wholesale electricity market that was approved by the old government in 2002. However, the reform implementation failed and, during the 2000s, the electricity market in Ukraine operated as a single buyer with the majority of electricity generation and distribution assets owned by the state.

The period of analysis begins in 1988 for the EU and 1991 for Ukraine and Russia and ends in 2010 for all three case studies. The period of analysis covers, therefore, the main stages of electricity liberalisation reforms in the EU, Ukraine and Russia to date.

The study makes a contribution to identifiable scholarly literature by attempting to discuss the electricity sector restructuring in EU countries as well as in Eastern Europe under the single theoretical framework of actor-centred institutionalism. To date, the framework of actor-centred institutionalism has been systematically applied to the study of electricity liberalisation in the EU countries (see Schmidt 1998, Eising 2001). However, no systematic study which applied actor-centred institutionalism to liberalising the electricity industries in Ukraine and Russia has been conducted. Additionally, the study contributes to new research by empirically investigating the newest developments in policy-making in the electricity industries and covers the time period from the beginning of the 1990s until the end of the 2000s.

Apart from that, the cross-national study introduced here has a purpose to compare policy developments in different institutional systems that were subject to the same exogenous forces at the same period of time. *The general scientific purpose of the study is to prove that institutional contexts in which the policies occur impact specific policy outcomes.* This is particularly relevant for unstable political systems in which formal and informal institutional settings are subject to

change, as was the case in Ukraine and Russia in the 2000s. *Additionally, the study concludes that different institutional settings could have adequate capacity to deal effectively with similar regulatory problems*. This research arrives at this conclusion based on the example of EU countries and the Russian Federation both of which, though they had different institutional settings in electricity liberalisation policy-making in the 2000s, were able to produce similar results in the liberalisation of the wholesale and retail electricity markets.

1.2.3 Methodology

This study is a theory-guided empirical policy analysis inspired by actor-centred institutionalism's framework. According to Schneider (2009, p. 199),

> There is a need of multilayered empirical analysis in the reconstruction of a policy process in the actor-centred perspective in order to answer the research question what actors and why are part of policy-making. In this case it is not sufficient to discuss actors and their positions through the prism of institutions they belong to. All relevant actions of actors must be analyzed systematically (translated from German by the author)[1].

In order to reconstruct the electricity liberalisation policy processes in the selected case studies, this study makes use of the hypothesis-driven process tracing. The process tracing method helps to "identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable" (George and Bennett 2005, p. 206). Employing hypothesis-driven process tracing in the selected case studies aims at finding enough empirical evidence to support the hypothesis provided by the framework of actor-centred institutionalism.

This study preferred the process tracing method, because the discussed cases vary in several independent variables and make it, therefore, impossible to apply the controlled comparison method. On the contrary, process tracing offers the possibility of identifying different causal paths that lead to a similar outcome in different cases by providing an

[1] The original text was published in German: „In einer akteurzentrierter Rekonstruktion eines Politikprozesses ist letztlich immer eine vielschichtige empirische Analyse zu leisten, in der herausgearbeitet wird, welche Akteure warum in die Produktion einer öffentlichen Politik involviert sind. Hierzu reicht es nicht, die Partizipation von Akteuren a priori aus ihren institutionellen Positionen abzuleiten, sondern es müssen auf systematische Weise alle relevanten Handlungseinheiten bestimmt werden" (Schneider 2009, p. 199).

explanation for each of the small number of the examined cases (George and Bennett 2005, p. 215).

Chapter 6 provides a comparison between the case studies. In order to provide sufficient conditions for comparison of policy outcomes as well as modes of actors' interaction on the electricity liberalisation policy-making across three case studies. The same focused questions are asked of each case and the time-dependent variable is added. These allow for the formation of comparisons among the case studies by comparing the outcomes of policy-making as well as the prevailing modes' of actors interaction in different countries during similar time periods in which the impact of external forces on these countries is seen to be similar.

The research is based on the qualitative analysis of primary and secondary sources that are interdisciplinary in nature and were written in English, German, Russian and Ukrainian. In order to define main policy-making actors and their preferences the study conducts a qualitative analysis of policy documents of policy actors on the issue of electricity sector restructuring. The analyzed policy documents cover a period from 1988 until 2010.

European, Ukrainian and Russian media sources, analytical materials of European, Ukrainian and Russian think tanks and written academic literature that covered particular problems relevant to the topic of the study were analyzed in order to identify changes in the positions of main policy actors on electricity liberalisation as well as possible changes in the intensity of actors' interactions.

Additionally, the study uses the available opinion polls and economic statistical data and is complemented by author's interviews and discussions with representatives of the intellectual elite and experts from Ukrainian think tanks. The purpose of interviewing experts was to explore the attitudes of Ukrainian elites towards the policy deadlock in the sphere of the electricity sector restructuring during Yushchenko's government. Interviews with experts in Russia and the EU were not conducted because these countries represented the success stories in the electricity liberalisation policy-making, and other analytical tools such as qualitative analysis of policy actors' documents on the issue of electricity sector restructuring, monitoring of media sources, analytical materials of think tanks and written academic literature were preferred and seemed to be sufficient for conducting the analysis.

For transliteration, the system developed by the U.S. Library of Congress was used because it has been, to date, the most frequently used in scholarly literature. Russian and Ukrainian place names and authors' names were transliterated from the Russian or the Ukrainian, respectively. The names of the official representatives of Russia and Ukraine are spelled according to the official documents and governmental web pages.

1.3 Structure of the Study

The study is structured into seven chapters.

The introduction reveals the research gap in the area of interest and narrows the problem down to a more specific research question to be addressed in the study. The second section justifies the decision of addressing the problem using the theoretical framework of actor-centred institutionalism, and the hypothesis is derived from the theory that is to be tested in three empirical case studies. The third section provides the methodology and the reasons for selecting the EU, Ukraine and Russia for case study.

The second chapter presents the organization of the electricity sector as an object of the analysis and deals more specifically with the new institutional framework in order to explain the outcomes of the regulatory reforms. First, it provides arguments from the economic literature that justify the monopolistic organization of the electricity industry and gives a short characteristic of basic liberal models of the electricity industry organization. Second, it discusses the development of the new institutionalist analysis in political science since the 1980s, its three main schools of thought with their theoretical assumptions and the applicability of the new institutional perspective for explaining the direction of regulatory policies. Then, it employs the rational choice actor-centred institutionalism developed by Mayntz and Scharpf (1995, 1997) to explain the outcome of the reforms in the power generating sector in the EU, Ukraine and Russia and introduces the explanatory variables and analytical categories provides by the framework. This chapter ends with the research design that describes two major analytical steps in the theory-guided empirical policy analysis and justifies the selection of policy actors and their relevance for the study.

The main part (chapters 3, 4 and 5) represents the empirical part of the research with the case studies of the power engineering restructuring in the EU, Ukraine and Russia. These chapters are structured in the same way. First, they present basic indicators that characterize electricity generation and consumption patterns and flesh out the processes of liberalising the electricity markets in the EU countries, Ukraine and Russia in the 1990s and in the 2000s. Thereafter, they discuss the actors' constellations during the electricity liberalisation policy-making in each case study that were the outcome of specific institutional settings in which the actors proceeded with their preferences and the exercise of their functions of decision-making. Based on the analysis of actors' constellations on electricity liberalisation policy-making the certain mode of actors' interaction is further attributed to each case and their effectiveness is discussed.

The sixth chapter proceeds with the comparison of three case studies along two lines, by comparing the outcomes of the electricity liberalisation reforms and discussing the preferred modes of actors' interaction and their effectiveness. The chapter concludes that the presented empirical cases vary in two independent variables provided by the framework of actor-centred institutionalism that were accountable for different outcomes in electricity liberalisation policy-making in each case. The comparisons among the case studies are possible in similar periods of times in which the impact of external forces is seen to be similar as well as among those countries that had similar starting institutional contexts. Although these comparisons are useful for finding the supporting evidence derived from the theoretical framework it is impossible to exclude further potential causes for the outcome of the reforms that are not discussed by the tested hypotheses.

Finally, the conclusion summarizes the study's key findings. It summarizes the empirical conclusions derived from the three case studies, generates further theoretical hypotheses from the empirical research with the purpose to contribute and advance the theoretical discussion on the explanation of the outcomes of the regulatory reforms in different countries and identifies current research gaps that have to be closed in further research.

2. Regulatory Reforms as an Object of Analysis in Political Science

2.1 Object of Analysis – Regulatory Reforms in the Electricity Industry

2.1.1 Natural Monopoly in the Electricity Sector

Before the middle of the 1980s, the monopolistic organization of the electricity industry was widely accepted all over the world. Two traditional rationales, the natural monopoly rationale and the public good rationale, accounted for this (Jaccard 1995).

According to the natural monopoly rationale, the electricity industry was widely accepted as a classical example of natural monopoly. According to the definition of natural monopoly there are industries which are highly capital- and technology-intensive so that benefits are possible only in the long run (The phenomenon is known in economic literature as economies of scale). For such industries, the best method of operation is the single-firm provision that is cheaper and more efficient than multi-firm provision (Jaccard 1995, p. 580). In the electricity sector, for example, the duplication of the network infrastructure would be inefficient and environmentally destructive and only the monopoly could provide an integrated network operation. Aside from the argument from the economies of scale, the proponents of the natural monopoly rationale argued that the demonopolized electricity industry would not cope with a number of potential market failures and the market imperfection that characterize the power engineering sector (Vickers and Yarrow 1991, p. 486). To such imperfections of the electricity market belong specialized electricity transportation that allows only those consumers and producers who are directly connected to the electric power systems through ties with a sufficient transfer capability to participate in the market; daily, weekly, and seasonal load variations that cause uncertainty of short-run costs of electricity producers and impossibility of organizing spot electricity markets; high capital intensity, long periods of construction and service of power plants and others (for a broader discussion see Belyaev 2011). The discussion of the natural monopoly rationale has led to the general consensus that the electricity industry contains large monopolistic elements such as transmission and distribution power grids which need to be regulated by the state (Mittra et al 1995, Belyaev 2011).

In turn, the public good rationale justified government intervention by treating electricity as a public good that is characterized by non-exclusivity and non-rivalry. Non-exclusivity means

that the use of the good or service cannot be withheld from one person without withholding it from others and non-rivalry means that use of the good and services by some does not diminish its potential use by others (Jaccard 1995, p. 580, Bartle 2005, pp. 41 – 42). According to the public good rationale, electricity as a public utility is essential to the well-being of individuals, society and the operation of economy and therefore should bear the characteristics of a public good. In addition to the economic dimension of the argument, there is a social one that represents the idea that all consumers have an equal right to get electricity at an equal price. The problem is that a free market could fail to deliver electricity as a public good to all consumers without exception because of the "free rider" problem: there is no incentive for individuals to provide a good where the costs are incurred by them alone whereas the benefits of the good accrue to others as well as themselves (Mittra et al 1995, p. 690). A monopoly in the power-engineering sector is, therefore, necessary, because there are significant variations in costs in power production and power distribution depending on what power generating company supplies electricity and how far the distribution sales companies must deliver it. The absence of a monopoly could mean a great inequality in electricity prices for all groups of consumers (Bartle 2005, pp. 41 – 42).

These imperatives for natural monopolies were widely reflected in Europe until the end of the 1980s – beginning of the 1990s. In the Soviet and early post-Soviet states, all electricity assets belonged to the state. In Western Europe, traditional structures of the electricity market organization varied from a state-owned monopoly company to a combination of central state, regional, local and private companies (see Table 2.1). The monolithic pattern existed in France, Greece, Ireland, Italy, Portugal and, partly, the UK. Thus, the French state-owned utility Electricité de France (EdF) provided 90% of all power generation, 100% of power transmission and 95% of power distribution (Bartle 2005). In Austria, Belgium, Denmark, Luxembourg, the Netherlands, Sweden, Germany, Spain and Finland the mixed pattern had emerged. Power generation was provided by a small number of large firms which were owned either by the state or by private entities. In nearly all countries, power transmission was controlled by one organization which was owned by some or all of the large generators. The distribution utilities were mostly owned and controlled by a combination of municipal and private companies. However, there was little competition between generation and supplier utilities and the relationship between the companies was cooperative, rather than competitive (Bartle 2005, p. 44). The electricity market functioned through long-term contracts between power generating and power supplying companies. In turn, large generators made agreements among themselves regarding monopoly supply areas so that consumers had no right to freely choose their suppliers.

Table 2.1 Traditional Structures of Electricity Market Organization in Western and Eastern Europe

Structure	*Electricity*	
Monolithic: unified state monopoly	France Greece Ireland Italy	Portugal UK (partly) all post-Soviet countries
Mixed: combination of the central state, the regional or local state and private companies	Austria Belgium Denmark Finland Germany	Luxembourg Netherlands Spain Sweden

Source: Bartle (2005), p. 43, own considerations.

2.1.2 Liberalisation of Electricity Markets

In the 1980s and 1990s, the model of natural monopoly in the electricity sector came under sustained attack. Turbulent oil prices in the world market led to a shift in states' priorities from investment in new generating utilities to cost reduction in the energy sector. Under such circumstances competition was seen as a suitable solution for introducing economic efficiency into the functioning of the electricity sector. It was argued that by selling electricity production assets to private investors the governments would gain three advantages: they would receive money for further use in other public expenditures; private companies would care about sector investment; and, finally, the sector would be financed through payments for use of utilities and customs' bills rather than through tax returns (Helm 2001, p. 299). In words of Helm (1993),

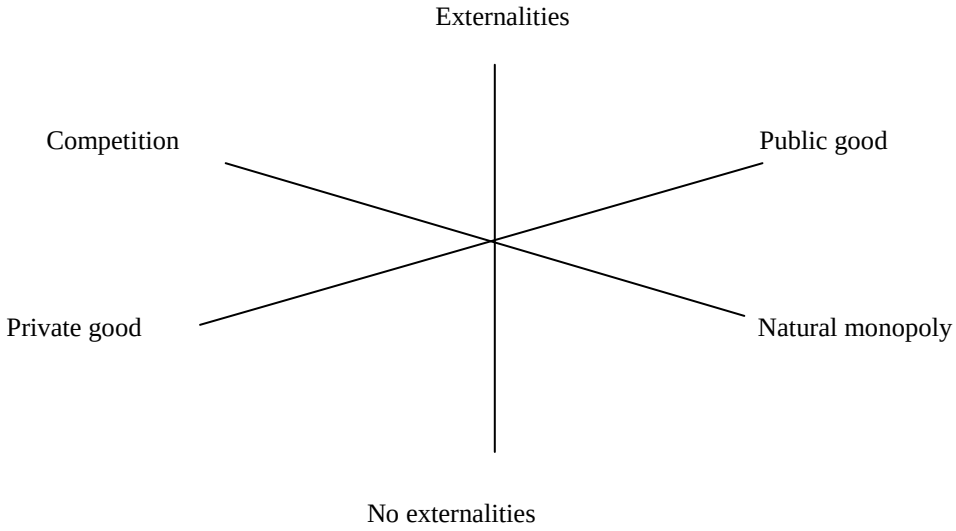
> In consequence, the introduction of competition did not have to cope with substantial investment needs. In the 1980s, the questions of security of supply and diversity simply did not arise. The key issue was not therefore long-term investment, but rather short-term operational efficiency: how to best utilize existing assets (Helm 1993, pp. 412 – 413).

In addition to arguing that demonopolization and competition are the best ways to achieve economic efficiency in the electricity sector, many have raised the problem of environmental externalities (Jaccard 1995, pp. 582 – 584, Mittra et al 1995, pp. 690 – 691). Since the 1970s, nearly all major power generation facilities were the major contributors to

environmental pollution. However, the costs of damaging and polluting the environment were not reflected as internal costs of power generation plants. These were external costs imposed on third parties (so-called external costs or externalities).

The extent of demonopolization of the electricity industry was, therefore, influenced by three contrasting factors: competition vs. natural monopoly; public good vs. private good and the account of externalities (see Figure 2.1).

Figure 2.1 Contrasting Factors for Public Intervention in Electricity Markets



Source: Jaccard 1995, p. 587.

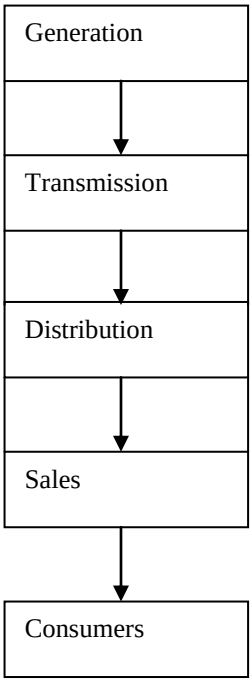
What is meant by the demonopolization reform in the electricity industry? Introduction of competition is nowadays limited to power generation activities and supply of electricity, while transmission and distribution power grids are widely accepted to remain natural monopolies. However, it is worth pointing out that monopoly features in the electricity sector arise from technological factors that are permanently developing and these changes may lead in the future to transmission and distribution power grids opening up to competition as well (Mittra 1995, p. 690). The introduction of competition is primarily seen through separation of transmission and generation activities (vertical restructuring) and selling generation assets to a number of private companies in order to introduce competition into the generating sector. The potential costs of such decisions are seen to arise from efficiency losses that result from the replacement of hierarchical coordination of generation and transmission activities with coordination via contracts between buyers and sellers of electricity. Such an electricity market with the competition in the power generation is called a single buyer market and represents according to Al-Sunaidy and Green (2006, p. 770) the first stage of the reform. The other stages of the reform

include the introduction of competition into the wholesale market or into both the wholesale and retail markets.

2.1.3 Economic Models of Electricity Market Organization

This chapter gives a brief overview of possible models of electricity market organization. Basically, four models of electricity market organization are distinguished in the literature – regulated natural monopoly, single buyer, competition in the wholesale market and competition in the wholesale and retail markets. Three of them – single buyer, competition in the wholesale market and competition in the wholesale and retail markets – belong to demonopolized competition-based electricity markets with different degrees of openness.

Figure 2.2 Model of Regulated Natural Monopoly

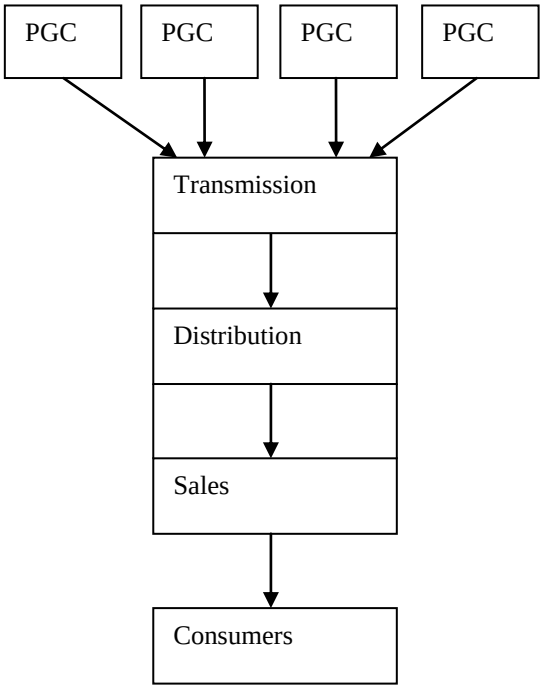


Source: Belyaev 2011, p. 52.

In the first model, a regulated natural monopoly, vertically integrated monopoly companies cover all spheres of energy production, transmission, distribution and supply (see Figure 2.2). Monopoly companies are responsible for reliable (uninterrupted) electricity supply to consumers in their territory. Independent power producers and sales companies may exist but they operate under the state control, selling or purchasing electricity from the monopoly company by special agreements. The electricity tariffs for consumers for electricity produced by

monopolies are fixed by state regulatory bodies at the level of average costs of the company. In the electric power industry, with diverse types of power plants, the formation of tariffs is based on the average costs such that the higher costs of less effective power generating plants are compensated by lower costs of more efficient power generating plants (Belyaev 2011, p. 52).

Figure 2.3 Single Buyer Model



Note: PGC is the abbreviation for power generating company.

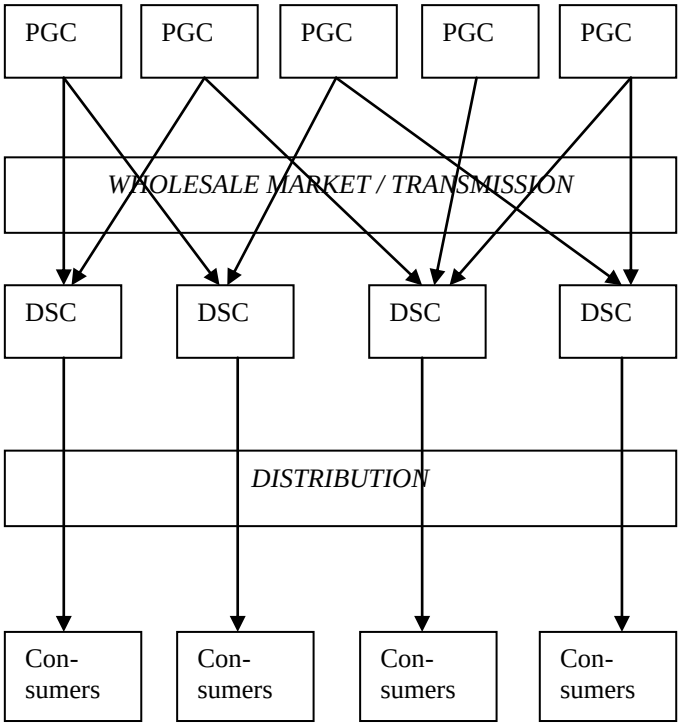
Source: Belyaev 2011, p. 54.

The second model is a single buyer model. In this model the electricity generation sector is unbundled from electricity transmission, distribution and supply sectors and represents several independent power generating companies that compete with each other to supply electricity to the single Purchasing Agency. The energy production sector is open for the entry of new private firms. The transmission, distribution and supply sector of electricity remain bundled and merged in one monopolist vertically integrated company called Purchasing Agency. The Purchasing Agency buys the energy from independent generating companies and sells it further to industrial and household consumers. The Purchasing Agency is naturally controlled by the state because the transmission and distribution assets are considered to be natural monopolies (see Figure 2.3).

According to Belyaev (2011, pp. 54 – 56), the single buyer model represents an extremely sophisticated imperfect market and it is rather difficult to imagine such a market functioning without state regulation, because there is the possibility that few electricity producers

could bargain and decrease energy production in order to increase prices and one single Purchasing Agency could reduce the volumes of purchased electricity in order to reduce purchasing prices and decrease volumes of sold energy to consumers in order to increase sale prices. However, state intervention and regulation excludes the use of power by independent energy producers and the monopolistic energy distributor by introducing the long-term contract system between the seller and the buyer as well as by regulating electricity prices and averaging the tariffs of different producers.

Figure 2.4 Model of Competitive Wholesale Electricity Market



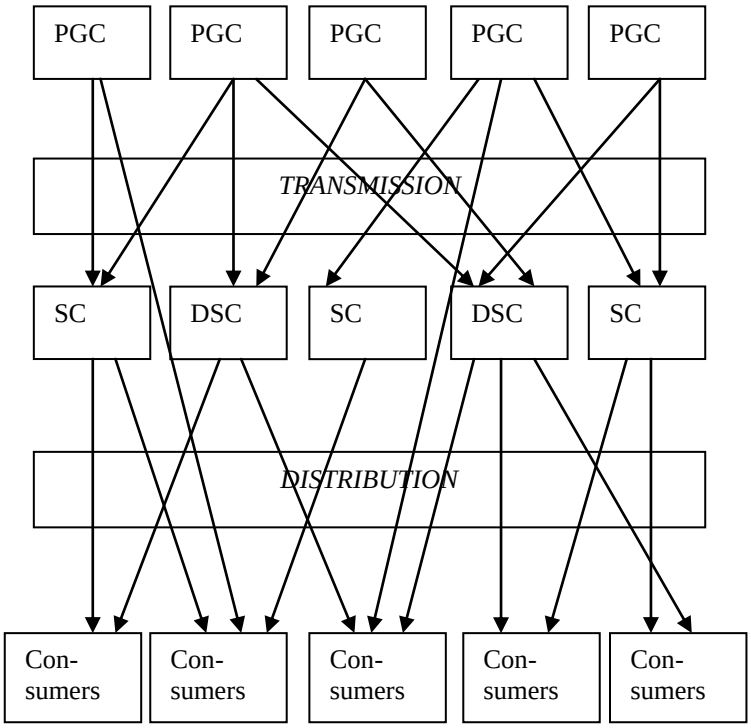
Note: PGC is the abbreviation for a power generating company; DSC is the abbreviation for a distribution sales company.

Source: Belyaev 2011, p. 56.

The third model of the domestic electricity market operation is the competition in the wholesale market. According to this model there are several independent power generating companies (PGC) as well as distribution sales companies (DSC). The power generating companies compete among themselves for the right to sell their energy to particular distribution sales companies that are free to choose their sellers and monopolistically deliver electricity to consumers on their territory. Distribution sales companies are responsible for uninterrupted electricity supply to consumers and are regulated in terms of tariffs for non-household consumers by regional state authorities (see Figure 2.4). Three new organizations emerge in the wholesale

market: the transport network company (TNC), the independent System Operator (SO) and the independent Trading System Administrator (TSA). The TNC owns high-voltage networks that remain natural monopolies and, as a rule, belong to the state and deliver the electricity from producers to suppliers. Every power generating or selling company was able to use high-voltage networks for a charge without any discrimination. The SO task is to provide for dispatching control of electricity production and transportation. The TSA arranges electricity trade either through the spot market or with bilateral long-term contracts between sellers and buyers (Belyaev 2011. p. 57).

Figure 2.5 Model of Competitive Wholesale and Retail Electricity Market



Note: PGC is the abbreviation for a power generating company; DSC is the abbreviation for a distribution sales company; SC is the abbreviation for a sales company.
Source: Belyaev 2011, p. 59.

Finally, the forth model of the organization of the electricity market is the introduction of competition to both the wholesale and retail markets. According to that model, all groups of consumers can freely choose from what electricity sellers – it could be distribution sales companies (DSCs), sales companies (SCs) or power generation companies (PGCs) – they buy electricity. In this market, sales companies and power generation companies do not have their own distribution network and therefore have to pay a fee to distribution sales companies for using them. In turn, distribution sales companies have to provide free access to distribution networks for all market participants who want to use them in order to sell electricity to their

consumers. Electricity distribution remains a natural monopoly and the state continues to regulate it through its regional and municipal bodies by fixing payment rates for using distribution networks and governing expenditures for network development (see Figure 2.5).

2.2 New Institutionalism Theory for Studying Regulatory Reforms

2.2.1 Definitions and Key Theoretical Assumptions of the New Institutionalism

As the previous chapter argued the economic and technological forces impacted the introduction of deregulation reforms in the electricity sectors worldwide. However, the outcome of these reforms varies across countries. This chapter proposes an explanation to apparent differences by employing the new institutionalist analysis.

New institutionalist analysis has been developing in political science since the 1980s. The pioneers of the new institutional tradition were March and Olsen who argued that politics is not "a pure case of environmentally constrained rational competition or a pure case of environmentally constrained temporal sorting" but it is influenced by the institutional structure of politics (March and Olsen 1989, p. 16). New institutionalists declined the definition of institutions employed by "old institutionalism", namely that institutions were material structures such as constitutions, cabinets, parliaments, bureaucraties, courts, armies, party systems, territorial arrangements, within which political behavior occurred. New institutionalism has emerged as a response for the transformation of institutions in the 1980s. At that time political, economic and social institutions became larger, more complex and, therefore, more important. For new institutionalists, politics is not the arena for aggregating individual preferences into collective actions by the way of bargaining, negotiation, coalition formation and exchange. They do not concentrate on preferences of particular actors and the resources that they possess. According to them, intentional and calculative actions of actors are embedded in rules and institutions of the political system:

> The core notion is that life is organized by sets of shared meanings and practices that come to be taken as given for a long time. Political actors act and organize themselves in accordance with rules and practices which are socially constructed, publicly known, anticipated and accepted. Actions of individuals and collectivities occur within these shared meanings and practices, which can be called institutions and identities (March and Olsen 1996, p. 249).

For new institutionalism, individuals behave and pursue political actions on the basis of logic of appropriateness, which is associated with institutional procedures and practices. According to March and Olsen (1996), institutions have path-dependent equilibria and are, therefore, susceptible to timely interventions. Actors need time and efforts in order to improve institutional adaptiveness. The new institutionalists accept that actors behave in rational terms and attempt to maximize their preferences. However, these preferences tend to change in the specific political institutional context. The interests and cleavages of actors are created by institutional arrangements and formed by processes of socialization and cooptation. The actions of actors are expressions "of what is exemplary, natural, or acceptable behavior according to the (internalised) purposes, codes of rights and duties, practices, methods, and techniques of the constituent group and of the self" (March and Olsen 1996, p. 251). Accordingly, politics depends on the identities of citizens and communities that are created and changed within that history; on the distribution of capabilities for appropriate political action among citizens, groups, and institutions; on accounts of political events, responsibility for them and interpretations of political history; and finally, on the ways in which a political system adapts to changing demands and changing environments (March and Olsen 1996).

One of the first comprehensive analyses in the new institutional tradition was conducted by Hall (1986). Hall (1986) refused to accept the idea that the state's economic policy is a rationalist response to economic problems. By applying an institutional approach to state-society relations he argued that institutional relationships, both formal and conventional, that bind the components of the state together and structure its relations with society provide the context in which politics is conducted (Hall 1986, p. 19). He further distinguished among two fundamental roles of institutional factors. On the one hand, the organization of policy-making affects the degree of power that any actors have over policy outcomes. On the other hand, the actor's organizational position also influences his or her definition of personal interests. The author constructs such a view by stating that national economic policy is influenced by "what a government is pressed to do, and secondly, by what it can do in the economic sphere" (Hall 1986, p. 232). Such pressure for a policy and the possibility of implementing it are affected by five factors: the organization of the working class in the labor market, the organizational relationship between financial and industrial capital, the organization of the state and the relationship between the legislative, executive and judicial powers, the position of the nation within the international economy and the organization of the political system. These so-called organizational variables provide an explanation for the state's economic policy because according to Hall,

That is to say, economic policy is the output not of individuals, but of organizations that aggregate the endeavor of many individuals in particular ways. Accordingly, the structure of these organizations has an immense impact on the nature of the policies produced. It is an "organizational intelligence" rather than the intelligence of the individuals that ultimately determines such factors as the capacity of the state for strategic thinking or the quality of policy (Hall 1986, p. 233).

In his comparative analysis of Britain and France, one of Hall's main objectives was to find an explanation for the British governments´ failure to adopt a consistent industrial policy in the post-war period. His found that the answer was in the institutional structure of British markets. First, the influence of capital over economic policy had been greater than the influence of the working class and industry; therefore, during most of the post-war period, the British pursued a policy that served the perceived interests of finance capital rather than industry. Second, there was no unity between financial and industrial capital in Britain and finance capital defined its interests in terms that were quite different from interests of industry. The British financial sector was oriented heavily towards the international provision of services and had limited concern about domestic industrial interests at the time they were pressing the governments for deflation rather than devaluation. Apart from that, the political culture in Britain was very resistant to state intervention (Hall 1986).

To conclude, two issues are of primary importance for new institutionalism, the impact of the institutional environment on individuals' behavior and the impact of institutional change on individuals' actions. The central argument of new institutionalism is that institutions shape action. The new insitutionalists reject other perspectives that argue that institutions are just a reflection of social forces or tend to be instruments are manipulated by actors. New institutionalism sees institutions as autonomous forces in politics that shape action and outcome. Therefore, it suggests the use of institutions as independent or, at least, key intervening variables.

2.2.2 Three Perspectives in the New Institutionalism

In 1996, Hall and Taylor made the distinction between three new institutional perspectives, sociological, historical and rationalist. They argued that these new institutional approaches developed in reaction to the behavioral perspectives that were influential during the 1960s and 1970s and they seek to elucidate the role the institutions play in the determination of social and political outcomes. Despite the fundamental issues common to any institutional analysis, namely, the attempt to understand the relationship between institutions and behavior

and the impact of the institutional change on the actors' behavior, the distinct approaches employ different theoretical perspectives, independent from one other. For rational choice institutionalism the actors behave strategically in all relevant decision-making arenas in order to reach their preferred outcome. Politics is for them a series of collective action dilemmas. The individuals who aim to maximize the attainment of their own preferences are likely to produce the outcome that is collectively suboptimal in the sense that another outcome could be found that makes at least one actor better off without making other actors worse off (Hall and Taylor 1996, p. 945). At the heart of the rational choice institutional analysis is the strategic interaction between actors and institutions. Actors' behavior is driven not by impersonal historical forces but by a strategic calculus and actors' expectations about how others are likely to behave as well. Institutions affect these interactions "by affecting the range and sequence of alternatives on the choice-agenda or by providing information and enforcement mechanisms that reduce uncertainty about the corresponding behaviour of others and allow 'gains from exchange', thereby leading actors towards particular calculations and potentially better social outcomes" (Hall and Taylor 1996, p. 945). In turn, actors create institutions in order to get gains from cooperation. Those institutions that can provide more benefits to the relevant actors than other alternative institutions survive.

The sociological institutional perspective concentrates on identifying normative and cultural mechanisms that constrain or construct both state behaviour and state identity and asks how identity itself influences state interests and practices, as well as international normative structures. For sociological institutionalists many institutional forms and procedures were nor adopted because they were more efficient than the others, but "many of these forms and procedures should be seen as culturally-specific practices, akin to the myths and ceremonies devised by many societies, and assimilated into organizations, not necessarily to enhance their formal means-ends efficiency, but as a result of the kind of processes associated with the transmission of cultural practices more generally" (Hall and Taylor 1996, pp. 946 – 947). Institutions influence the actors' behaviour by providing a set of cognitive scripts, categories and models that specify the behaviour of actors in a given context. The sociological institutionalists call it the "normative dimension" of institutional impact. The institutions affect not only the strategic calculations of the actors but also their identity so that the self-images and identities of social actors are constituted from the institutional forms, images and signs provided by social life. The institutional practices tend to change in order to enhance the social legitimacy of the organization or its participants (Hall and Taylor 1996).

Finally, the third perspective is the historical institutionalism. The focus of this perspective is on the way prior institutional commitments condition further action, limit the scope of what is possible and cause agents to redefine their interests (Aspinwall and Schneider 2001, p. 10). Because of this, institutional and policy change become "path dependent" as actors define their preferences based upon what has occurred in the past. "The image is one of a ratchet, in which institutional arrangements are winched into place slowly over time, thus constructing human behaviour" (Aspinwall and Schneider 2001, p. 10). In their attempt to answer the question on how the institutions affect the behaviour of actors two groups of historical institutionalists emerged. The first group adopts the "calculus approach" and argues that individuals behave strategically and seek to maximize the attainment of their goals. Institutions serve as agents to provide information about the behaviour of other actors. Hall and Taylor (1996, p. 939) underline this role of institutions by arguing that " the key point is that they affect individual action by altering the expectations an actor has about the actions that others are likely to take in response to or simultaneously with his own action". The other group of historical institutionalists employ the "cultural approach" to these issues. This approach does not deny the rational behaviour of individuals but emphasizes the degree of "satisfaction" of the actor and his attempt to establish routines patterns of behaviour to attain his purposes. In this connection the institutions are seen by the actor as moral and cognitive templates for interpretation and action. "The individual is seen as an entity deeply embedded in a world of institutions, composed of symbols, scripts and routines, which provide the filters for interpretation, of both the situation and oneself, out of which a course of action is constructed" (Hall and Taylor 1996, p. 939). A nuance of historical institutionalism is that this approach bases itself on the persistence of institutions against change. The supporters of the "calculus approach" suggest that institutions are persistent against changes because individuals fear that changes can make them worse off. From this it follows that the more the institutions contribute to the resolution of collective action dilemmas or the more gains it makes possible the more persistent it will be against changes (Hall and Taylor 1996, p. 940). In turn, the supporters of the "cultural approach" see the institutions as collective constructions that are not easily changed by individuals. Such collective constructions already contain the reform choices the individual wants to make. For Theda Skocpol (1995), these institutions are not simply or primarily systems of meaning or normative frameworks. In her opinion, group identities are grounded in organizational linkages and therefore, the analysis of intergovernmental, interorganizational concepts necessarily becomes a comparative and historical enterprise. While focusing on state-society interactions and tracing processes over time she argues that actors' goals and capacities and conflicts with one another are grounded in institutions that she defines as follows:

…institutions for me are sets of relationships that persist, although in an inherently conflictual and tension filled way. Institutions may be formal organizations or informal networks. They have shared meetings and relatively stable bundles of resources attached to them. I take an organizational realist approach to institutions, viewing them as actual patterns of communication and activity, rather than seeing them primarily as values, norms, ideas, or official rules (Skocpol 1995, p. 105).

2.2.3 Theoretical and Methodological Diversity within the New Institutionalism

The objective of new institutionalism is not to describe the institutions and explain how they work but rather to explain political outcomes that are embedded in certain institutional environments. However, new institutionalists are not united in the question of how to conduct an institutional analysis (Lecours 2005).

The historical institutionalists concentrate strongly on the impact of institutions that have been developing historically on policy processes in terms of path dependency. Normally they start with the empirical question related to differences in policy outcomes through time and space in different countries. To answer this empirical question, historical institutionalists look at differences in institutional settings in different countries or in different regions of one country and compare institutional settings in different time periods in order to explain policy change. All historical institutionalists work within macro contexts and make hypotheses about combined effects of institutions and processes rather than concentrate on one institution (Pierson and Skocpol 2002). For developing explanations of these puzzles historical new institutionalists usually analyze processes over a substantial stretch of years and look at the past as *processes* over time. Central for them is path dependence that "can be a faddish term, lacking clear meaning, but in most historical-institutionalist scholarship it refers to the dynamics of self-reinforcing or positive feedback processes in a political system" (Pierson and Skocpol 2002, p. 699). The logic of path dependency is that outcomes at a critical juncture trigger institutional feedback mechanisms that reinforce a particular pattern in the future. Methodologically, historical institutionalists employ techniques of periodization. The institutional origins technique compare the periods before and after the creation of an institution. The institutional change technique refers to moments of substantial and discrete changes in the institutions. The exogenous shock strategy compares periods before and after a major international event. Finally, the rival cause technique examines continuity in the context of non-institutional change.

On the contrary, rational choice new institutionalists attempt to answer puzzles when observable outcomes appear not to be rational responses to policy choices. The argument here is that actors behave rationally but the institutional environment affects strategic calculations of actors. The institutions are seen as strategic constraints and not as historical structures as underlined by supporters of historical institutionalism. Methodologically rational choice new institutionalists work with the models of strategic micro-level behavior and look at institutional-actor settings for identifying payoffs and choices of actors (Lecours 2005, p. 15).

Sociological institutionalism is grounded in organization theory and focuses on the routinizing psychological effects of common cultural frameworks. For scholars of this tradition the preferences and actions of actors are the result of the normative environment in which the individual is embedded.

Among scholars there is no united understanding of the question regarding the eventual possibility of a convergence of the three new institutionalist perspectives. Some authors such as Lecours (2005) view such a synthesis as impossible because of different ideational settings and different methodological, epistemological and ontological assumptions that the three new institutionalist traditions use. On the contrary, for Thelen (1999) there are more points of tangency than commonly assumed. She agrees that the rational choice new institutionalism and historical new institutionalism differ along two lines in approaches to theory building. Rational choice theorists attempt to show up the wide applicability of theoretical claims. Most historical institutionalists, on the contrary, test theoretical propositions on a limited number of cases that are often unified in time and space. A second difference with respect to the construction of theories lies, according to Thelen (1999), in the ways the historical institutionalists and rational choice institutionalsists build their hypotheses. Historical institutionalists start mostly with empirical puzzles that they can observe from events and comparisons. Then they use comparisons to test hypotheses that account for differences in observable outcomes. Rational choice institutionalists proceed differently and deal with puzzle situations in which observable behavior of actors differs from what general theory predicts. However, Thelen (1999) assumes that both perspectives have much overlap in the second step of the analysis, namely testing hypotheses against empirical cases. This involves contextualizing assumptions and propositions and demonstrating empirical evidence for causal relationship. According to her, norms and culture which, for a long time, were of concern to historical institutionalists and institutional sociologists appear to play an increasingly important role in rational choice analysis (Thelen 1999, p. 379).

Recent developments in the new institutional theory have shown that there are different views on the scope of the neo-institutional analysis and its applicability (Peters 2012). On the one side, it appears that all approaches to new institutionalism have the same fundamental analytical logic. They all underline the role of institutions and structures in determining the behavior of individuals. However, different approaches to new institutionalism differ in the instrument through which they exercise constraint on the individual. Some approaches argue that values constrain individuals and that the nature of institutions is largely normative. The others underline the logic of appropriateness by stating that institutional rules constrain individual behavior and that individuals use the rules and incentives for achieving certain goals. However, although Peter (2012) argues that the diversity within the new institutional perspective is broad and defines at least seven new institutionalist approaches, normative institutionalism, rational choice institutionalism, historical institutionalism, empirical institutionalism, constructivist institutionalism, sociological institutionalism and international institutionalism. For him there is sufficient core to justify all these approaches being considered one approach to politics:

> The fundamental issue holding all these various approaches, and their various components, together is simply that they consider institutions the central component of political life. In these theories institutions are the variables that explain political life in the most direct and parsimonious manner, and they are also the factors that themselves require explanation. The basic argument is that institutions do matter, and they matter more than anything else that could be used to explain political decisions.
>
> In all the approaches, something about institutions – their values, their rules, their incentives, or the pattern of interactions of the individuals within them – explains the decisions that governments take. Individuals remain as important actors in most of these theories, but the implicit or explicit argument is that there is substantially greater leverage to be gained through understanding the institutional frameworks within which they operate (Peters 2012, p. 184).

Peters (2012) underlines that new institutionalism, in general, and some of the particular approaches within it in still lack theoretical developments. Thus, the majority of the new institutionalist approaches, in particular the historical institutionalism and the empirical institutionalism, do not develop explanations about the origins of the institutions and their structural change and take them largely as given. According to him, however, the internal dynamics of an institution and the underlying behavioral mechanisms that make them work provide important explanatory variables that impact individuals' behavior.

2.3 Explaining the Outcome of Policy-Making in the Electricity Sector: Actor-Centred Rational Choice Neoinstitutionalism

Analytically, this study relies on the actor-centred institutionalism that was developed by Mayntz and Scharpf in the 1990s. The framework of actor-centred institutionalism represents itself as an integration of action-theoretical or rational-choice and institutionalist or structural paradigms. According to the authors, this fusion of paradigms makes "a better 'goodness of fit' between theoretical perspectives and the observed reality of political interaction that is driven by the interactive strategies of purposive actors operating within institutional settings that, at the same time, enable or constrain these strategies" (Scharpf 1997, p. 36). Therefore, the framework of actor-centred institutionalism emphasizes the role and influence of institutions on the perceptions, preferences and capabilities of actors and on the modes of their interaction.

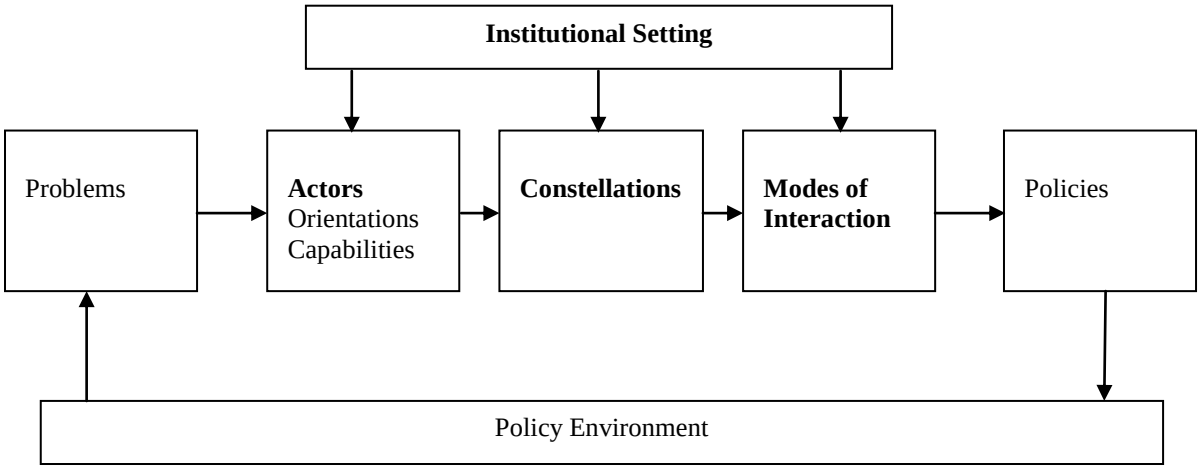
In this framework the institutions are defined as "systems of rules that structure the courses of actions that a set of actors may choose" (Scharpf 1997, p. 38). To these systems of rules belong formal legal rules that are sanctioned by the court system and the state, as well as social norms, or informal rules, that actors traditionally respect because their violation would be sanctioned by loss of reputation, social disapproval, withdrawal of cooperation and rewards and ostracism. In the framework of actor-centred institutionalism, institutions are influences on actors and their interactions because socially constructed formal and informal rules permit or prohibit the actions of actors. So, Scharpf (1997) summarizes,

> In our framework the concept of the "institutional setting" does not have the status of a theoretically defined set of variables that could be systematized and operationalised to serve as explanatory factors in empirical research. Rather, we use it as a shorthand term to describe the most important influences on those factors that in fact drive our expectations – namely, actors with their orientations and capabilities, actor constellations, and modes of interaction (Scharpf 1997, p. 39).

Aside from the institutional setting in the form of formal and informal rules, some policy-making actors are collective or corporate, such as political parties, labor unions, government ministries or international organizations, which are institutionally constituted. This means that the individuals acting within such collective or corporate entities must be able to coordinate their choices within a common frame of institutional rules that define the scope of powers of the individuals and the purposes and values according to which the individual must act.

The development of both institutional settings is, according to Scharpf (1997, p. 41), path dependent and once installed their change is costly.

Figure 2.6 Framework of Actor-Centred Institutionalism



Source: Scharpf 1997, p. 44.

The unit of analysis in actor-centred institutionalism is the interaction of actors that explains policy outcomes. In order to find out what interaction occurs in certain policy-making areas, one must analyze, on one side, the actors, along with their perceptions, preferences and capabilities and, on the other side constellations of actors (see Figure 2.6).

Actor-centred institutionalism establishes a difference between individuals and composite actors. As argued earlier, composite actors have to be discussed from two perspectives: from the outside, as a single actor with certain resources and capacities, and from the inside, as an institutional structure within which internal actors interact. However, according to Scharpf (1997, p. 52), in the real world of complex interactions of actors, in most cases it is not necessary to extend analyses to the level of internal interactions, and it is sufficient to treat larger units as actors whose choices can be explained in terms of factors generated at the level of larger units.

Each actor, individual or composite, has a set of capabilities, specific perceptions and preferences. Capabilities of the actor are meant to describe all action resources that allow an actor to influence a policy outcome (Scharpf 1997, p. 43). These action resources are created by institutional rules. Thus, institutional rules define competencies of certain actors in given policy processes, grant or limit rights of participation in policy processes and enable certain actors to make autonomous decisions.

Perceptions and preferences of an actor remain relatively stable and refer to the set of policy choices each actor makes for himself, namely, desirable or undesirable nature of status quo, the causes of a perceived problem, efficacy and desirability of perceived courses of actions and desired outcomes (Scharpf 1997, pp. 43 – 44). The framework of actor-centred institutionalism conceptualizes preferences of actors in four categories, interests, norms, identities and interaction orientations. The category of interests describes the basic preference of actors for self-preservation, autonomy and growth. The category of norms relates to normative expectations addressed to the occupants of given positions. The category of identity refers to certain aspects of self-interest and certain rules and normative purposes that are generally applied to individuals or organizations of the same type and, therefore, make the distinction from other individuals and groups (Scharpf 1997, pp. 63 – 66). Finally, the forth category of interaction orientations concentrates on the situations in which an actor fails to produce a stable result by a unified action and has to collaborate with others (Scharpf 1997, pp. 69 – 72). Actor-centred institutionalism takes the categories of interests, norms, identity and interaction orientations as given and determines them empirically while relying on institutional information.

Table 2.2 Modes of Interaction in Actor-Centred Institutionalism

	Institutional Setting			
	Anarchic Field	*Network*	*Association*	*Organization*
Unilateral Action	X	X	X	X
Negotiated Agreement	(X)	X	X	X
Majority Vote	-	-	X	X
Hierarchical Direction	-	-	-	X

Source: Scharpf 1997, p. 47.

However, knowing actor's perceptions, preferences and capabilities does not mean that policy outcomes can be determined according to them. This is because in the real life it is unlikely that any actor is capable of unified action. Therefore, in order to analyse a particular policy process it is necessary to look at constellations of actors that are involved in policy-making. These actors' constellations have their specific modes of interactions. The framework of actor-centred institutionalism defines four modes of interactions that are possible in certain institutional settings (see Table 2.2). The first mode of interaction is unilateral action in which all parties involved choose their own strategies unilaterally. The second possible mode of interaction is negotiated agreement when common strategies of action are negotiated by all parties involved. The third mode of interaction is majority vote when strategies are determined

by majority rule. Finally, the fourth and last mode of interaction is hierarchical decision when the strategies of one or more actors are determined by the unilateral choice of another actor.

As seen in the table, there are institutional contexts that allow the employment of all modes of interactions and there are those that permit the employment of only some modes of interactions. Scharpf (1997) uses the examples of anarchic fields that mean the absence of formal and formal rules, networks or joint-decision systems, associations and organizations or states. However, it should be underlined that in the real world the institutional settings are more complex and differ in the levels and units of analysis. What is necessary to underline is the interdependence of institutional settings and actors' modes of interactions. Thus, different modes of interactions differ in their demand for sufficient institutional capacity, and different institutional settings differ in their capacity to support different modes of interaction (Scharpf 1997, p. 47). From the table, it can be concluded that in the anarchic field where any institutional structure is absent the actors act unilaterally or have a limited possibility of negotiated agreement. In the case of networks, regimes and joint-decision systems negotiations are possible because the institutional structures that assure the binding character of negotiated agreements are present. However, in the network institutional settings it is impossible to take decisions by majority rules or by hierarchical direction because the latter demand much more dense and specific institutional settings. Such institutional settings are provided by associations for the possibility of majority vote and by organization for the possibility of hierarchical direction.

2.4 Sub-Conclusion: Research Design

The study asks: How does the political context, which is understood as both, political structures and institutions in which politics occur as well as interests and behaviour of policy actors, explain considerable differences in the outcomes of electricity liberalisation policy-making in Western Europe (in the EU-example) and Eastern Europe (in the comparative example of Ukraine and Russia)? This research question was chosen because of the identified puzzle in the course of electricity sector restructuring reforms in the EU countries, Ukraine and Russia. Thus, as underlined in the Introduction, the initial steps in the electricity liberalisation policy-making in Western and Eastern European countries were similar but the implementation of these first liberalisation steps, as well as further reforms that are required for the establishment of truly liberal electricity markets, varied in a large degree between the countries.

To hypothize these differences in outcomes the study employs the framework of actor-centred institutionalism. The reasons for using the framework of actor-centred institutionalism are listened in the Introduction as well. To summarize, first, actor-centred institutionalism provides the tools for interaction-oriented research that aims at an explanation of past policy choices and the production of systematic knowledge. Second, actor-centred institutionalism makes it possible to discuss the preferences of all relevant policy-making actors in single national states as well as complicated multilevel decision-making systems such as that of the EU and to ascertain their impact on one other without excluding some actors because of theoretical considerations, as is the case in the theoretical frameworks of supranationalism or intergovernmentalism. Third, actor-centred institutionalism adds an additional analytical and explanatory category of country-dependent and time-dependent social and political institutional contexts and, therefore, makes it possible to discuss the outcomes of policies that strongly differ across countries and time frames with greater precision. Finally, actor-centred institutionalism provides a conceptual scheme for discussing the capacity of given decision-making systems for solving given policy problems.

Actor-centred institutionalism is a mono-hypothetical theoretical framework that suggests that differences in institutions and policy structures on one side and in interests and behaviour of relevant policy-making actors on the other side account for differences in policy outcomes across states. The unit of analysis in actor-centred institutionalism is the interaction of actors that explains policy outcomes.

For answering the research question, this theory-guided empirical policy analysis, first, identifies the relevant policy actors in the area of electricity liberalisation as well as their perceptions, preferences and capabilities. The study establishes a difference between individuals and composite actors. As argued earlier, composite actors such as political parties, labor unions, government ministries or international organizations have to be discussed from two perspectives, from the outside, as a single actor with certain resources and capacities, and from the inside, as an institutional structure within which internal actors interact. Additionally, the individuals acting within such collective or corporate entities must be able to coordinate their choices within a common frame of institutional rules that defines the scope of powers of the individuals and the purposes and values according to which the individual must act. This study analyzes both, individual and composite actors that were identified as relevant in the electricity liberalisation policy-making. The decision regarding the relevance of certain actors for the analysis is made on the basis of identification of decision-making powers of actors in the electricity liberalisation policy-making as well as their actual participation in the decision-making process.

In case of EU countries, three European institutions, the European Commission, the European Parliament and the European Court of Justice, are seen as single composite actors with a common policy line and the analysis is extended to the level of internal interactions only in the case of the European Parliament in the 2000s, because, at that time, there were decisive divergences among its parliamentary fractions on the direction of electricity liberalisation in Europe and in the case of the European Commission between 2004 – 2005 because of some contradictions between the Competition DG and the DG TREN that impacted the outcome of electricity liberalisation policy-making at the European level. Within the Member States a number of composite state actors, namely, the governments, national regulatory authorities and relevant ministries and agencies, are analysed as single policy actors because they produced a unified position on electricity liberalisation issues. Additionally, the study identifies relevant non-state actors that participated in the electricity liberalisation policy-making in EU countries primarily through lobbying activities. In doing such, the study distinguishes among non-state single and composite actors at the national as well as the European arenas. The main non-state actors that are analysed in the study are national electricity monopolies, national businesses in the electricity industry, European associations of supply industries, public utilities and consumers, and associations of national electricity utilities. The European associations are mostly analyzed as single composite non-state actors because their degree of influence was dependent on their capacity to formulate a strong unified position.

Concerning the cases of electricity liberalisation in Ukraine and Russia, the executive, legislative and judicial individual and composite state actors and private business non-state actors are analysed. Among executive actors, the President, the government, the prime minister, the relevant ministries and regional executive authorities are chosen as relevant for analysis because of their decision-making powers in the area of electricity liberalisation identified in respective laws. Because of the specifics of the political systems of Ukraine and Russia the positions of the Presidents are analysed separately from those of the governments. The composite actors such as the governments, the ministries and regional executive authorities are analysed as single policy actors because they were able to come up with a unified position on electricity liberalisation policy. Apart from the executive institutions the impact of the parliaments and national judicial institutions on the electricity liberalisation policy-making is ascertained. Where it is observed that the internal divergences within the parliament impacted the outcome of electricity liberalisation policies, different positions of parliamentary fractions on the issue of electricity liberalisation are revealed. Concerning non-state actors, national electricity monopolies as well private business groups with their direct and indirect ways of influence on the state actors are discussed. For choosing non-state actors that are relevant for the

analysis the study heavily relies on the rent-seeking literature (see Hellmann 1998, Wengle 2012), which argues that, in post-socialist states, economic policies were captured by the oligarchs and classical lobbying associations had no impact on the direction of economic reforms.

In order to identify the preferences of chosen actors, the study conducts the qualitative analysis of policy documents of policy-making actors on the issue of electricity sector restructuring.

In the second step of the analysis the study looks at constellations of actors that are involved in policy-making and defines their specific modes of interactions whose variation is provided by the framework of actor-centred institutionalism. The framework of actor-centred institutionalism singles out four modes of interactions, unilateral action, the negotiated agreement, the majority vote and the hierarchical decision, that differ in their demand for sufficient institutional capacity. In turn, institutional settings differ in their capacity to support these modes of interaction.

European, Ukrainian and Russian media sources, analytical materials of European, Ukrainian and Russian think-tanks and written academic literature that covered particular problems relevant for the topic of the study are used in the study in order to identify changes in the positions of main policy actors on electricity liberalisation as well as possible changes in the intensity of actors' interactions.

The chosen method of the qualitative analysis of primary and secondary sources is the hypothesis-driven process tracing that aims at identifying causes for the policy outcomes in each single case study. The cases of the EU, Ukraine and Russia are selected as empirical case studies on the basis of their variations across the independent variables provided by the framework of actor-centred institutionalism. First, they vary in institutional contexts in which the electricity reforms are conducted. Second, the preferred modes of actors' interaction on electricity liberalisation policy-making are different in three case studies. If, in the case of EU countries, the negotiated agreement appeared to be a prevailing mode of actors' interaction with the elements of the bargaining between the Member States, Ukraine featured the hierarchical direction of the reform in the 1990s and the horizontal bargaining among relevant policy-making actors in the 2000s. In Russia's case, the hierarchical direction of the reform in the 1990s was weakened because of the executive's necessity to bargain with business interests, regional leaders and the parliament. In the 2000s, because of the changes in the Russian political systems, the electricity liberalisation reform was driven hierarchically by the president and the government.

Finally, in order to provide sufficient conditions for comparison of the policy outcomes as well as modes of actors' interaction on the electricity liberalisation policy-making across three case-studies, the same focused questions are asked of each case and the time-dependent variable is added. These allow for the formation of comparisons among the case studies by comparing the outcomes of policy-making and the prevailing modes of actors' interaction in different countries in similar time periods, during which the impact of external forces is seen to be similar on these countries.

3. Case Study I. Politics of Electricity Liberalisation in the European Union (1990 - 2010)

3.1 Electricity Market Reform in the EU in the 1990s

3.1.1 Basic Features of the Power Industry of the Countries of the EU in the 1990s

The following Tables 3.1 and 3.2 present indicators that characterize some electricity generation aspects of EU Member States in the 1990s. As these tables demonstrate, the total gross electricity production in Europe grew staidly in the 1990s and achieved the amount of 3,025,238,000 GWh in the year 2000. The volume of produced electricity had, therefore, increased by 15% in 2000 compared to the year 1990. However, Bulgaria, Estonia, Lithuania and Romania recorded decreases in electricity production in 2000, compared to 1995.

Table 3.1 Total Electricity Gross Production in the EU Countries in 1990 – 2000 (GWh)

	1990	***1995***	***2000***
European Union	2,586,280	2,733,982	3,025,238
Belgium	70,923	74,408	84,012
Bulgaria	42,141	41,789	40,924
Czech Republic	62,559	60,847	73,466
Denmark	25,982	36,759	36,053
Germany	550,015	537,284	576,543
Estonia	17,392	8,788	8,509
Ireland	14,515	17,859	23,977
Greece	35,003	41,552	53,843
Spain	151,920	167,085	224,472
France	420,773	494,065	540,734
Italy	216,600	241,489	276,642
Cyprus	1,974	2,497	3,370
Latvia	6,648	3,979	4,136
Lithuania	28,405	13,899	11,425
Luxembourg	1,377	1,230	1,169
Hungary	28,436	34,018	35,191
Malta	1,100	1,632	1,917
Netherlands	71,938	80,926	89,631
Austria	50,294	56,225	61,257

Poland	136,311	139,006	145,184
Portugal	28,501	33,265	43,764
Romania	64,309	59,266	51,934
Slovenia	12,444	12,913	13,624
Slovakia	26,132	26,774	31,158
Finland	54,377	64,035	69,968
Sweden	146,514	148,351	145,266
United Kingdom	319,737	334,041	377,069

Source: Eurostat.

Regarding the structure of electricity production in 2000, the thermal power plants based on non-renewable resources represented 85.2% of total electricity generation in the European Union. In the countries of Central and Eastern Europe (Estonia, Latvia, Lithuania, Czech Republic, Slovakia, Hungary, Poland and Slovenia), the production of conventional thermal electricity and electricity by nuclear power plants accounted for 93.8 % of total electricity production, in 2000 (see Table 3.2).

Table 3.2 Electricity Generation Mix in the EU-15 and in 8 Central and Eastern European Countries in 2000 (% of total)

Electricity Generation Energy Mix in EU-15	
Conventional thermal	51.8%
Nuclear	33.4%
Renewables	14.8%
Electricity Generation Mix in 8 Central and Eastern European countries (since 2004 the Members of the EU)	
Conventional thermal	75.9%
Nuclear	17.9%
Renewables	6.2%

Source: Eurostat.

According to the data of the European Commission, the volume of trade in electricity among the Member States remained low in the 1990s in comparison to cross-border trade in other sectors such as telecommunications, financial services and industrial products and was equivalent to around 8% of total electricity production in the Community (Commission of the European Communities 2001a, p. 9) (see Table 3.3). Additionally, according to the Commission, by the end of the 1990s the price of electricity had reduced in nearly all Member States which was caused both by the competition at the national level as well as the pressure of foreign competition (Commission of the European Communities 2001a, p. 9).

Table 3.3 The Level of Physical Exports and Imports of Electricity in the EU Countries in 1999

Gwh	***Imports***	***Exports***
Belgium	8,918	8,204
Germany	39,304	38,018
Spain	11,858	5,905
France	4,471	66,668
Greece	1,813	1,652
Italy	42,539	527
Luxembourg	6,175	657
Netherlands	22,406	3,753
Austria	10,494	14,402
Portugal	3,513	4,453
Switzerland	20,856	30,123
Central Europe	5,030	13,012

Note: Trade within the Scandinavian system and between Ireland and the UK are not included in this table.

Source: Commission of the European Communities 2001a, p. 9.

During the ten-year period from 1990 to 2000, the consumption of electricity rose in the EU by 17%. At that period, there was a fast growth in the consumption of electricity in a number of European countries, Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Cyprus, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Finland and United Kingdom. At the other end of the range, electricity consumption fell in seven countries, Estonia, Bulgaria, Latvia, Lithuania, Hungary, Romania and Slovakia (see Table 3.4).

Table 3.4 Final Energy Consumption in the EU Counties in 1990 – 2000 (GWh)

	1990	***1995***	***2000***
European Union	2,150,329	2,249,742	2,518,937
Belgium	57,984	68,448	77,542
Bulgaria	35,272	26,689	24,251
Czech Republic	48,177	48,082	49,381
Denmark	28,361	30,882	32,454
Germany	455,079	451,209	483,453
Estonia	7,016	4,581	4,991
Ireland	11,868	14,850	20,289
Greece	28,471	34,087	43,151
Spain	125,799	140,911	188,459
France	302,230	324,850	384,903

Italy	214,627	238,272	272,975
Cyprus	1,791	2,223	2,996
Latvia	8,320	4,465	4,477
Lithuania	12,013	6,355	6,197
Luxembourg	4,149	4,996	5,775
Hungary	31,593	27,744	29,441
Malta	910	1,259	1,567
Netherlands	73,509	82,700	97,786
Austria	42,767	46,712	51,541
Poland	96,235	89,691	98,646
Portugal	23,544	28,804	38,373
Romania	54,236	36,354	33,939
Slovenia	9,242	9,343	10,521
Slovakia	23,414	21,730	22,010
Finland	58,943	65,217	75,674
Sweden	120,347	124,566	128,725
United Kingdom	274,432	294,722	329,420

Source: Eurostat.

The energy consumption of the industrial sector comprised the share of 44% of total electricity consumption in the EU countries in 2000. Total electricity consumption in the residential sector grew steadily during the ten-year period from 1990 to 2000 and comprised 27% of total electricity consumption in Europe in 2000 (see Table 3.5).

Table 3.5 Electricity Consumption in the EU Countries in Sectors of Economy in 2000 (in % of total)

Electricity Consumption in the EU-27	
Industry	44%
Transport	3%
Residential	27%
Agriculture/ Forestry	1.7%
Services	23.5

Source: Eurostat.

3.1.2 Regulatory Policies

3.1.2.1 A Long Way to the First Proposal for the Establishment of the Internal Electricity Market

Following the Second World War, electricity was viewed as a natural monopoly in all European countries. Governments have widely intervened in the industry. Hence, electricity has usually been produced by state-owned companies. Thus, in 1985, 19 out of 24 OECD countries had state-dominated electricity industries (Pollitt 1999, p. 29). For example, in the United Kingdom and France the electricity industry was represented by large state-owned monopoly enterprises. In Norway and Sweden there was a mixture of state and municipal ownership. In Belgium, Germany and Spain private sector ownership was substantial, with some companies, part private, and part state-owned. The distinctive feature of the whole industry was that the incumbent companies were not subject to the threat of entry and the governments dictated their whole investment policy.

However, after 1985, the situation changed rapidly (for discussion of demonopolization of the electricity sector see the previous chapter). Under the influence of worldwide calls for privatisation and deregulation that began in the United States and particularly in the aggressively free market atmosphere of the United Kingdom under Thatcher the European Commission asked the Ministers of Energy of Member States to give attention to the creation of the common energy market in Europe. In 1987, the Energy Council empowered the Commission to issue the document on the main obstacles to operation of the common energy market in Europe.

The European Commission issued the Working Document on the Internal Energy Market, in 1988. Referring to the electricity sector, the Commission specified main obstacles for the deregulation of electricity markets in Europe. The obstacles which were highlighted were those of unequal treatment of producer utilities between Member States, taxation differences, relative opacity of electricity costs and prices, compartmentalization of national markets due to the largely internal character of high-voltage interconnection systems and supplies to users at the distribution, large consumer and ordinary consumer levels (European Commission 1988). According to the Commission, the benefits of introduction of competition into the electricity sector would be to recover 0.5% of the Community GDP. More specifically, the economic benefits of the creation of the common electricity market in Europe were underlined in the paper:

> The potential benefit of "more Europe" would be twofold: a reduction in costs as a result of greater competition and a reduction in certain unit costs as a result of the effect of scale and the optimization of investment or management (European Commission 1988, p. 8).

A particular attention was paid to state monopolies of a commercial character (European Commission 1988, p. 21). The Commission put into the question the compatibility of exclusive rights of the Member States for the importing, exporting, transporting and distributing of electricity with provisions on the common internal market, in particular with those that introduce no discrimination regarding the conditions under which goods are produced and marketed (European Commission 1988, p. 21).

In 1989, the Commission presented a draft directive on price transparency in which it announced investigations into energy price transparency to consumers in the Member States and argued that prices charged to industrial consumers should be known to all. In June of 1990, the Council implemented two directives on transit and price transparency that the Commission was dealing with in its working documents during 1988 – 1989. The directive on price transparency instructed electricity and gas suppliers to increase the transparency of pricing systems, prices and volumes sold to different customers groups. The directive on transit introduced common transit rights for transmission grid operators in the electricity sector. However, these directives represented only a pre-liberal stage of the electricity market restructuring in EU and had only a minimal effect on the market opening in Europe (Bartle 2005, p. 74).

At the beginning of the 1990s, the Commission concentrated on the issue of introducing a third-party access (TPA)[2] into the national electricity sector. In doing so, it implemented a bottom-up strategy and established two advisory committees with the Member States and industry representatives. The position of the Consultative Committee of the Member States on the liberalisation of the electricity industry was that enhancing the competition and broadening the electricity market would be beneficial, however, under the premise that the steps towards introducing the competition would not compromise security of supply, quality of service and system control in the Member States (Commission of European Communities 1991, p. 18). The consultations of the Professional Consultative Committee on Electricity that consisted of representatives of the electricity industry, i.e. integrated utilities, generators, transmission companies, distributors, large industrial users, domestic and other small consumers, have shown that clear differences in opinions have existed on advantages and disadvantages of the introduction of the TPA regime. Those, who asked for the introduction of the new TPA regime saw the benefits of the new regime in giving eligible consumers and distribution companies the

[2] The Commission has relied on the following definition of the third-party access: „Third-party access (TPA) is a regime providing for an obligation, to the extent that there is capacity available, on companies operating transmission and distribution networks for electricity and gas to offer terms for the use of their grid, in particular to individual consumers or to distribution companies, in return for payment“ (Commission of the European Communities 1992, p. 6).

freedom to negotiate supply and price arrangements, opening the way for more trade between regional and national systems, and in creating a competitive climate at the level of electricity production for the existing industry and new entrants (Commission of European Community 1991, p. 36). However, there were also those who resisted the TPA by arguing that the new regime would create uncertainty and have adverse consequences for investment planning, supply security, system control, supply costs and price stability. In addition to that, they argued that the TPA would require an excessive amount of regulation going beyond that necessary to protect consumers, and that any benefits of this new regime would accrue only to large consumers at the expense of household consumers (Commission of European Community 1991, p. 36).

On the basis of these extensive negotiations with representatives of the Member States and experts from working groups, in 1992, the Commission developed a proposal to the Council to introduce *mandatory* third-party access into the electricity industries of Member States (Lyons 1998, p. 29). In the proposal, the Commission made an assessment of the situation of the electricity markets of the Member States and concluded that there were numerous obstacles in the national electricity markets such as obstructed arrival of new entrants to the electricity industry, monopolies in production, distribution and supply industry sectors that allow only very limited competition, no free right on the part of consumers to choose their suppliers as well as the efforts of the Member States to intervene in their national electricity markets (Commission of European Communities 1992, p. 7). In its proposal the Commission took care of the results of the consultations between the Member States and agreed with their common conclusion that the integration of national electricity markets should rely on the principles of the gradual approach, subsidiarity as well as the avoidance of the trap of excessive regulation (Commission of European Communities 1992, p. 8). The Commission was very careful with the introduction of the new TPA access and proposed to introduce third-party access rights only to a limited number of high voltage gas and electricity consumers so that the transmission and distribution companies were obliged to offer access to their network to certain eligible entities at reasonable rates and within the limits of available transmission and distribution capacity. Among such large industrial users the aluminium, steel, chemical and glass industries were included (Commission of European Communities 1992, p. 9 - 10). The proposal also instructed the Member States to abolish exclusive rights in electricity generation as well as in the construction of gas and electricity transmission lines, and ordered vertically integrated companies to unbundle their accounting and management systems. According to the Commission, the latter was necessary in order to increase transparency in transmission activities (Commission of the European Communities, pp. 9 – 10).

However, despite pre-consultations in the working groups, the Council of Ministers rejected this proposal. This meant that the process towards the creation of a single market in electricity at that time promised to be lengthy, involving "the Commission scaling back its early ambitions in the face of strong Member States opposition" (Bartle 2005, p.75). A majority of the Member States considered the proposal from the Commission as overly ambitious.

3.1.2.2 A Renewed Proposal for the Electricity Directive 1993 and Negotiations on the Single Buyer Model

In December 1993, the Commission responded with a modified proposal for common rules in the electricity markets of the Member States. Among the main amendments belonged the possibility of allowing electricity and gas producers to negotiate access to the network that replaced the regulated access provided for in the initial proposals, the introduction of a tendering procedure as an alternative to the authorisation system for new transport and production facilities, and a greater emphasis on public service obligations and harmonised conditions (Commission of the European Communities 1993, Lyons 1998). However, the agreement on the modified proposal could not be reached in the Council because of different positions of the Member States. At that time a clear division in the opinions of the Member States had developed. Thus, France, Belgium, Ireland, Greece and Spain strongly opposed the Commission's proposals. On the other hand, the United Kingdom, Germany and the Netherlands were supportive and pledged support for gradual harmonisation of national energy markets (Bartle 2005, p. 76). The dominant electricity industries such as EdF, Ruhrgas and RWE were concerned about the questions of security of supplies and subsidiarity that remained unclear. Especially concerning the subsidiarity, they recognized that the harmonisation of national electricity markets would require regulation at the European level, which was strongly opposed by some Member States (Helm 2001, p. 306). Especially France rejected the negotiated TPA in an ultimate form and pledged support for a single buyer model in order to safeguard its public service obligations (Bartle 2005, p. 76, Lyons 1998, p. 30). Under such circumstances, the Council agreed to ask the Commission to check the feasibility of introducing a single buyer model in parallel with the third-party access.

In 1995 and the first half of 1996, difficult negotiations were conducted during the Council meetings and in the working groups. German and French delegations even conducted the negotiations separately because of differences in views between these two countries (Bartle 2005, p. 76). The introduction of the electricity market directive was a highly sensitive issue in

two countries in the light of national elections. In France, the proposed new legislation was considered by some as a source of unemployment and in Germany there was an appeal for the need for equivalent market liberalisation among all participants in the European internal electricity market (Lyons 1998, p. 30).

In March 1995 the Commission issued a Working Paper where it combined the single buyer model proposed by France and the negotiated TPA. The Commission acknowledged that a single buyer system, as proposed by France, could not be considered as economically equivalent to the Commission's proposal of negotiated Third-Party Access because "it falls short of what is desirable and achievable from a competition point of view" (Commission of the European Communities 1995, p. 5). Further, the Commission laid down six conditions that should be applied in the single buyer model in order to make it compatible with the system of the negotiated TPA. To those conditions it counted the right of eligible consumers to contract electricity supplies with external producers under the same conditions as with domestic independent electricity producers; the objective and justified import regime that should be governed by an obligation of the single buyer to buy unlimited quantities of imported electricity under certain objective conditions, by transparency of tariffs to use the transmission system and transparency of prices to be paid by the single buyer for imported electricity; unbundling of the single buyer in terms of a full separation of management and of information flows between production and supply; transparent tendering procedures for new and additional production capacities organized only by public authorities or other independent entities appointed for this purpose; transparent parallel authorisations of independent producers; and finally, the right of all eligible consumers to construct and use direct lines for transactions with external producers and domestic independent producers (Commission of the European Communities, pp. 5 – 7).

Under pressure from France's side, the single buyer concept, with most of the conditions laid down by the Commission, was incorporated in the draft directive on the common electricity market. However, as well documented by Bartle (2005, p. 76), before the agreement between France and Germany was reached the directive could not be implemented by the co-decision procedure of the Council and the European Parliament. The agreement between France and Germany was reached in June 1996 during the meeting between Helmut Kohl and Jacques Chirac. According to Bartle (2005, p. 76), two countries made substantial concessions in order to conclude the agreement. Germany agreed that an electricity directive would include the options of the single buyer model and the negotiated TPA, higher eligibility thresholds, a longer period of transition towards full liberalisation, and distributors not having the same right to choose their supplier as large users, which points were highly important for France. In turn, France made concessions to Germany by accepting that the single buyer model, in order to be compatible with

the negotiated TPA, would be modified according to major conditions presented by the Commission in 1995 and that a market reciprocity clause would be introduced to allow restrictions of imports if there was an imbalance in market opening between the single buyer model and the negotiated TPA.

The directive was adopted in 1996 and came into effect at the beginning of 1997. It specified a very gradual transition, opening the national electricity markets to competition. It was said that, in 1999, users of more than 40 GWh per year (about 26% of the market) were entitled to choose their supplier, in 2002 users of more than 20 GWh (about 29% of the market) and in 2005 users of more than 9 GWh (about 33%) (Bartle 2005, p. 76, Eikeland 2004, p. 6). The Member States were obliged to implement the directive by February 1999. In the academic circles, the directive was characterized as a "framework" for the future policy of introduction of international competition into the power engineering sector. As Eikeland (2004, p. 6) scrutinized,

> Rather than strict, invariable instructions, which characterised the Commission's initial proposals, the new directive proposals basically offered a *framework* for further liberalisation of the electricity and gas sectors, with considerable freedom for Member States to choose pace and regulatory measures. Member States could opt for a system of regulated third-party access (giving eligible customers the right to access on terms (transmission prices) made transparent ex-ante) but should not be denied the opportunity to apply a system of negotiated access (where the transmission system operator negotiates terms of access with eligible customers) (Eikeland 2004, p. 6).

The 1996 directive introduced the rules for third-party access to the transmission grids of the Member States and stipulated the access of new companies to power generation. In addition, the electricity undertakings, whatever their system of ownership or legal form, were told to keep separate accounts for their generation, transmission and distribution activities (this is a minimum degree of unbundling of generation and transmission) (Article 14).

3.1.2.3 The Content of the Directive 96/92/EC and Its Implementation in the Member States

The 1996 directive on the introduction of common European rules into the national electricity industries explained the necessity of introducing the common internal electricity market through a number of factors. First, it argued that the completion of the EU's internal electricity market was a necessary part of the establishment of the common internal energy market. Referring to the gradual establishment of the internal electricity market, it, nevertheless,

underlined the important logic of efficient electricity sector functioning, reinforcing security of supply and respecting environmental protection (Directive 96/92/EC). The Directive 96/92/EC laid down the rules for functioning of national electricity markets in the Member States and established the competition and non-discrimination principles. Thus, concerning new generation capacity, private firms could get from the state authorities a license according to the authorisation or tendering procedure (Article 4). The transmission system should remain a natural monopoly and the independent system operator should ensure free access to the transmission grid for all participants in the EU's internal electricity market for payment (Articles 7 – 9). Thus, the directive introduced the following ruling:

> Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non-discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations of interconnector transfers and the technical constraints on the system (Article 8, Paragraph 2 of the Directive 96/92/EC).

Further, in Article 14, the rule was established according to which electricity undertakings, whatever their system of ownership or legal form, should keep separate accounts for their generation, transmission and distribution activities. In those Member States where a single buyer model was introduced the single buyer should operate separately from the generation and distribution activities of the vertically integrated undertaking. Concerning the third-party access, the Directive specified that the Member States could choose between three options, the negotiated third-party access, the regulated third-party access or the single buyer. According to the option of the negotiated third-party access all electricity producers and suppliers and all eligible customers could sign supply contracts with each other and negotiate the price for using the transmission grid with the network operator. The system of regulated third-party access allowed the market participants to access the transmission grid based on fixed tariffs. The third model foresaw the single buyer that was responsible for the electricity supply to all customers within the area concerned. Under this model, eligible customers could conclude supply contracts with producers inside and outside the system. Then, the single buyer was obliged to purchase the quantity of electricity that was agreed in the contract between the eligible customer and the producer at the price that would be calculated as the difference between the price at which the single buyer has been supplying the customer thus far and thereafter and a tariff for the use of the transmission system that has been made public (Articles 16 – 18).

In the year 1998, the Member States had great differences in terms of the unbundling and introduction of competition into their national electricity markets as well as the opening of their markets (see Table 3.6). Thus, in 1998, only half of all Member States opened their power generation industry to access by new firms. At that time nearly all electricity industries of the Member States were characterized by the dominance of a few state-owned and/or private companies in the power generation sector that, in addition, owned transmission and distribution facilities. Only UK, Sweden, the Netherlands and Finland had fully legally unbundled their electricity generation, production and transmission activities.

Table 3.6 State of Liberalisation of the National Energy Markets in the EU in 1998

	Access to Generation	**Access to the Networks**	**% of Eligible Consumers that can freely choose their suppliers**
Austria	Authorisation	Single buyer	27%
Belgium	No	No	No
Denmark	Authorisation	Negotiated TPA	90%
Finland	Authorisation	Regulated TPA	100%
France	No	No	No
Germany	Authorisation	Negotiated TPA	100%
Greece	No	No	No
Italy	No	No	No
Ireland	No	No	No
Luxembourg	No	No	No
Netherlands	Free access	Regulated TPA	32%
Portugal	Tendering and Authorisation	Regulated TPA	Not available
Spain	Authorisation	Regulated TPA	30%
Sweden	Authorisation	Regulated TPA	100%
UK	Authorisation	Regulated TPA	100%

Source: Commission of the European Communities, 1998, pp. 8 – 13, own compilation.

3.1.3 Actors' Constellations on Electricity Liberalisation Policy-Making

3.1.3.1 Autonomous Actions of EU Institutions vs. Member States

3.1.3.1.1 European Commission vs. Member States

Liberalisation of the electricity sector in Europe was impacted in the second half of the 1990s by the wider trend towards the withdrawal of the state from infrastructure industries. At the end of the 1980s, electricity stakeholders all over the world started to question the necessity of monopolies of national electricity markets. It was argued that monopoly is less effective in providing low-cost electricity and new technology and that competition in the generation and distribution of electricity is the best way to reduce electricity prices, stimulate technological innovation and better service for customers.

In Europe, there were also broad debates over the need for a more integrated energy policy. The pressures for deregulation of the electricity industry came from consumers and pro-liberal governments such as Great Britain, but also from the European Commission. After the collapse of oil prices in the middle of the 1980s, as pointed out earlier, consumers became more concerned about energy prices than security of energy suppliers. These considerations were reinforced by broad debates on privatisation and deregulation processes in the states' economic policies. Also a number of more pro-liberal states in Europe discussed the reforming of the electricity industry. The most progressive one was Great Britain. Between 1987 and 1991, privatisation of the electricity supply industry, telecommunications, gas and other less monopolistic state-owned industries belonged to the program of ownership transformation by the British government (Vickers and Yarrow 1991). These policies were clearly driven by economic and technological forces discussed in the previous chapters, such as increasing economic efficiency through competition, raising revenues for the government, widening share ownership and so on. Following this discussion, in 1988, the British government issued a paper that outlined structural reforms in the electricity sector that included separation of transmission and generation activities, privatisation of power generating assets and state-owned regional electricity distribution corporations as well as the introduction of significant competition into the electricity production and electricity supply (for a more detailed discussion of the restructuring of the British electricity industry see Vickers and Yarrow 1991).

The European Commission used this relatively strong consensus among utilities themselves and between them, the governments and consumers as a window of opportunity through which to pursue reforms which restructured the electricity industry on the pan-European level. It should be noted that the idea of the common energy policy in Europe was developed by the European Commission starting in the 1950s, without any success, however. The Commission's discourse on energy had been characterized by the necessity to harmonise national energy policies. The Commission was the first institution that put into question the compatibility of the existing structure of the electricity industry in the Member States with the goals of the proclaimed Internal Energy Market (Commission 1988). Even more, the European Commission believed that "a European electricity market as part of an Internal Energy Market would not only be a major boost to the efficiency of the energy sector but would be one of the most important achievements of the entire campaign for a Single European Market by 1992" (McGowan 1990, p. 16). In its working document on the internal energy market, in 1988, the European Commission made clear that the common energy policy should be regulated on the supranational level and that the role of national public authorities in the energy sector would be gradually decreasing:

The public authorities will still have a role to play. Their responsibilities may change, however, or the level at which authority is exercised may alter (e. g. responsibilities may be transferred to decentralized regions or to the Community). In certain areas, it will remain essential, whilst respecting the Treaty rules, in order to monitor the safety of installations or guarantee public safety, (particularly concerning the environment) to ensure that the quasi-public service nature of energy continues to apply (continuity of supply), to fulfil certain obligations directly (by continuing to promote innovative energy technologies in order to prepare for the future independently of short-term market signals) or to take due to account of the social and/ or regional aspects of energy. There will therefore still be a role for the public authorities but it is evident that the very spirit of the large market presupposes that the responsibilities in question will increasingly be exercised in a Community perspective and less and less simply on the basis of domestic considerations (European Commission 1988, p. 9).

At the beginning of the 1990s, the main issue that drove the introduction of the internal energy market in the EU was the discussion of third-party access (TPA) that should allow the companies from the Community to access the transmission grids of other Member States. The discussions on this issue within the Consultative Committee of the Member States revealed that the Member States were strongly concerned about the possible negative impact of the TPA introduction on the functioning of national markets and existing contracts. The common view was that the introduction of the TPA should proceed through minimum regulation, subsidiarity, gradual approach and evaluation of experience (Commission of European Communities 1991, p. 16). There was a certain paradox in the Member States' discourses on energy in this period. On one side, the Member States called for the development of the common energy security policy and its foreign dimension by emphasizing the geopolitical dimension of energy policy. On the other side, all of the Member States' discourses emphasized their own competences in determining their national strategies in the development of the electricity sectors. Table 3.7 summarizes the regulatory authorities in the Member States that had regulatory functions in the electricity sector and represented the national positions on the restructuring of the electricity industry in the EU.

The discussion of third-party access and the Commission's 1993 revised proposal on substituting mandatory third-party access with negotiated third-party access was one of the first serious debates between major EU policy-making institutions, the Member States and electricity industries in harmonising their interests in the power engineering industry. In this connection, the Commission was ready to substitute its initial proposal to introduce the mandatory third-party access with the negotiated third-party access. However, it rejected the proposal from Parliament to establish an Electricity and Gas Council consisting of representatives from electricity

undertakings, distribution companies, large industrial consumers, small and medium consumers and trade union organizations (Commission of the European Communities 1993, p. 7).

Table 3.7 National Regulatory Authorities in the EU Countries in 1999

State	*Regulatory Authorities*	*Legal Status of Regulatory Authority*
Austria	Ministry of Economic Affairs	Government ministry
Belgium	Comité de Contrôle for Electricity and Gas for captive customers Regulatory Commission for Electricity and Gas open market	Statutorily independent authorities
Denmark	Energy Agency Energy Regulation Board	Government ministry Statutorily independent
Finland	The Electricity market Authority	Independent Experts subordinated to Finnish Ministry of Trade and Industry
France	Electricity Regulation Commission	Independent commission
Germany	Ministry of Economics/Environment Cartel Office	Government Ministry
Greece	Electricity Regulatory Authority	Statutorily independent
Ireland	Commission for Electricity Regulation	Statutorily independent
Italy	Independent Authority or Electricity and Gas Ministry of Industry	Statutorily independent
Luxembourg	Institute of Telecommunications and Electricity	Independent body
Netherlands	DTe, part of Competition Authority	Statutorily independent
Portugal	Entidade Reguladora	Statutorily independent
Spain	Ministry of Industry and Energy Electric System National Board	Government Industry Statutorily independent (but only advises ministry)
Sweden	STEM	State Authority
United Kingdom	Department of Trade and Industry Office for Gas and Electricity Markets Office for the Regulation of Electricity and Gas, Ofreg (Nothern Ireland)	Government ministry Statutorily independent Statutorily independent
Norway	Norwegian Competition Authority Norwegian Water and Energy Authority	Subordinate to government Subordinate to government
Switzerland	Competition Commission Price Control Authority	Statutorily independent Ministry of Economic
Czech Republic	Ministry of Finance Energy Regulation Administration	Government Ministry Department of Ministry of Trade and Industry
Hungary	Parliament Ministry of Economy Ministry of Finance Hungarian Energy Office	 Government Ministry Government Ministry Department of Ministry
Poland	Council of Ministers Energy Regulatory Authority	Government Ministers Independent administrative department

Source: Pollitt 1999, p. 46.

Not only the diverse national interests of the Member States prevented the Commission from the pursuance of the reforms in the electricity sector by using the pressure of the Single European Act and the common internal market but also the lack of pressure from the industry itself was a second major preventing factor the Commission had to cope with. The main focus of nearly all European consumers and groups representing the user interests of the industry until the middle of the 1990s was national. The electricity consumers dealt in a less degree with influence

from international competition on price decrease but were demanding lower prices within their countries (Bartle 2005, p. 98). So, these were primarily the European institutions that pushed for the reform in the electricity sector in the EU, so that "given the strategic position of the electricity industry in national politics, in the absence of policy at the level of the European Union (EU), the pace of reform in many Member States would have been considerably slower" (Jamasb and Pollitt 2005, p. 1).

The directive on the internal electricity market issued in 1996 was a compromise between the Commissions' original proposal to introduce the full competition into the national electricity markets of the Member States and a harmonised third-party access and the strong positions of the Member States that were rather careful in the fast opening of their national electricity markets. These were especially Germany and France that pursued the reforms in their electricity sectors very gradually and prioritized vertically integrated electricity undertakings. The Commission accepted the requirement of France that the Member States could choose the single buyer model. France argued that the states needed this option in order to induce public service obligations on national firms such as security of supply, regularity, quality, prices of supplies and environmental protection (Eikelland 2004, p. 6).

From the introduction of the negotiations on the electricity market restructuring in 1988until 2001 when the first electricity directive from the year 1996 was fully implemented in all Member States the positions of those Member States who at the beginning were in confrontation with the national electricity market opening have been gradually changing. These were France with the view of electricity as a public good and Germany with the strong social economic context.

France was from the very beginning concerned that EU attempts to liberalise the electricity sector would jeopardize the long tradition of state primacy in regulation of public service in electricity supply. Furthermore, France and the executives of the French national electricity utility Electricité de France (EDF) saw no incentives to open their national electricity market for competition (Eising and Jabko 2001, p. 751). Additionally, the EDF functioned well in the late 1980s and brought significant revenues into the French budget which was one factor more why the French government was reluctant to open its national electricity market. As interviews-based study of Eising and Jabko (2001, p. 752) argues,

By the late 1980s, EDF was posting record profits and had become a formidable cash flow for the French state. Preserving this source of income as an instrument to preserve a balanced budget was especially important for the French government in the run up to Economic and Monetary Union. Faced with the prospect of high short-term costs, the hypothetical long-term welfare benefits of liberalisation did

not appear as sufficiently tangible for any of the successive French ministers to seriously envision a rapid demonopolization of French electricity supply (Eising and Jabko 2001, p. 752).

However, as the last chapter has shown, the French government had to work out a compromise because of the pressure of the Commission that pushed the reform of the opening of the electricity market by using the arguments of economic efficiency and the functioning of the common internal market from one side and intergovernmental negotiations in the Council as well as informal meetings between the states' delegations from the other side. Under such circumstances "the French could no longer pursue a tactic of systematic opposition against a proposal that was increasingly pragmatic and thus could no longer be rejected as "ideologically liberal" (Eising and Jabko 2001, p. 753).

In the middle of the 1990s the positions of other relevant political and business actors in France began to change. The Ministry of Finance supported the idea that the demonopolization of the French electricity industry would lead to the increase of the efficiency of the sector's functioning. Furthermore, large industrial consumers that were in general satisfied with the electricity prices provided by the state-owned electricity company welcomed the liberalisation as a way to get electricity at the lower price as a result of the competition between independent suppliers. Concerning the French public, it remained in favour of the state electricity monopoly. Taken into account all this, the French position on electricity liberalisation in the 1990s could be formulated in a following way: "There was a feeling that France could live with a liberalising directive as long as certain key objectives were ensured – that is, the continuation and integrity of EDF as a public service corporation, the preservation of state prerogatives in determing the broad outlines of energy policy" (Eising and Jabko 2001, p. 754).

The German political actors including the government, the Federal Economic Ministry as well as economic ministries at the regional level were against changing the status quo in the national electricity industry. They underlined the heterogeneity of the Member States' structures in their national electricity sector and the necessity to maintain the principles of network-bound energies. However, from the interviews with officials of the Federal Economics Ministry conducted by Eising and Jabko (2001) it has resulted that the position of the Federal Economic Ministry gradually came to change because of close interactions with the Council of Ministers at the EU level and its decision-making process (Eising and Jabko 2001, p. 757). The authors came to conclusion that:

Whereas ministry officials perceived that EU negotiations might strengthen their political position at the domestic level, their change of preferences cannot be interpreted merely as a bureaucratic-political move. Rather, it also reflected a fundamental reassessment of the principles that had informed the organization of the German sector (Eising and Jabko 2001, p. 757).

3.1.3.1.2 European Parliament vs. Member States

The European Parliament had been steadily gaining power, since the beginning of the 1990s. In electricity deregulation and liberalisation policy-making, the Parliament together with the Council adopted and amended proposals from the Commission and provided an active mediation between the Commission and the Council in the power industry regulation.

In 1993, the European Parliament, through its energy committee, took an active role in finding a compromise acceptable to both the Council and the Commission. In 1992, the Council rejected the Commission's proposal to establish a single market in electricity, arguing that before such a market could be established a number of obstacles in the areas of security of supply, environmental protection, protection of small consumers, transparency and non-discrimination, recognition of the differences between national systems and transitional provisions would have to be removed (Commission of the European Communities, 1993). The European Parliament supported the need for greater harmonisation to accompany the gradual opening-up of the electricity sector in the EU during the transitional period and the need for prior harmonisation in the fields of environment and taxation, as a precondition to any further liberalisation (Commission of the European Communities, 1993). At the same time, the Parliament pledged support for the pluralist establishment of the internal market in the electricity in the EU. Concerning the liberalisation of the production of electricity it suggested either a system based on a tendering procedure for new capacities or a system based on the granting of non-discriminatory licences. Concerning the question of a particular interest of the Member States, the mandatory third-party access, which the Council rejected in 1992, the European Parliament suggested introducing negotiated access to networks that would allow large industrial consumers to benefit from the direct supply of electricity. Therefore, the Parliament managed to suggest alternative mechanisms in those questions that were sensitive for the Council, but, at the same time, it supported the establishment of the common internal market in electricity.

After a new Commission proposal was presented in December 1993, there was much speculation as to how Members of the European Parliament might deal with the Directive (Lyons, 1998, p. 31). However, as Lyons (1998) writes, the Members of the Parliament understood that if the Council could find a compromise the Parliament would not take the risk of

rejecting the Directive anymore in the co-decision procedure. He cited the words of Socialist MEP Claude Desama, the EP's rapporteur, on this question: "Parliament cannot take the risk of killing off the Directive" (Lyons, 1998, p. 31). The research/energy committee of the Parliament suggested some smaller amendments to the draft directive of the Commission but the largest fractions in the Parliament at that time, the Socialist Group and the Christian Democrats, had not worked out a common position on them and at the end agreed on the amended draft directive of the Commission, in December 1996.

3.1.3.1.3 European Court of Justice vs. Member States

The role of the European Court of Justice (ECJ) is to be defined as autonomous and important in policy-making in the electricity industry in the EU, in the 1990s, as well. According to Pierson (1996), "in the process of European integration, the European Court has taken an active, even forcing stance, gradually building a remarkable base of authority and effectively 'constitutionalizing' the emerging policy" (Pierson 1996, p. 133). The European Court of Justice (ECJ), through its autonomous ruling in the 1990s, contributed, in a large degree, to the introduction of the common internal market in the EU by underlining the fact that common market should cover the electricity industry as well.

In the 1990s, the European Court of Justice (ECJ) in its judgments in *Corbeau*[3] and *Porto di Genova*[4] opened the ground for introduction of liberalisation into the monopolized energy sector. In these cases, the court came to the conclusion that it was lawful to grant special rights to undertakings but that the exercise of those rights should be subject to competition rules. Thus, in 1993 the ECJ stated:

> In the case of public undertakings to which Member States grant special or exclusive rights, they are neither to enact nor to maintain in force any measure contrary to the rules contained in the Treaty with regard to competition (ECJ 1993, § 12).

After this ruling the ECJ started to apply competition rules of the EU's common internal market to the electricity sector, having, however, in mind the fact that supply of electricity is a service of general economic interest:

[3] Case C-320/91 *Corbeau* [1993] ECRI-2533.

[4] Case C-179/90 *Merci Convenzionali Porto di Genova SpA v Siderurgica Gabriella SpA* [1991] ECR I-1979.

Undertakings entrusted with the operation of services of general economic interest are to be subject to the rules on competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them (ECJ 1993, § 13).

Additionally, the court concluded that the actions of undertakings which have a dominant position in the national market in particular branches or which get exclusive rights from the state may have negative impacts on the trade relations between Member States and, therefore, are against the law of the European Union:

The undertakings enjoying exclusive rights in accordance with the procedures laid down by the national rules in question are, as a result, induced either to demand payment for services which have not been requested, to charge disproportionate prices, to refuse to have recourse to modern technology, which involves an increase in the cost of the operations and a prolongation of the time required for their performance, or to grant price reductions to certain consumers and at the same time to offset such reductions by an increase in the charges to other consumers. (…) It is sufficient to recall that a national measure which has the effect of facilitating the abuse of a dominant position capable of affecting trade between Member States will generally be incompatible with that article, which prohibits quantitative restrictions on imports and all measures having equivalent effect (ECJ 1991, §§ 19, 21).

In the *Almelo*[5] case, the ECJ came to the conclusion that electricity is a good and that all agreements that contain an exclusive purchasing clause which prohibits local distributors from obtaining electricity supplies from other suppliers has a restrictive effect on competition. As a result, it was stated that the exclusive purchasing clause contained in the agreements between the regional distributors and the local distributors negatively affects trade between the Member States.

Therefore, it can be concluded that the ECJ played a major role in the 1990s in limiting the scope and impact of national law and rules concerning the organization of energy policy either by the application of the treaty rules or by secondary legislation, or both. On one hand, the ECJ ruled that the national electricity markets of the Member States were a part of Europe's internal market and that the Member States were required to remove all obstacles to the proper achievement of such a market, based on undistorted competition. The consequence of this legal interpretation by the ECJ was that the Member States had to remove all national measures in the national electricity markets which conflicted with community rules on free of goods and services, as well as competition rules. On the one hand, enforcement proceedings were instituted before the Court of Justice which often challenged the legality of such national measures from

[5] Case C-393/92 *Gemeente Almelo and others v Energiebedrijf IJsselmij* [1994] ECR I-01477.

the Member States that restricted trade in electricity or led to distortions of competition in national electricity markets.

3.1.3.2 Access of Interest Groups to Policy-Making

The main business groups that had interests and influence in the electricity industries in the Member States of the EU were electricity utilities and their associations, as well as large industrial consumers. Since it was discovered that the Commission was an important driver of policy, the influence of interest groups on the policy-making of Member States and the Commission is portrayed in this chapter.

In response to the radical nature of the Commission's proposals regarding the establishment of a competitive internal energy market in Europe, national electricity supply industries representing nearly all the Member States founded the European Grouping of the Electricity Supply Industry (Eurelectric), in 1989, with the purpose of providing a united industry response, primarily in the form of industry opposition. Additionally, the end of the 1980s and the beginning of the 1990s saw a rise in direct firm activity in major firms such as the French firm Electricité de France (EdF), RWE, PreussenElektra, and Bayernwerk of Germany and the British companies National Power and PowerGen. These firms were concerned about the questions of security of supplies and the subsidiarity principle in the industry regulation (Helm 2001, p. 306). In 1992, local public utilities from Germany, France, Italy and Belgium founded their lobby organization, the CEDEC, in Brussels in order to strongly oppose the Commission's plans.

However, despite opposition from the side of national electricity supply industries, the Commission continued to pursue its proposals for the competitive internal electricity market and the openness of Member States' transmission assets to all participants in this market. By 1995, a division of interests between major electricity supplier utilities outside the formal association Eurelectic occurred and was shaped by national positions on electricity liberalisation. Thus, when the Council compromise between France and Germany was feasible, the electricity supply industries from the UK, Sweden, Germany and the Netherlands started to support the Commission's plans (Bartle 1999). So, it could be concluded that the change in views of the supplier firms from the UK, Sweden, Germany and the Netherlands, in the middle of the 1990s, occurred not through their interests in operating globally but in terms of the Commission and Member States' efforts to introduce liberalisation requirements (Bartle 1999, Bartle 2005). The supply utilities from these states developed an informal alliance of the "northern liberals" which met regularly outside the forum of Eurelectric (Bartle 1999, p. 377). On the other side, the

French EdF strongly opposed the model of third-party access and strongly lobbied for the single buyer system with some support from utilities in Belgium, Luxembourg, Greece and Ireland. In general, the French business organized itself to lobby in the EU much later than other Member States, due to the low level of internationalist action of French firms in the 1980s. At the beginning of the 1990s, the situation changed somehow, and French business started to organize itself into members in European business associations, such as UNICE, members in the national business associations and individual firms, in order to lobby in Brussels. However, in the first half of the 1990s, the French business was less present in the EU than that of other countries and acted less efficiently and actively (Schmidt 1996, p. 232).

The main focus of nearly all European consumers and groups representing user interests in the industry, until the middle of the 1990s, was national. Electricity consumers dealt, to a lesser degree, with influence of international competition on price decrease but were demanding lower prices within their countries (Bartle 2005, p. 98). Furthermore, the national character of the electricity intensive industries made them reluctant to demand policy changes from the government. They were reluctant as well regarding change of the monopolistic character of electricity supply because the electricity suppliers often suggested contracts preferential to them (Humphreys and Padgett 2006, p. 390).

Electricity supply companies started to react to the Commission's proposal on electricity liberalisation at the end of the 1980s. Thus, in the middle of the 1980s, large users from Germany and Great Britain, the Verband der Industriellen Energie- und Kraftwirtschaft (VIK) and the EIUG, positively appreciated the Commission's proposal to establish a single European electricity market because they saw the introduction of competition into the power generation and supply sectors as a way of reducing electricity prices (Bartle 1999). In 1989, the EU-based lobby organization of large energy-consuming industries, IFIEC-Europe, was founded. The large French consumers and labour unions were, on the contrary, very slow in organizing themselves to lobby in Brussels. They had not supported liberalisation in Europe until the middle of the 1990s, due to long-term contracts with the EdF and the fear of losing their jobs and privileges (Schmidt 1996, p. 241).

In addition to the formation of electricity supplier and consumer interest representing lobbying organizations at the EU level, the Commission attempted to consult the representatives of the electricity industry. For this purpose, in 1996, the Commission established the Energy Consultative Committee (ECC) that was to consist of 31 members representing the energy industry (15 members), energy consumers (8), energy sector unions (6), environmental protection organisations (1), and the Commission (1). According to the Commission, the role of the ECC would have been that of helping identify areas in which further harmonisation was

needed and providing advice regarding the implementation of the Commission's energy policy proposals. However, according to the expert Lyons (1998), the progress of the establishment of the Committee was rather slow. Only in early 1998 did the Commission appoint the first members of the ECC.

At the end of the 1990s, a division in interests occurred between electricity supply industries and consumer industries, concerning the further harmonisation requirements in the internal electricity market in Europe, as proposed by the European Commission in 1999 and 2000. Thus, the position of the largest business association of electricity supply industries in the EU, Eurelectric, as well as the lobby association of public service union workers from the Member States EPSU, justified their unwillingness regarding further harmonisation requirements due to social implications of the integration of the European electricity markets, in particular the reductions in the number of jobs within the electricity sector that would occur due to increased competition (EURELECTRIC, EMCEF and EPSU 2000). The European Federation of Public Service Unions EPSU, in its study, confirmed a significant loss of jobs in the electricity and gas sector in the European Union. According to the organization, over 250,000 jobs were lost between 1990 and 1998, and a further reduction of jobs by 25% over a 4 – 5 year period could be expected (EPSU 1999, p. 3). The EPSU argued that no specific measures that could mitigate the negative impact of the electricity directives could be found. Additionally, the EPSU argued that not all interests were taken into consideration during the preparation and implementation of the first electricity directive and that "the European Commission and several of Europe's governments have been taken hostage by the narrow interests of a small group of large industrial electricity consumers of electricity (UNICE, IFIEC, Ener-8) and neo-liberal wishful thinking" (EPSU 1999, p. 6). The ERSU acknowledged that national governments had been permanently loosing influence over their energy policy to transnational energy companies, independent regulators and European institutions. The EPSU criticized European regulatory bodies focusing on ensuring competition in the internal electricity market and argued that further regulation on the European level should be focused on improving the quality of service to citizens and businesses, as well as ensuring public service obligations (EPSU 1999, p. 25).

On the contrary, associations of large energy consumers in Europe completely supported the Commission's intention to introduce a fully liberal, competition-based internal electricity market in Europe. They pledged support for a full separation of national transmission grids from power generation and distribution assets, as well as for a non-discriminatory third-party access to the transmission assets of the member States (IFIEC 1999). Additionally, they realized the shift of the regulatory governance in the electricity sector to the European level and supported the

creation of new supranational regulatory institutions in Europe such as an Association of Independent Network Operators (ETSO).

On the Pan-European level, it shall be concluded that, in the 1990s, there was a lack of pressure from the industry and its main actors on the issue of electricity liberalisation and demonopolization, and interest intermediation in the electricity sector, as it arose in the first half of the 1990s, played a merely supportive role in the Commission's objective of driving the Single Market agenda forwards. Despite the reports of electricity supply industries and public service unions on the negative social consequences of the electricity market's opening, the Commission continued to use competition policy powers in order to bring the Member States to work within the scope of the first electricity directive. In the second half of the 1990s, the Commission's main task was to turn the single buyer model to its advantage and to find a compromise between different models of implementation of the harmonisation requirements in the electricity sector. Until the end of the 1990s, the Commission did not make practical use of the option of including industry actors in the policy-making in the sphere of electricity, in order to advance market-making policies at the European level.

3.1.4 Mode of Actors' Interaction and Its Effectiveness

The analysis of the actors' constellations in European policy-making in the electricity sector during the 1990s allows for a characterization of the mode of actors' interaction as a negotiated agreement. The first legally binding electricity directive was the outcome of controversial negotiations that occurred among the national governments of the Member States, the European institutions and interest groups. The EU level of negotiations and its formal and informal institutional dynamics contributed to gradual changes in preferences of the Member States and their main policy-making actors. In the 1990s, the negotiations progress in Brussels impacted the outcome of the national electricity industries reform in EU countries.

The European Commission played a major role in policy-setting in the electricity industry at the end of the 1980s and in the 1990s. Since the 1980s, the governments of the EU Member States were put under pressure by global economic and technological forces. High electricity prices had pressured for change. The European Commission took this window of opportunity; the establishment of the common internal market that resulted from the Single European Act facilitated the expansion of the internal market rules in the sphere of electricity. However, at that time the Member States lacked the pressure from their national electricity industries and consumer unions to introduce national and international competition into the electricity sector, seeing differently the future means of organizing their national markets.

The Maastricht Treaty further strengthened supranational authority in a number of policy areas, although it did not specify the EU institutional actors' competences in energy policy, because, at that time, Member States still feared the loss of their national competencies in the area of energy, the majority favoring the monopolistic character of the electricity and gas industries. In addition to this, in the first half of the 1990s, the European Court of Justice ruled that the internal electricity market was a part of the European internal market and, in this way, shifted policy-making in the electricity industry to the European decision-making level. The Single European Act, the Maastricht Treaty and the decision of the ECJ mostly contributed to political spillover in which European institutional actors exploited and defined their new competences that, however, were not written down in the treaties within a new institutional framework. External forces such as global privatisation and liberalisation that spilled over from technologically advanced sectors, such as telecommunications, into public utilities, as well as the adoption of comprehensive electricity market reforms in Great Britain and Nordic countries, advanced the policy-making at the EU level.

Because of a powerful opposition of big national utilities and national governments, the Commission found it impossible to promote liberalisation at the national electricity markets based on its direct competition legal powers, as it had done before in telecommunications. Under the circumstances of pronounced political resistance, the Commission opted for the negotiated decision route of Council legislation.

The Commission put forth its proposal for liberalisation of the electricity market across Europe, in 1992. The draft directive required a legal co-decision from the Council and the Parliament. As the Council had not accepted the proposal, the negotiation phase in the Council, between the Council and the Commission, as well as between the Commission and the Parliament, began.

The Parliament played a critical role of mediator and guided the Commission towards significant changes. In its detailed opinion, it rejected one of the main aspects of the Commission's draft directive, the mandatory third-party access, and recommended adding the option of negotiated third-party access. In December 1993, the Commission responded to the Council's instructions and the Parliament's opinion. It agreed that, concerning the issue of third-party access, the Member States had the right to choose between the option of a mandatory third-party access or a negotiated third-party access. Additionally, concerning the issue of opening the electricity generation sector to competition, the Commission opted for the introduction of a tendering procedure, as an alternative to the authorisation system for new production facilities.

Therefore, it could be concluded that during the negotiation phase, in the year 1993, the Parliament mediated the interactions between the Commission and the Council and was able to

find the compromise solution on one of the most important issues in the entire liberalisation process of the European electricity market, third-party access. Additionally, the willingness of the Commission to suggest compromise and not radical policy solutions contributed, to a large extent, to the dialogue with the Council.

During the first half of 1994, the French rejected negotiated third-party access because of national public service obligations and suggested the introduction of the single buyer option. The Council asked the Commission to carry out a study on the feasibility of introducing the option of single buyer in parallel with the third-party access. The Commission laid down six conditions on the coexistence of the single buyer model together with the negotiated third-party access in the European electricity legislation.

At that time, the negotiation mode shifted from being between the Commission and the Council to being within the Council. During the German Presidency of the Council, during the second half of 1994, and the French Presidency, during the first half of 1995, the negotiations were handicapped by national elections in Germany and France. The French government rejected the directive because the proposed electricity directive was seen by the French public as a potential source of unemployment. The German public demanded the reciprocal market opening between France and Germany.

After the national elections the countries continued to negotiate collectively with other EU members within the Council. After the single buyer concept was, under a number of conditions, incorporated into the draft directive and after the ECJ ruled that electricity was a good and, therefore, rendered the EU rules on free movement of goods applicable to the sphere of electricity, the position of France began to change. It had the feeling that it could come up with the electricity directive, as long as it could secure public service obligations and the government's competences in defining the guidelines of national energy policy. The single buyer model seemed to be a suitable option for securing these preferences. Additionally, collective negotiations and the bargaining in the Council further delegitimized France's defence of the national electricity market. This is because of the specifics of the institutional setting at the EU level that can be described in the words of Eising and Jabko:

> The bargaining style in the Council is more often analytical than adversarial, which tends to delegitimize the defence of concrete national situations. Although obstructionist or purely self-serving negotiating tactics remain possible, there is a risk of backlash if a majority of Council members is antagonized. Those member states willing to defend their national settings are challenged to come up with compromise proposals that expand the areas of agreement. This applies even to powerful member states such as France and Germany, whose proposals must not only reflect their own domestic structure but must also be applicable in and acceptable to the other member states. This in turn limits the range of

legitimate arguments available to them – unless they are willing to face the responsibility of permanent deadlock or failure of the negotiations (Eising and Jabko 2001, pp. 746 – 747).

Therefore, France and Germany had to make concessions to each other and find a compromise, which can be explained as the result of pressure from the European level of negotiations, both in the supranational and intergovernmental format.

Concerning interest representation on the EU level, it had to be concluded that it played only a supporting role in the negotiations on electricity liberalisation in the EU for a number of reasons. First, in the 1990s interest representation played a role mainly at the domestic level, because electricity had not yet become a regional or global market, and, as a result, there was no need for transnational interest organization. Second, the issue of electricity liberalisation was high politics, because it involved challenging the national principles of the national electricity sectors' operation and, therefore, required negotiations on the level of member states and political institutions rather than a conjunction of political institutions and large private interests.

The analysis of the negotiations in the sphere of electricity on the EU level allows one to derive the conclusion that the negotiated agreement as a preferred mode of actors' interaction in the policy-making on electricity liberalisation in the 1990s was effective because it did not lead to policy deadlock or reversal regulation. The first electricity directive that was adopted in 1996 and fully implemented in 1999 allowed a major step forward towards the establishment of a common internal electricity market in Europe.

3.2 Electricity Market Reform in the EU in the 2000s

3.2.1 Basic Features of the Power Industry in the Countries of the EU in the 2000s

Electricity is the most important secondary source of energy in the European Union and the electricity industry is one of the largest sectors of the economy in Europe. Annual production was some 3,300 Terawatt hours in 2010, which marked a 10.6% increase compared with the year 2000 (European Commission 2001a, p. 2). In nearly all Member States, the production of electricity reduced in 2009 and 2010 reflecting the impact of the financial and economic crisis. Tables 3.8 and 3.9 present indicators that characterize some electricity generation aspects of EU Member States in the 2000s.

Table 3.8 Total Electricity Gross Production in the EU Countries in 2000 – 2010 (GWt)

	2000	***2005***	***2010***
European Union	3,025,238	3,310,644	3,346,225
Belgium	84,012	87,025	95,120
Bulgaria	40,924	44,365	46,653
Czech Republic	73,466	82,578	85,910
Denmark	36,053	36,246	38,792
Germany	576,543	620,574	628,984
Estonia	8,509	10,205	12,964
Ireland	23,977	25,970	28,612
Greece	53,843	60,020	57,392
Spain	224,472	294,077	301,527
France	540,734	576,204	569,103
Italy	276,642	303,699	302,063
Cyprus	3,370	4,377	5,322
Latvia	4,136	4,906	6,627
Lithuania	11,425	14,784	5,749
Luxembourg	1,169	4,131	4,592
Hungary	35,191	35,756	37,371
Malta	1,917	2,240	2,113
Netherlands	89,631	100,219	118,140
Austria	61,257	66,409	71,125
Poland	145,184	156,936	157,657
Portugal	43,764	46,575	54,091
Romania	51,934	59,413	60,979
Slovenia	13,624	15,117	16,433
Slovakia	31,158	31,455	27,858
Finland	69,968	70,572	80,668
Sweden	145,266	158,436	148,609
United Kingdom	377,069	398,355	381,771

Source: Eurostat.

More than one quarter of the net electricity generated in the EU-27 in 2010 came from nuclear power plants (27.3 %) and 54.8 % of produced electricity came from power stations using combustible fuels. The production of electricity from renewable energy sources grew between 2000 and 2010 and increased by 20% in 2010, compared to 2000. However, at the same time there was little change in the relative importance of combustible fuels and electricity generation from nuclear power plants. The share of net electricity generation from nuclear energy fell from 33.4 % in 2000 to 27.3 % in 2010 (see Table 3.9).

Table 3.9 Electricity Generation Mix in the EU Countries in 2010 (% of total)

Electricity Generation Energy Mix in EU-27	
Conventional thermal	54.8%
Nuclear	27.3%
Renewables	17.7%

Source: Eurostat.

During the ten-year period from 2000 to 2010, the consumption of electricity rose in EU countries by 12%. In 2005, the countries of the EU consumed 2770 TWh of electricity. This represented approximately 19.4% of all final energy consumption in the EU (Competition DG of the European Commission 2007, p. 112). The largest markets were Germany, France, United Kingdom, Italy and Spain. Less than 0.2% of the electricity required to meet this consumption was imported from outside the EU. The EU remained, in the 2000s, self-sufficient in electricity production.

Table 3.10 Final Energy Consumption in the EU Counties in 2000 – 2010 (GWh)

	2000	***2005***	***2010***
European Union	2,518,937	2,770,014	2,822,141
Belgium	77,542	80,202	83,311
Bulgaria	24,251	25,716	27,103
Czech Republic	49,381	55,291	57,212
Denmark	32,454	33,464	32,123
Germany	483,453	520,954	528,958
Estonia	4,991	6,040	6,908
Ireland	20,289	24,352	25,430
Greece	43,151	50,904	53,120
Spain	188,459	242,222	244,802
France	384,903	422,771	444,089
Italy	272,975	300,880	299,313
Cyprus	2,996	3,960	4,882
Latvia	4,477	5,729	6,215
Lithuania	6,197	7,977	8,332
Luxembourg	5,775	6,152	6,579
Hungary	29,441	32,338	34,207
Malta	1,567	1,958	1,606
Netherlands	97,786	104,507	106,865
Austria	51,541	58,299	61,321
Poland	98,646	105,416	118,980
Portugal	38,373	46,322	49,888

Romania	33,939	38,859	41,317
Slovenia	10,521	12,742	11,966
Slovakia	22,010	22,850	24,135
Finland	75,674	80,736	83,478
Sweden	128,725	130,698	131,217
United Kingdom	329,420	348,675	328,784

Source: Eurostat.

Electricity consumption in the European countries continued to grow in the 2000s. Total electricity consumption in the residential sector grew by 7% in the period 2000 – 2005. A different trend was observed in industry. The electricity consumption in the industrial sector of economy decreased by 5% in the same period of time (compare Table 3.5 and Table 3.11).

In the 2000s, cross-border trading of electricity in the EU was more important than exchange with third countries. The biggest net importers of electricity were Italy, Luxembourg, Sweden, Latvia and Hungary. On the contrary, France, the Czech Republic, Poland, Estonia and Lithuania were the main net exporters (Competition DG of the European Commission 2007, p. 112). However, the Competition DG of the European Commission reported that a target for import interconnector capacity of 10% of production capacity per Member State by 2005, which was set by the Barcelona Council and which was vital for the increase in the cross-border trade, had not been met by several countries, such as Italy, Portugal, Spain, Ireland and UK. In another ten Member States, it was between 10 and 30% in the year 2007 (Competition DG of the European Commission 2007, p. 175).

Table 3.11 Electricity Consumption in the EU Countries in Sectors of Economy in 2005 (% of total)

Electricity Consumption in the EU-27	
Industry	42%
Transport	3%
Residential	29%
Agriculture/ Forestry	1.7%
Services	24.3%

Source: Eurostat.

3.2.2 Regulatory Policies

3.2.2.1 Necessity for Further Harmonisation in the Internal Electricity Market

By 2000 all Member States, except Luxembourg, had adopted national legislation implementing the provisions of the directive concerning common rules for the internal electricity market (Directive 96/92/EC). France and Belgium were on their way to adopting the secondary legislation (Commission of the European Communities 2000). However, the directive required only minimum targets for the opening of the market which corresponded to 30% of the consumption, in 2000, and 35%, in 2003. As Table 3.12 indicates, many member states exceeded these requirements and opened their markets to a greater degree. All EU members introduced competition into the power-generating sector by allowing new firms to access the market via the authorisation procedure. All members, apart from France, Germany and Greece, legally unbundled the transmission activity from electricity production and distribution. France used the rhetoric of proper public service and introduced only the separate management of accounts. The electricity sector in France was dominated by the state-owned company EDF that carried out 95% of generation and distribution activities and owned the whole transmission grid. Concerning the German electricity market, in 2000, nine supra-regional transmission companies, which controlled almost all electricity production in their areas, were dominating the national market (Commission of the European Communities 1998, p. 9).

The 1996 electricity directive instructed the Commission to report on the range of further needs for harmonisation of national regulations in the sphere of external trade with electricity. Thus, Article 25 (1) of the directive stated that,

> The Commission shall submit a report to the Council and the European Parliament before the end of the first year following entry into force of this Directive on harmonisation requirements which are not linked to the provisions of this Directive. If necessary, the Commission shall attach any harmonisation proposals necessary for the effective operation of the internal market in electricity (Article 25 (1) of Directive 96/92/EC).

In 1998 and 2000, the Commission addressed this issue. It stated that further harmonisation was required in the issues of energy taxation and the role of renewable electricity production in the single market. Of particular importance to the Commission were additional harmonised rules regarding the treatment of renewables, which had to prevent distortions in trade for renewable electricity and eliminate significant differences between the Member States in the

regulation of the renewables treatment (Commission of the European Communities 1998a, p. 3). Going further, the Commission focused on the use of schemes to support renewable energies.

Table 3.12 State of Liberalisation and Opening of the National Electricity Markets in the EU in 2000

	Market opening	**Competition in generation**	**Unbundling transmission**	**Network access**
Austria	30%	Authorisation	Legal	Regulated
Belgium	35%	Authorisation	Legal	Regulated
Denmark	90%	Authorisation	Legal	Regulated
Finland	100%	Authorisation	Ownership	Regulated
France	30%	Authorisation	Management	Regulated
Germany	100%	Authorisation	Management	Negotiated
Greece	30%	Authorisation	Management	Regulated
Ireland	30%	Authorisation	Legal	Regulated
Italy	30%	Authorisation	Legal	Regulated
Netherlands	33%	Authorisation	Legal	Regulated
Portugal	30%	Tendering	Legal	Regulated
Spain	45%	Authorisation	Legal	Regulated
Sweden	100%	Authorisation	Ownership	Regulated
UK	100%	Authorisation	Ownership	Regulated

Note: The data about Luxembourg were not included because in the middle of the 2000s Luxembourg has not yet implemented the directive.

Source: Commission of the European Communities 2000, p. 13.

The Commission analysed such schemes from two different points of view, the state aid and the established legal rules at the EU level. The first of these is state aid, and the report emphasised the rules of the Commission's 1994 guidelines on state aid for environmental purposes. Second, according to the Commission, the schemes to support renewable energies had to be compatible with other EU laws, especially the electricity directive. The Commission underlined that the first directive on electricity had created only one mechanism to deal with renewable energies, the so-called favourable dispatching. Thus, the Article 8 (3) of the Directive established that

A Member State may require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power (Article 8 (3) of Directive 96/92/EC).

However, in the opinion of the Commission this mechanism was of only limited use, because it did not cover schemes providing direct or indirect support to renewable energy

sources and it did not *in se* permit Member States to authorise the transmission system operator to oblige eligible customers to purchase "their" share of renewable energy (Commission of the European Communities 1998a, p. 4). The other relevant provision of the directive, public service obligation, was relevant in the context of the examination which would determine if environmental protection recognised by the Commission and Court of Justice as a mandatory requirement, which may limit the competition, was legitimate, reasonable and necessary (Commission of the European Communities 1998a, p. 7). At the end, the Commission identified a clear need for additional common rules in this area in order to harmonise the treatment of electricity from renewable sources.

In its second report, which covered further harmonisation requirements in the internal electricity market, the Commission announced a wide range of already existing or expected obstacles within the single electricity market that had to be prevented. First, it outlined that the issue of the cross-border trade of electricity could only be solved at the community level and not by relying exclusively on national measures. Second, the Commission concluded that further opening the market in the electricity sector should be based on the principles of equivalent market opening, the possibility of reciprocity between Member States and the Commission being obligated to report additionally on harmonisation requirements (Commission of the European Communities 1999, p. 23). Third, the Commission recognized possible competition distortions in the specific areas of the operations of the internal electricity market (such as environmental standards, accounting standards for nuclear decommissioning, taxation with respect to energy products and corporate tax schemes) as a result of diverging legal standards in the Member States that mainly affect the cost of electricity generation. The Commission argued that, because of these distortions, further harmonisation measures at the community level, such as establishment of equivalent competitive conditions in the area of environmental requirements and development of a new framework for the taxation of energy products, were needed (Commission of the European Communities 1999, pp. 28 – 36).

Additionally, the Commission acknowledged the limited success of the top-down legislative approach applied for the first electricity directive. To change this, it involved a broad range of stakeholders and representatives from the national regulatory authorities, Member State governments, transmission system operators (TSOs), electricity traders, consumers and network users in order together to identify and seek consensus on the harmonisation of cross-border transmission system issues.

3.2.2.2 The Way to the Second Electricity Directive

Not only the Commission, but also the European Council drew attention to a number of unsatisfactory aspects of the harmonisation reforms in the electricity industries of the Member States, at the end of the 1990s. In March 2000, at Lisbon, the European Council empowered the Commission to complete the internal market in electricity and gas. The European Council considered negotiated third-party access and the single buyer model in conjunction with the tendering procedure no longer satisfactory for the operation of the competitive national power generation markets. Additionally, it concluded that the legal separation of transmission assets from generation assets was necessary to prevent biases against entrants from other Member States (Newbery 2002).

At its meeting in June 2001, the Commission reiterated the need for rapid adoption of the new electricity directive in order to avoid distortions of competition. The position of the Commission was formulated in the following way:

> The current position is not acceptable since it places some EU companies at a significant competitive advantage compared to others, due to the simple fact that some Member States have chosen to open their markets more quickly than others (Commission of the European Communities 2001b, p. 37).

In order to change this, the Commission proposed, first, that Member States open all non-household electricity customers to competition by 2003 and all customers including households by 2005. Second, it pledged support for equal qualitative market opening. Regarding the unbundling, it proposed a legal unbundling of transmission and distribution grids from power generation and supply. Regarding the third-party access, a particular concern of the Commission was the fair access of all market players to the transmission and distribution grids, including all the necessary related ancillary facilities of the Member States. To ensure this, the Commission proposed the imposition of the only option of the regulated third-party access with a published and regulated tariff structure, instead of the already established possibility to choose between the three options of negotiated third-party access, regulated third-party access and single buyer model. Third, the Commission required that Member States establish independent national regulatory authorities that had to ensure *ex-ante* market regulation. The independent regulatory authorities should have the tasks of fixing or approving transmission and distribution tariffs prior to their entry into force and of setting conditions for access to electricity transmission and distribution networks of the Member States. Forth, a high level of consumer protection in terms of protection of vulnerable consumers as well as security of supply, environmental protection

and supplies at appropriate prices should be established. Finally, the Commission required the establishment of a harmonised community framework on tariffs for cross-border transactions and on the allocation of available interconnection capacities. According to the Commission, the establishment of the common European framework on access tariffs was necessary to ensure that costs incurred by transmission system operators were accurately reflected in charges for access to the system whilst excluding excessive transaction costs for cross-border operations (Commission of the European Communities 2001a, pp. 35 – 42, 66 – 67).

However, France and Germany opposed some of the proposals of the Commission. France pledged support for more gradual opening of the national electricity markets and Germany opposed the requirement for an independent regulator and *ex-ante* regulation (Newbery 2002, p. 18). Additionally, the Member States' position on the internal liberalised electricity market was at that time resistant because of the California crisis where the liberalisation of the electricity market led to much more higher wholesale energy prices, market distortions as well as bankruptcy of supply utilities and major disruption.

The Barcelona Council Meeting of 15-16 March 2002 weakened the Commission's requirement that all European non-household consumers achieve a full competitive electricity market, as of 2004. Nevertheless, in the amended Directive, in June 2002, the Commission reinstated the full market opening by 2005. However, on 25 November 2002, Energy Ministers reached the agreement to postpone the date for full electricity market liberalisation to 1 July 2007.

At the beginning of 2003, the Energy Council reached a common position regarding the amendments to the new electricity directive and a regulation on cross-border electricity exchanges. Some modifications were made to the Commission's 2001 proposal. Thus, the Council agreed that the deadlines for the establishment of the right to freely choose a supplier should be the middle of 2004 for all non-household customers and the middle of 2007 for both, non-household and household customers. Further agreement was achieved on the legal unbundling of transmission system operators by 2004 and of distribution systems by 2007. The Member States rejected the idea of ownership unbundling and the Commission had to accept the less strict option of legal unbundling:

> If Member States were not to choose ownership unbundling, they should be able to prove that the unbundling measures they apply will have the same results in terms of non-discrimination as ownership unbundling. The Commission has proposed legal unbundling coupled with measures of functional unbundling and following adoption of this proposal will carefully monitor results to determine whether this is adequate to achieve the objective of non-discriminatory network access (Commission of the European Communities 2002, p. 11).

Additionally, under the agreement, the sole option of regulated third-party access to transmission networks was chosen and legally established (see Table 3.13).

Table 3.13 Comparison of EU Electricity Directives from the Years 1996 and 2003

	Most common form pre-1996	*1996 Directive*	*2003 Directive*
Generation	Monopoly	Authorisation Tendering	Authorisation
Transmission Distribution	Monopoly	Regulated third-party access Negotiated third-party access Single Buyer	Regulated third-party access
Supply	Monopoly	Accounting separation	Legal separation from transmission and distribution
Customers	No choice	Choice for eligible customers	Choice for all groups of consumers to the year 2007
Unbundling	None	Accounts	Legal
Cross-Border Trade	Monopoly	Negotiated	Regulated
Regulation	Government department	Not specified	Regulatory Authority

Source: Vasconcelos (2004), in Jamasb and Politt (2005), p. 7.

3.2.2.3 The Way to the Third Energy Directive

In June 2005, the Commission launched gas and electricity sector inquiries. A report adopted in 2006 concluded that the internal electricity market in Europe had a number of significant distortions, such as significant rises in wholesale prices that could not be fully explained by higher primary fuel costs and environmental obligations, as well as persistent complaints about entry barriers and limited possibilities to exercise customer choice (Commission of the European Communities 2006b). It was discovered that the electricity markets of the Member States still remained highly concentrated together with limited customer choice. The market concentration was particularly obvious in power generation where generators had the scope of exercising market power by raising prices. Apart from this, it was discovered that vertical integration, which was still allowed under the legal separation of accounts, led to a lack of effective access to networks (Commission of the European Communities 2006b, p. 6). From this it followed that the legal separation of accounts was not sufficient to prevent market distortions, because the integration of generation/imports and supply interests within the same group, as well as prevalence of long-term power purchase agreements between electricity producers and a few incumbent suppliers, reduced the incentives for new entrants to trade in wholesale markets of the Member States.

The report concluded that two measures should be taken in order to eliminate the electricity market distortions in the Member States. From one side, the full and combined use of the Commission's powers under antitrust rules (Articles 81, 82 and 86 EC), merger (Regulation (EC) No 139/2004) and state aid control (Articles 87 and 88 EC) was needed in order to ensure that competition was not distorted. From the other side, the Commission pledged support for further regulatory action at the Community level. According to the report, the full ownership unbundling was the most effective means of ensuring choice for energy users and encouraging investment because in that case separate network companies were not influenced by overlapping supply/generation interests regarding investment decisions (Commission of the European Communities 2006b, p. 12). Additionally, a further regulatory action was necessary in order to substantially strengthen the independent powers of national regulators and enhance regulatory coordination of the functioning of the common internal electricity market at the European level.

The Commission raised these new concerns in March 2006, when it proposed a new energy strategy for Europe that should be based on the principles of sustainability, competitiveness and security of supplies (Commission of the European Communities 2006a). In January 2007, the Commission adopted strategic energy review as part of an energy and climate package. The package established new quantitative goals on the way to the common internal energy market in Europe and proposed the so-called 20-20-20 goals, a 20% unilateral reduction of climate gas emissions by the EU, a 20% share for renewable sources and 20% reduction in energy use, all to be achieved by 2020 (Commission of the European Communities 2007a).

The Commission continued to push the idea that the legal unbundling of the power generation, transmission and distribution assets, as it was legally established in the directive in 2003, was not sufficient for the functioning of the competitive internal electricity market. However, facing resistance from the side of the Member States, it considered two alternative options and not a single option of the full ownership unbundling as earlier to change this: an Independent System Operator in which the vertically integrated company remained owner of the network assets and received a regulated return on them but was not responsible for their operation, maintenance, development; or ownership unbundling in which network companies were wholly separate from the supply and generation companies (Commission of the European Communities 2007a, p. 7). Thus, according to the Commission:

> Economic evidence shows that ownership unbundling is the most effective means to ensure choice for energy users and to encourage investment. This is because separate network companies are not influenced by overlapping supply/generation interests as regards investment decisions. It also avoids overly detailed and complex regulation and disproportionate administrative burdens. The independent

system operator approach would improve the status quo but would require more detailed, prescriptive and costly regulation and would be less effective in addressing the disincentives to invest in networks (Commission of the European Communities 2007a, p. 7).

In March 2007, the European Council in its Presidency Conclusions acknowledged that a truly competitive Europe-wide internal energy market had not yet been achieved and that it therefore remained an action priority area in the EU to achieve significant progress in the efficient operation and completion of the EU's internal market for gas and electricity. Additionally, it acknowledged that there was a further need for action in the following areas on the way to creation of the internal electricity market: effective separation of supply and production activities from network operations; further harmonisation of the powers and strengthening of the independence of national energy regulators; the establishment of an independent mechanism for national regulators to cooperate and take decisions on important cross-border issues; the creation of a new community mechanism for Transmission System Operators to improve coordination of network operation and grid security building on existing cooperation practices; a more efficient and integrated system for cross-border electricity trade and grid operation; the enhancement of competition and security of supply through facilitated integration of new power plants into the electricity grid in all Member States; relevant investment signals contributing to the efficient and more secure operation of the transmission grid; increased transparency in energy market operations; and better consumer protection (European Council 2007a, p. 16). However, without laying down concrete proposals the European Council invited the European Commission to provide additional clarifications related to the key measures envisaged in the area of creation of the internal electricity market.

During the meeting of the Energy Council, in June 2007, the Member States agreed on the European Council's action plan rejecting, however, some proposals from the Commission. Thus, France, Germany, Austria, the Czech Republic, Greece, Luxembourg, the Baltic states, Slovakia and Hungary rejected the ownership unbundling as the sole option for the unbundling of the power generation, transmission and distribution assets (EurActiv 2007). Additionally, the Energy Council rejected any EU-level arrangements that would interfere with Member States' exclusive right to decide on their energy mix (Eikeland 2008, p. 15).

Those Member States who opposed the ownership unbundling argued that the separation of transmission grid from power generation and distribution accounts was necessary but that other measures apart from the ownership unbundling could be taken in order to accelerate the dynamics of competition. In their view, large integrated companies were in a better position to negotiate contracts with powerful external suppliers (EurActiv 2007). The United Kingdom, the

Netherlands and Ireland were among the supporters of the option of ownership unbundling of electricity assets. Thus, their position was formulated as follows:

> Without proper separation there is a strong risk that network businesses will fail to develop the network if this will enable new generators and suppliers to compete with the affiliated businesses. The UK believes that full ownership unbundling is the best way to ensure this (EurActiv 2007).

In September 2007, the European Commission made a proposal for a third internal energy policy package. It stated that the legal unbundling of power generation, transmission and distribution assets was not sufficient for the functioning of the internal European electricity market because of three reasons. First, if not fully separated, there was the possibility that the transmission system operator affiliated with certain generation and supply companies might treat these companies better than competing third parties. Second, under the system of the legal unbundling of the accounts, non-discriminatory access to information could not be guaranteed as there was no effective means of preventing transmission system operators releasing market sensitive information to the affiliated generation or supply companies. Finally, the third reason, as stated by the Commission, was the so-called distorted investment incentives within an integrated company. On one side, a vertically integrated company had no incentive to invest in new networks in the overall interests of the market because this would facilitate entry of new generation and supply companies. On the other side, a vertically integrated company had an incentive to invest in sales companies (Commission of the European Communities 2007b, pp. 4 – 5).

Despite the fact that the majority of the Member States declined the option of the ownership unbundling, the Commission underlined that ownership unbundling remained the Commission's preferred option for overcoming the distortions at the internal electricity market. According to the Commission, only if Member States could ensure that the same person or persons did not exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system, could the truly competitive market in Europe be established (Commission of the European Communities 2007b, p. 5).

However, the Commission also suggested the alternative option of an Independent System Operator as an unbundling requirement that enabled vertically integrated companies to retain the ownership of their network assets but required that the transmission network itself had to be managed by an entity entirely separate from the vertically integrated company. In practice this option required that vertically integrated energy companies had to dispose some of their

transmission grid assets or to hand over the operation of such assets to a third party (Commission of the European Communities 2007b, p. 6).

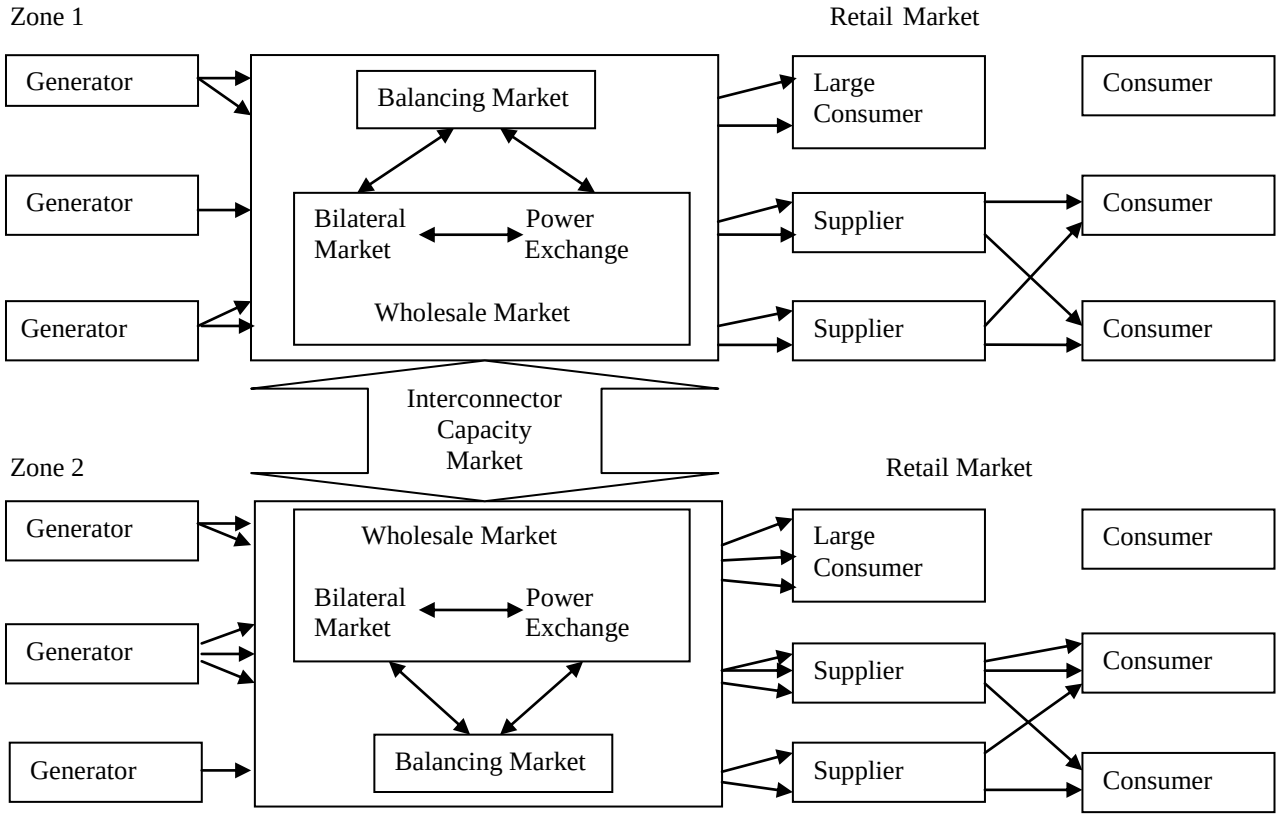
Apart from the unbundling issue, the "reciprocity clause" was included in the new draft of harmonisation legislation that required applying the options of ownership unbundling and the independent system operators for non-European country companies. According to the clause, companies from third countries that wanted to acquire a significant interest or even control over an EU network had to comply with the same unbundling requirements as EU companies. This safeguard clause that aimed at preventing takeover of transmission systems by vertically integrated companies from outside the EU was particularly due to lobbying on the part of Poland, which feared the expansion of Gazprom's influence into their territory.

The other important part of the new proposal was concentrated on measures to ensure independence of national regulators from national ministries and enhancing EU-level regulatory capacity. The Commission proposed that the regulatory authority should be legally distinct and functionally independent of any other public or private entity (Commission of the European Communities 2007b, p. 9). Apart from that, the Commission revealed the need for national regulatory authorities to cooperate with each other in order to agree to amend their national grid codes. For this purpose it suggested the establishment of a new Agency for Cooperation between National Energy Regulators (ACER) that could make individual regulatory decisions which were binding on third parties concerning detailed technical issues (Commission of the European Communities 2007b, p. 11). Further, a new European Network for Transmission System Operators (ENTSO) was proposed in the draft legislation with the purpose of strengthening transmission system operators' role of the in the areas of market development and technical codes, as well as transmission grid investment planning.

The draft legislation asked for extended powers of the European Commission to interfere in issues of access to national transmission assets. Thus, according to the new energy package, the Commission obtained the right to adopt guidelines on technical and market codes in the areas of grid connection and access rules, data exchange and settlement rules, interoperability rules, capacity allocation and congestion management rules and rules regarding harmonised transportation tariff structures in cases when the European network of Transmission System Operators for Electricity failed to agree on them or when these technical or market rules adopted by the European Network of Transmission System Operators for Electricity did not ensure non-discrimination and effective competition and the efficient functioning of the market. Additionally, the Commission obtained the right to interfere with its guidelines in those cases when the national transmission system operators failed to implement a technical or market code

adopted by the European Network of Transmission System Operators for Electricity (Commission of the European Communities 2007c, p. 27).

Figure 3.1 Architecture of the Internal Electricity Market Organization in the EU since 2003



Source: Meeus, Purchala and Belmans 2005, p. 28.

Therefore, it could be concluded that the Commission's draft legislation in September 2007 represented the Commission's strong ambition to create a competitive internal electricity market in Europe and was much more ambitious than the draft legislation from 2002 – 2003.

In January 2008, Austria, Bulgaria, France, Germany, Greece, Luxembourg, Latvia and the Slovak Republic sent a letter to the Commission and to the Parliament's Industry Committee in which they proposed a set of amendments for a third option for energy market liberalisation (EurActiv 2008). In this letter, the Member States stated that crucial doubts remained concerning the legality, opportunity, proportionality and efficiency of the ownership unbundling measure. According to them, ownership unbundling would not have positive consequences on investment and prices. Just the opposite, it would generate negative social consequences. Furthermore, the Member States underlined that the ownership unbundling measure negatively impacted the principle of proportionality because other measures, which did negatively affect security of supply and other social issues, were available. Concerning the second measure of an Independent

System Operator proposed by the Commission, the Member States saw it as quite similar to ownership unbundling. Instead, the Member States proposed a third option of "effective and efficient unbundling of transmission system operators" (EurActiv 2008).

In practice, this option allowed the functioning of vertically integrated undertakings that owned the generation, transmission and distribution assets. However, the option foresaw the establishment of the transmission system operator as a separate corporate entity with branding, communication and premises separated from the vertically integrated undertaking. Additionally, the transmission network operator should have effective decision-making rights with regards to operating, maintaining and developing the transmission assets, independent from the integrated electricity undertaking (EurActiv 2008).

In particular, the security of supply issue consolidated the split between the Member States on the extent of internal energy market reforms. A concern of those Member States who rejected ownership unbundling and supported the functioning of vertically integrated undertakings in the national electricity and gas markets was that liberalised energy markets would be more vulnerable to supply distortions than centrally planned energy systems.

In June 2008, the compromised proposal was proposed in the Council although not all Member States could agree on it (Council of the European Union 2008a, p. 2). According to this compromise, the third option of an independent transmission operator should be available for those Member States where the transmission system belonged to a vertically integrated undertaking. Additionally, the Council agreed on the establishment of the regulatory agency, which was independent from the Member States and the Commission, but added that the agency must only have tasks of an advisory nature and no decision powers concerning technical cross-border issues. Concerning the issues of the regulatory regime of cross-border trade and the exemptions for new infrastructure and for new interconnectors, the Presidency of the Council suggested a two-step approach. This approach involved the agency only as last resort after attempts to solve the issue between the national authorities concerned. For exemptions for new infrastructure/interconnectors, the Member States and not the agency would have the right to make the final formal decisions (Council of the European Union 2008a, p. 7).

In its first reading in June 2008, the European Parliament rejected, with the majority of its voices, the option of an independent transmission operator and argued that without effective separation of networks from the activities of generation and supply there was risk of discrimination both in access to the network and in the incentives for vertically integrated companies to invest in the networks. For that reason, the Parliament voted for the two unbundling options of ownership unbundling and independent system operator (European Parliament 2008).

Despite the Parliament's strong support of ownership unbundling, in its common position, the Council rejected ownership unbundling and an independent system operator as only two possible options for further harmonisation requirements and added the third possible option of an independent transmission operator for those Member States where the vertically integrated undertakings had been functioning at the national electricity markets. Thus, a compromise was reached in the Council according to which the options of a system operator and a transmission operator allowed further functioning of vertically integrated undertakings at national electricity markets. However, in order to be harmonised in their requirements with the option of ownership unbundling the effective separation of interests between the independent system operator or transmission operator from one side and generation and supply companies from other side should be guaranteed (Council of the European Union 2008b, p. 6). According to the Council,

> To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated undertaking into shares of the network undertaking and shares of the remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with. The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The independence of the transmission operator should, inter alia, be ensured through certain "cooling-off" periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking (Council of the European Union 2008b, pp. 6 – 7).

The Commission and the Parliament agreed on the third option of an independent transmission operator as proposed by the Council Presidency and the third energy package came into force in the middle of 2009 with the requirement that the Member States should implement all requirements of the third energy package by March 2011.

3.2.2.4 The Content of the Electricity Directive 2003 and the Electricity Directive 2009

The EU legislation on electricity provided in the Second Energy Package established common rules for the generation, transmission, distribution and supply of electricity. It laid down the rules related to the organization and functioning of the electricity sector and access to the market (Article 1 of Directive 2003/54/EC). The legislation imposed on undertakings

operating in the electricity sector public service obligations, which related to security of supply, regularity, quality and price of supplies and environmental protection. It provided for equality of access for EU electricity companies to national consumers. The household consumers were to be provided with universal service, which was defined as the right to be supplied with electricity of special quality within their territory at responsible, easily and clearly comparable and transparent prices (Article 3 of Directive 2003/54/EC). Apart from security of supplies, the Directive 2003/54/EC introduced acting rules for transmission system operators and distribution system operators. Article 10 and Article 15 of the directive introduced the so-called unbundling of transmission system operators and distribution system operators that meant that where the transmission system operator or the distribution system operator was part of vertically integrated undertaking, it should be independent at least in terms of its legal form, organisation and decision-making from other activities not related to transmission. In order to ensure the independence of the transmission system operator and the distribution system operator, the following minimum criteria had to be met: (1) persons responsible for the management of the transmission system operator or the distribution system operator shall not participate in other stages of electricity production and distribution in the company (the three stages being electricity generation, electricity transmission and electricity distribution); (2) the transmission system operator shall act independently; (3) the transmission system operator shall have effective undertaking decision-making rights regarding assets necessary to operate, maintain or develop the network, independent from the vertically integrated electricity; (4) discriminatory conduct of the transmission system operator shall be excluded (Article 10 of Directive 2003/54/EC). Finally, apart from assuring the security of supplies and unbundling of transmission and distribution system operators the Directive 2003/54/EC ensured third-party access to the transmission and distribution systems based on published tariffs and applicable to all household and non-household customers (Articles 20, 21).

In turn, Regulation No. 1228/2003 set the rules for cross-border exchanges in electricity in order to enhance completion within the internal electricity market. Article 3 of the regulation introduced a compensation mechanism, which established that transmission system operators should receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks. Such compensation should be paid by the operators of national transmission systems from which cross-border flows originated.

Finally, Directive 2005/89/EC established measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the electricity market. Among measures it listed were an adequate level of generation capacity, an adequate balance between

supply and demand and an appropriate level of interconnection between participants in the internal electricity market (Article 1 of the Directive 2005/89/EC).

In April 2009, a third package of legislative proposal was adopted amending the second package. The third package further liberalised the internal market of electricity and gas. Directive 2009/72/EC ('the Electricity Directive') provided for a new unbundling regime with the following three models:

(i) the ownership unbundling model;

(ii) the independent system operator ('ISO');

(iii) the independent transmission operator ('ITO').

Each of these models, which Member States could choose freely, should separate network operation from production and supply activities and be effective in removing conflict interests between producers, suppliers and transmission system operators. However, it should be noted that these three models provided for different degrees of structural separation of network operation from production and supply activities.

Article 9 of the Electricity and Gas Directives provides the rules for the ownership unbundling model. Here, it is stated that compliance with ownership unbundling means that the undertaking which is the owner of the transmission system also acts as the TSO (Transmission System Operator) and is, consequently, responsible for, among other things, granting and managing third-party access on a non-discriminatory basis to system users; collecting access charges, congestion charges, and payments under the inter-TSO compensation mechanism; and maintaining and developing the network system (Interpretative Note on Directive 2009/72/EC and Directive 2009/73/EC 2010, p. 9). Therefore, the same person is not entitled both to exercise control over an undertaking performing any of the functions of production or supply and to exercise control or exercise any right over a TSO or a transmission system.

The second possibility of Member States' participation in the internal energy market is the designation of the Independent System Operator (ISO). But the ISO model can be only applied where, on the date of entry into force of the Electricity and Gas Directives, the transmission system belonged to a vertically integrated undertaking. A vertically integrated undertaking is defined as when the same person or the same persons are entitled, directly or indirectly, to exercise control and when the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity or gas (Interpretative Note on Directive 2009/72/EC and Directive 2009/73/EC 2010, p. 12). If this is the case, the ISO model should be proposed by the owner of the transmission system concerned. Each independent system operator shall be responsible for granting third-party access as well as for operating and developing the

transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning (Article 13 (4) Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity).

Finally, the independent transmission operator (ITO) may be established where, on the date of entry into force of the Electricity and Gas Directives, the transmission system belonged to a vertically integrated undertaking. Under the ITO model, the TSO may remain part of a vertically integrated undertaking but numerous detailed rules are provided in order to ensure effective unbundling and the autonomous functioning of the ITO (Interpretative Note on Directive 2009/72/EC and Directive 2009/73/EC 2010, p. 14). In order to provide for the independence of the transmission system owner, it should be ensured that (1) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity; (2) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; (3) and the transmission system owner shall establish a compliance programme, which establishes measures taken to ensure that discriminatory conduct is excluded, and to ensure that observance of it is adequately monitored (Article 14 of the Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity).

3.2.2.5 The Implementation of the Second and the Third Energy Directives between 2004 and 2010

EU countries proceeded very gradually with the establishment of the internal electricity market between 2004 and 2010.

In 2005, the Commission described the opening of the electricity market as unsatisfactory (Commission of the European Community 2005a). At that time, fewer than 50% of all consumers had switched their supplier in the EU. In most cases, they were just able to change to another domestic supplier. In the majority of Member States, foreign suppliers represented less than 20% of electricity market share (Commission of the European Communities 2005a, p. 4).

Table 3.14 State of Unbundling of Transmission System Operators in the EU Countries in 2005

Member State	***Way of Electricity Transmission Unbundling***
Austria	Legal
Belgium	Legal
Denmark	Ownership
Finland	Ownership
France	Legal
Germany	Legal
Greece	Legal
Ireland	Legal
Italy	Ownership
Luxembourg	Legal
Netherlands	Ownership
Portugal	Legal
Spain	Ownership
Sweden	Ownership
UK	Ownership
Norway	Ownership
Estonia	Legal
Latvia	Legal
Lithuania	Ownership
Poland	Legal
Czech Republic	Ownership
Slovakia	Legal
Hungary	Ownership
Slovenia	Ownership
Cyprus	No data
Malta	No data

Source: Commission of the European Communities 2005b, p. 12.

In 2005, the Commission saw three main obstacles that hindered the development of the common European electricity market. First, the national electricity markets of the Member States still remained non-competitive and were dominated by one or two companies. These companies were often vertically integrated and national transmission system operators as well as distribution system operators were not adequately separated from supply companies to ensure cost reflective tariffs and the removal of any cross subsidies. On the other hand, around half of the Member States had chosen the option of ownership unbundling of transmission system assets, while the other half of the Member States had chosen legal unbundling (see Table 3.14).

Second, the national electricity markets of the majority of Member States remained insufficiently integrated with one other and the rules on cross-border electricity exchanges were not unified among them. Thus, according to the Commission's data, in 2005, significant price differences were prevailing in the internal electricity market. Such price differences in electricity for industrial customers were sometimes more than 100% (Commission of the European Communities 2005b, p. 4). Additionally, cross-border flows of electricity, in 2004, stood at around 10.7% of total consumption of electricity in the EU which was an increase of only around 2% compared to the year 2000 (Commission of the European Communities 2005b, p. 4).

Finally, a third factor accounting for the insufficient electricity market establishment in 2005 was the existence of regulated end-user prices for electricity, as well as associated long term power purchase arrangements (PPAs) (see Table 3.15).

Most Member States missed the deadline of 1 July 2004 for the transposition of the second Electricity Directive. This was reported by the Commission in 2008 (Commission of the European Communities 2008), as well as in 2009 (Commission of the European Communities 2009). The Commission added that there were quite high differences in the electricity prices among Member States. According to the Commission, various factors could explain the differences in electricity prices between Member States. Here, objective factors, such as the differing costs of generating electricity and availability of sufficient generation capacity in each Member State, had to be taken into account, but, at the same time, the Commission insisted that the insufficient level of competition on the wholesale and retail market and regulated prices had led to price differences as well (Commission of the European Communities 2009).

Table 3.15 Main Obstacles to Competition at the EU Internal Electricity Market in 2005

Obstacles to Competition	***Member States***	***% of large users that switched their supplier***
No Obstacles	SE, FI, DK, NO, UK	More than 50%
Unbundling/ Regulation at National Electricity Markets	LU, AT, DE	From 10% (LU) to 30% (DE)
Lack of Integration between the Member States	FR, BE, GR, IE, ES, NL, LT, IT, SI, CZ, SK, LV	From 0% (GR) to 35% (NL)
Long-Term PPAs and Regulated End-User Prices	PT, EE, PL, HU	From 0% (EE) to 25% (HU)

Source: Commission of the European Communities 2005a, p. 5.

According to the Commission's data, in 2007 – 2008, household electricity prices rose in Member States by almost 2% on average. In Hungary, Czech Republic, Denmark, Belgium and

Latvia the household electricity prices increased by more than 13% in that period (Commission of the European Communities 2009, p. 7). Additionally, the problem was identified with the functional unbundling of national distribution system operators, because it was reported that Member States made extensive use of derogations from unbundling at distribution level. Thus, more than half of the Member States allowed distribution system operators with fewer than 100,000 customers an exemption from legal unbundling requirements (Commission of the European Communities 2009).

Table 3.16 State of the EU Wholesale and Retail Electricity Markets in 2008 – 2009

Wholesale Electricity Market	Number of companies with more than 5 % share of general capacity			Share of three biggest companies (by capacity) (%)			HHI (by capacity)		
	2008	2009	Δ	2008	2009	Δ	2008	2009	Δ
Austria	6	5	-1	50	49.2	-0.8	NA	NA	
Belgium	2	3	1	97.5	98	0.5	7,206	6,000	-1,206
Bulgaria	6	6	0	58.4	58.8	0.4	NA	NA	
Cyprus	1	1	0	100	100	0	NAP	NAP	
Czech Republic	1	1	0	75.31	72.3	-3.01	NA	NA	
Denmark	2	2	0	75	75	0	NA	NA	
Estonia	1	1	0	99	99	0	NAP	NAP	
Finland	4	4	0	68	68	0	NA	NA	
France	1	1	0	93	99	6	7,065	7,740	675
Germany	4	4	0	84.7	79.3	-5.4	2,008	1,764	-244
Great Britain	8	7	-1	42	46	4	901	1,076	175
Greece	1	NA	NA	NA	NA	NA	10,000	10,000	
Hungary	5	5	0	67.9	62	-5.9	1,911	1,520	-391
Ireland	4	4	0	88	88	2	NA	NA	
Italy	5	5	0	57.6	55.6	-2	1,351	1,240	-111
Latvia	1	1	0	94	94	0	8,110	8,900	790
Lithuania	3	3	0	85	70	-15	3,095	3,472	377
Luxembourg	3	3	0	79	79	0	5,882	5,881	-21
Malta	1	1	0	100	100	0	10,000	10,000	0
Northern Ireland	4	5	1	86	76	-10	4,096	2,800	-1,296
Norway	6	4	-2	43	57	14	1,826	1,078	-748
Poland	5	5	0	52.5	55.1	2.6	1,622	1,585	-57
Portugal	2	2	0	72.2	72.6	0.4	4,521	4,627	106
Romania	5	5	0	70.98	69.53	-1.45	2,116	2,104	-12
Slovak Republic	1	1	0	83.9	84.82	0.92	5,019	6,257	1237
Slovenia	3	3	0	92.5	88.3	-4.2	4,369	4,052	-317
Spain	5	5	0	72.9	79.4	6.5	1,716	2,254	538

Sweden	3	3	0	74.7	73.5	-1.2	NA	NA	
The Netherlands	4	6	2	69.9	64	-5.9	1,551	1,433	-118

Retail Electricity Market	Number of nationwide suppliers	Companies with market share over 5 % in the whole retail market			Market share of three largest companies in whole retail market (%)		
	2009	2008	2009	Δ	2008	2009	Δ
Austria	11	6	6	0	62	64	2
Belgium	8	NA	2		NA	87.6	
Bulgaria	1	3	3	0	97.5	97.2	-0.3
Cyprus	1	1	1	0	100	100	0
Czech Republic	312	3	3	0	99	98	-1
Denmark	16	7	7	0	NA	NA	
Estonia	4	1	1	0	99	99	0
Finland	25	4	4	0	40	40	0
France	19	1	1	0	97	96	-1
Germany	26	3	3	0	52	47.9	-4.1
Great Britain	20	NA	NA		NA	NA	
Greece	57	1	1	0	100	100	0
Hungary	107	4	4	0	80.73	78.01	-2.72
Ireland	6	4	4	0	84	86.92	2.92
Italy	29	3	2	-1	59	59	0
Latvia	2	1	1	0	100	100	0
Lithuania	2	1	1	0	100	100	0
Luxembourg	8	4	3	-1	94	94	0
Malta	1	1	1	0	100	100	0
Northern Ireland	15	4	4	0	90	90	-0
Norway	33	5	5	0	36	36	0
Poland	18	6	6	0	44.3	44.8	0.5
Portugal	6	2	3	1	99.6	95.2	-4.4
Romania	150	5	6	1	48	51	3
Slovak Republic	0	3	3	0	60	NA	
Slovenia	16	7	6	-1	58	64	6
Spain	155	4	4	0	84.8	82.7	-2.1
Sweden	104	3	3	0	NA	NA	
The Netherlands	24	4	4	0	NA	81.1	

Note: Herfindahl-Hirschman Index (HHI) measures concentration in the electricity market in terms of capacity.

Source: European Commission 2011, pp. 13, 15.

In June 2009, the European Commission initiated infringement procedures against 25 Member States for violations of the second electricity directive, among which lack of transparency, insufficient coordination efforts by transmission system operators to make maximum interconnection capacity, lack of enforcement action by the competent authorities in the Member States, and lack of adequate dispute settlement procedures (European Commission 2010) (see Table 3.16). So, it could be concluded that, in 2009 – 2010, the EU internal electricity market still functioned with a number of distortions. First, the EU electricity market remained concentrated. The Commission's data indicated that, in 2009 – 2010, Bulgaria, France, the United Kingdom, Ireland, Poland, Portugal, Slovakia and Spain reported an increase in wholesale electricity market concentration as compared to 2008 but ten other countries reported a decrease (Austria, Czech Republic, Germany, Hungary, Italy, Lithuania, Romania, Slovenia, Sweden, and the Netherlands) (see Table 3.17). Second, the data on switching revealed that the switching rate remained generally low at household level because the prices offered by different suppliers were not sufficiently attractive for household consumers. The annual switching rate for large industrial customers was generally higher and quite significant in Czech Republic (73%), Portugal (32.7%) and Italy (25.7%) (European Commission 2011, pp. 10 – 11). Third, regulated end-user prices continued to exist in 19 Member States for households and in 16 Member States for non-household consumers (European Commission 2011, p. 11).

3.2.3 Actors' Constellations on Electricity Liberalisation Policy-Making

3.2.3.1 Autonomous Actions of EU Institutions vs. Member States

3.2.3.1.1 European Commission vs. Member States

At the end of the 1990s, the Commission made use of the "window of opportunity" that arose from the Article 25 (1) of Directive 1996 and empowered the Commission to issue further proposals on the harmonisation requirements in the internal market in electricity that were not part of the directive. The Commission actively used this opportunity. It stressed that the first directive was only an initial step in terms of market opening in electricity in the EU and that it must be followed by progressive further steps. At the same time, the Commission was very careful in the interpretation of sensitive issues, such as plurality of mechanisms of third-party access which the Member States could choose and insurance of public service obligations (Commission of the European Communities 1998).

Benchmarking reports, which openly displayed how Member States performed with respect to the implementation of the internal rules of the electricity market, were an important

tool for the Commission's influence. Thus, the Commission's benchmarking reports, in 2001 and 2003, adjusted that there were considerable asymmetries in the implementation of the first electricity directive that caused considerable distortions of the internal market because some Member States' energy markets were more open to competitors and new entrants than others. According to the Commission, the danger was that,

> An uneven playing field is developing which affects both energy customers, for whom there are considerable variations in the level of customer choice and in prices, and energy companies, since the degree of threat from competitors varies considerably which may lead to unfair competition in the European market (Commission of the European Communities 2001b, p. 7).

In addition to the differences in the degree of the opening of national electricity markets, the Commission underlined that the detailed regulatory framework of the electricity industry varied significantly among Member States. In particular, in some Member States there were certain conditions related to third-party access that were not conducive to a competitive market and, in almost all Member States, there was a degree to which a few existing electricity generators had a dominant position in wholesale markets. Additionally, the first electricity directive could not abolish generally restricted opportunities for cross-border trade due to the lack of a cost reflective tarification system and a lack of coordination regarding capacity allocation (Commission of the European Communities 2001b).

The Commission argued that such distortions of the imperfect common electricity market had a number of negative consequences on consumers and energy companies. The consumers continued to get electricity at high prices in those Member States that still had minimal market opening or ineffective regulation of third-party access. In turn, it was the position of the Commission that the energy companies would have a number of advantages when they enjoyed cross-border trade without any barriers:

> The ability of an electricity company to develop a pan-European presence in the next few years, which can best be achieved through acquisition, will to a significant extent determine its commercial success in the internal market in years to come (Commission of the European Communities 2001b, p. 36).

However, despite the use of the "window of opportunity" the regulatory power of the Commission to adopt the second electricity directive was strongly undermined by Member States. At the end of the 1990s, the Member States realized that the possibility of choosing among three options of third-party access to electricity transmission and distribution networks, as well as national differences in the degree of unbundling of accounts, negatively impacted the

trade in electricity among the Member States and caused disadvantages for the further development of national electricity industries. However, Member States rejected additional requirements regarding the establishment of the internal electricity market that the Commission presented in 2001. Among these requirements were the necessity of ownership unbundling of power generation, transmission and distribution of accounts; the establishment of independent regulatory authorities; and a complete opening of the market to competition by 2005. The Member States rejected the ownership unbundling and the establishment of independent regulatory authorities and pledged support for legal separation of account and opening of the market by 2007. Thus, according to the Commission's amended proposal on the second electricity directive, the Member States should designate one or more competent bodies as national regulatory authorities that were responsible for ensuring non-discrimination and effective competition at the electricity market (Commission of the European Communities 2002). The Member States were eager to leave a number of additional controlling rights and possibilities in their own hands. Thus, the Council amended the Commission's proposal on the possibility of the Member States to use the tendering procedure for the new generation capacities, if a number of criteria in the sphere of environmental protection and the development of the new criteria were met:

> Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, to tender for new capacity on the basis of published criteria. This tender may relate to new capacity or energy efficiency/demand-side management measures. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the measures being taken are not sufficient to achieve these objectives (Commission of the European Communities 2002, p. 23).

The situation changed in 2005, with the new Commission and its new president José Manuel Barroso. Barroso intended to revitalize the Lisbon agenda. He pleaded for a more proactive application of competition policy, including the screening of industrial sectors for barriers to competition (Eikeland 2008). In this connection, the internal energy market was chosen as one of the pilot cases and the DG Competition and DG TREN jointly launched an inquiry on competitive conditions in the internal electricity and gas markets, in June 2005. According to Eikeland (2008, p. 19), the DG Competition was, from the very beginning, convinced that a new liberalisation package was needed. DG TREN was not fully convinced, but the results of the inquiry report led the two DGs towards agreement on the need for a more radical energy liberalisation package. In addition to this, in the inquiry report the Commission presented itself as an effective law enforcer and argued that the full and combined use of the

Commission's powers under Community antitrust rules, merger and State aid control was needed to maximise the impact of the Commission's enforcement action (Commission of the European Communities 2006b, p. 9).

After the publication of the inquiry report, the Commission launched, in April 2006, 34 infringement procedures against 20 Member States for violation and non-transposition of the provisions of the directives on electricity and gas adopted in 2003 (Commission of the European Communities 2006c, p. 6). Parallel to its proceedings as a law enforcer under the competition rules, the Commission started the discussion about the necessity for further regulatory action at the Community level. In general, three major lines of discussion were presented by the Commission. First, it clearly indicated that legal and functional unbundling, as required by the legislation from 2003, was not sufficient to ensure the development of the competitive European electricity market, because it could not tackle the problems of non-discriminatory access to information, discrimination with respect to third-party access and distortion of investment incentives (Commission of the European Communities 2006c, pp. 10 – 11). Instead of legal unbundling of accounts, the Commission suggested a new regulatory measure of the introduction of options of fully ownership unbundled transmission system operators or separate system operators without ownership unbundling. Second, the Commission concluded that the effectiveness of national regulators was constrained by a lack of independence from government and sufficient powers and discretion (Commission of the European Communities 2006c, p. 12). According to the Commission, in order to change this, national regulators should gain a number of independent *ex-ante* functions in the areas of third-party access to networks, balancing mechanisms, market surveillance of power exchanges, compliance with functional and account unbundling for distribution system operators, all cross-border issues, consumer protection including any end-user price controls, information gathering and sanctions for non-compliance (Commission of the European Communities 2006c, p. 13). Finally, the Commission adjusted a lack of compatible technical rules between transmission system operators of the Member States. To change this, the transmission system operators needed to agree to detailed inter-TSO operational standards including detailed exchange of information, both in terms of long term network planning and on a real-time operational basis. To achieve the third objective, a new regulatory framework was necessary as well, because, as the Commission's investigation revealed, "it is doubtful whether this can be achieved in the current framework where both TSOs and regulators are inclined or even obliged to follow a national focus" (Commission of the European Communities 2006c, p. 17).

However, the meeting of the Energy Council, in June 2007, showed that the majority of Member States, in particular France and Germany, rejected some important proposals from the

side of the Commission, in particular the option of ownership unbundling. Energy Commissioner Piebalgs admitted that "the majority of the Member States were not with him at this stage" (EurActiv 2007), but he still believed unbundling was the best measure to ensure competition and lower prices for consumers.

After the 2007 European Spring and Summer Councils, DG Competition and DG TREN proceeded together to co-write a draft on further harmonisation requirements for the common internal electricity market (Eikeland 2008). However, there were some differences in opinion on particular questions related to the function of the European electricity market among them. DG Competition pushed strongly for ownership unbundling despite that fact that some Member States, in particular Germany and France, rejected it during the Summer Energy Council meeting. The DG Energy preferred consensus seeking and suggested adding to the new legislation the alternative model of an Independent System Operator. Another change in opinion between two DGs came when DG Competition rejected the so-called "regionalization" option or a step-wise arrival at full internal electricity market integration that has been supported by DG TREN since 2003 (Eikeland 2008, p. 15). Finally, the DGs agreed to include apart the ownership unbundling the option of an Independent System Operator into the new draft directive and leave apart the step-wise integration of the internal electricity market in Europe.

Therefore, two new qualitatively new tendencies in the development of the Commission's role in the issue of the establishment of the common internal electricity market in Europe could be observed between 2005 and 2007. First, the new Commission, together with its new president Barosso, made the development of the truly competitive market in Europe its prerogative and the Commission saw the development of the true European competitive electricity market as a pilot project in this process. Second, DG Competition obtained direct access to energy policy-making. The co-working of DG TREN and DG Competition strengthened the role and the voice of the Commission in the policy-making on the establishment of the internal electricity market.

However, the Commission's initial proposal was not supported by the minority of Member States that argued that ownership unbundling would not lead to the full functioning of the liberalised electricity market in Europe and that it would open the European electricity market to more vulnerability concerning security of supply. The Council Presidency prepared to add to the Commission's proposal a third option of an independent transmission operator that would be applicable in those Member States in whose national electricity markets the vertically integrated undertakings were functioning. The Commission failed to come through with its renewed proposal and agreed on the Council's proposal. This Commission compromise at the end of 2008 should be explained through an unstable institutional network in the area of policy-making on the establishment of the common electricity market in Europe in 2007 – 2008. First,

no sufficient backing for the Commission's initial proposal on the introduction of ownership unbundling in national electricity markets of all Member States could be noticed. The Commission used its position as an autonomous policy-maker and was successful in introducing more harmonisation requirements in the electricity industry through the implementation of the third energy package. The third energy package was a more successful Commission initiative than the second energy package from 2003. The Commission was able to introduce more competitive requirements on the national electricity markets through more strict requirements on the unbundling of power production, transmission and distribution of assets. Furthermore, additional policy-making rights on the issues of the establishment of the common European electricity market were transferred from the national to the European level through the establishment of the agency of national regulators with the power to make binding decisions, as well as the strengthening of the Commission's role in issues of controlling the agency of national regulators' activity. However, the Commission was not successful in pushing for a single option of ownership unbundling because of more pragmatic than truly liberal positions of other participants in the institutional network on policy-making. First, the Council, because of the strong opposition of some members, proposed a compromise that included the third version of an independent transmission operator. Second, the European Parliament took a generally ambivalent position on the internal energy market in Europe. Although the majority of parliamentarians supported the Commission in its initial position to introduce ownership unbundling in all Member States, there were a minority of parliamentarians from France, Germany and new Member States who strongly opposed ownership unbundling as the most effective and efficient option for the unbundling of electricity assets. Additionally, the European Parliament in general took rather different positions concerning various issues related to the common internal energy market. Thus, in 2008, Parliament voted, by a majority, for the ownership unbundling of electricity assets but rejected the Commission's initiative on the new renewable energy directive and opted for the continuation of Member States' rights to decide on the modes of supporting national deployment of renewable energy (Eikealnd 2008, pp. 43 – 44). The positions of other players in this institutional network, such as business actors and their institutions and social interests in the Member States, were ambivalent as well and did not voice strong support for full liberalisation of national electricity markets in Europe.

3.2.3.1.2 European Parliament vs. Member States

The position of the European Parliament on the necessity of amending the first electricity directive was formulated in 2002 and 2003. The European Parliament agreed with the

Commission that the main obstacles in arriving at a fully operational internal electricity market were related to issues of access to the network, pricing and different degrees of market opening between the Member States. Additionally, Parliament pointed at different national approaches to the internalisation of environmental costs and differing levels of government support for some parts of the energy sector (European Parliament 2002). In this connection, the European Parliament suggested the establishment of effective authorities that would remain independent of the electricity industry's interests and of Member States' governments and would independently have the power to implement legally binding methods for calculating network access tariffs. Parliament voted for a phased approach to complete the internal electricity market. It did not establish a concrete deadline for the completion of the internal electricity market but asked for enough time to enable the industry to adjust and ensure that adequate measures and systems were in place in order to protect the interests of customers and ensure that they had a real and effective right to choose their supplier (European Parliament 2002, p. 5). The European Parliament privileged the option of ownership unbundling in amended legislation but stated that the less strict version of accounts' unbundling was also possible:

> Member States which wish to derogate from ownership unbundling shall notify the Commission to prove that the system they choose guarantees a degree of non-discrimination similar to that guaranteed by ownership unbundling. The Commission shall, by 2006, assess the different national systems and the degree of non-discrimination attained in the access to the transmission grids and shall, if necessary, submit new proposals for mandatory ownership unbundling (European Parliament 2002, p. 16).

In 2003, the European Parliament agreed with the Council's amendments and accepted its requirements to legally unbundle the accounts. However, Parliament underlined that ownership unbundling was the best option for the achievement of a fully competitive internal electricity market, because ownership unbundling implied a change of assets ownership (European Parliament 2003, p. 4).

Thus, it should be concluded that during the work on the second electricity directive, the position of the Parliament was similar to that of the Council. Parliament supported the Member States' requirements on legal instead of ownership unbundling of power generation, transmission and distribution assets, establishment of national regulatory authorities and the gradual opening of the national electricity markets. Additionally, Parliament accepted the powers of Member States to interpret the public service requirements on a national basis when taking national circumstances into account (European Parliament 2003, p. 8) and the deadline for the full opening of the electricity market to competition to household and non-household consumers by 1

July 2007 (European Parliament 2003, p. 31). A separate Regulation instructed Member States to establish a separate EU-level committee, the European Regulators' Group for Electricity and Gas (ERGEG) that was constituted of Member State regulatory authorities and would develop guidelines for the harmonisation of technical and market factors constraining access to cross-border trade. All these requirements rendered the second electricity directive less ambitious than it was, when first proposed by the European Commission.

However, the situation changed in 2007, when the European Parliament started to fully support the Commission in its intention to introduce ownership unbundling as a requirement common to all parties in order to organize the national electricity markets. The Parliament's consideration was the same as that of the Commission. It stated that transmission ownership unbundling appeared was the most effective tool in promoting investments in infrastructures in a non-discriminatory way and fair access to the grid for new entrants in the common internal electricity market (European Parliament 2007, p. 4). Parliament also backed the Commission's proposal on the independent role of national regulators. It agreed that national regulators should obtain the right to make binding decisions together regarding technical and trade issues and that the Commission should play a determining role, without, however, undermining the independence of national regulators (European Parliament 2007, p. 5).

At the same time, despite the fact that a majority of the parliamentarians had voted in support of further harmonisation requirements, there was another major group of parliamentarians who did not support ownership unbundling (Eikeland 2008). This sceptical group was formed by French and German representatives and representatives from several of the countries which joined the EU in 2004 and advocated the view that full liberalisation in the internal European energy market was not compatible with long-term security of supply in Europe.

In June 2008, the overwhelming majority of parliamentarians rejected the compromise proposal of the Council Presidency to introduce the option of an independent transmission operator for those countries that still had their national electricity industries dominated by vertically integrated undertakings (European Parliament 2008). Additionally, Parliament issued critical voices on the compromise-finding behaviour of the Commission towards the opponents of ownership unbundling. However, French and German parliamentarians, as well as parliamentarians form Member States that jointed the European Union in 2004, voted against the Commission's proposal and supported the Council Presidency's compromise. It should be, therefore, underlined that during the debates on ownership unbundling in the European Parliament, in July 2007 and June 2008, a division occurred along national lines rather than political party lines.

On the other hand, one should underline an ambivalent position on the part of the European Parliament on various issues related to the establishment of the common internal energy market in Europe, during the debates on the common internal electricity market in 2007 – 2008. If Parliament initially supported the introduction of ownership unbundling in electricity industries in all member States, it rejected, at the same time, some other Commission initiatives on the truly liberalised internal energy market in Europe. Thus, as documented by Eikeland (2008), during the debate on the new renewable energy directive proposed by the Commission in January 2008, a majority in Parliament did not back the Commission's proposal to introduce "trade in guarantees of origin" as an instrument to align political support of renewable energy with the internal energy market ideals. Instead, Parliament voted for the continuation of Member States' rights to decide the modes of supporting national deployment of renewable energy.

Therefore, the position of the European Parliament during the debates on the internal electricity market in Europe in 2007 – 2008 could be defined as moderate, concerning the establishment of a truly liberal European energy market.

3.2.3.1.3 European Court of Justice vs. Member States

In June 2005, the European Court of Justice delivered its first interpretative judgment concerning the directive on the internal electricity market. This judgment[6] concerned preferential access to an electricity interconnector by an undertaking that previously held a monopoly because of agreements concluded prior to the liberalisation of the EC energy markets. First, in its judgement, the court recognized the need to reduce negative consequences caused by the requirements of the second electricity directive to liberalise the national electricity markets on certain undertakings (Talus 2006, p. 44). In ensuring this, the court argued that the former monopolistic undertakings could be protected from the application of competition rules provided in the second energy directive for the purpose of the safeguarding of commitments entered into under the previous legislation. In practice, this meant that the old legislation had to be amended according to the requirements of the second electricity directive but, while amending the national legislation, special situations of traders had to be taken into account (Case C-17/03, §§ 80 – 82).

Thus, in its first interpretation of the EU second directive on electricity, the ECJ accepted exemptions from the legislation on further liberalisation of national electricity markets and, in particular, the exemption from mandatory third-party access to interconnectors.

[6] ECJ, 2005. Case C-17/03 Vereniging voor Energie, Milieu en Water and Others v Directeur van de Dienst uitvoering en toezicht energie.

There were certainly differences in the purposes of the activities of the European Commission and the ECJ after the implementation of the second electricity directive. In its first judgements, the ECJ found justification for derogations from the EU electricity legislation in order to rectify negative consequences resulting from the creation of an internal electricity market on certain electricity undertakings. The Commission, on the contrary, started the inquiry procedure in order to reveal remaining competition obstacles to the internal liberalised electricity market in Europe.

This modification of the pro-competition position of the ECJ had already occurred at the end of the 1990s, when the Court started to give much greater weight to public service obligations in energy supply and was unwilling to deny competences to Member States in the area of the delivery of public service obligations, as long as appropriate legislation had been adopted at the EU level. Additionally, the Court did not support the Commission in its strategy of instrumentalizing infringement procedures to press Member States to further open national electricity markets (Hancher 1998).

Therefore, it could be concluded that, in the 2000s, the ECJ was not really supportive of the Commission's ambition to establish an internal electricity market in Europe. First, the Court was unwilling to deny competence to the Member States in matters involving sensitive issues such as public services obligations or safeguarding of contractual commitments as long as appropriate legislative alternatives were not adopted at the community level. Second, the Court circumscribed the jurisdiction of the Commission to intervene in such sensitive issues by way of enforcement proceedings in relation to breaches of the primary EU law.

3.2.3.2 Access of Interest Groups to Policy-Making

In September 2000, the Commission organized public hearings in which the representatives of 120 associations and companies, such as electricity generators, transmission system operators, distributors, consumers and other interested parties participated. The position of these European electricity business groups, according to the Commission's data, was such that over 80% of them favoured the full market opening in the short to medium term (Commission of the European Communities 2001a, p. 5). In their view, the most important distortion of competition resulted from significantly different competitive environments between Member States. Additionally, 70% of the representatives underlined that legal unbundling of the generation, transmission and distribution of electricity assets was necessary for effective and non-discriminatory access to the networks of Member States (Commission of the European Communities 2001a, p. 6).

However, the position papers of the lobbying associations of energy suppliers and consumers give a slightly different picture of the attitudes of these two groups towards the necessity of further introducing harmonisation requirements in the sphere of electricity in Europe. Thus, the energy-intensive industries adjusted the positive consequences of the opening and liberalisation of the European internal electricity market to industrial energy consumers, such as lower prices and a larger degree of choice and flexibility in negotiating competitive supply. However, they required further harmonisation measures that had to be taken by the Commission, because they saw a number of distortions in the functioning of the electricity market in Europe that was developed by the year 2000. Among main market distortions, they counted market concentration and barriers to entry for electricity producers and suppliers caused by insufficient unbundling of power generation, transmission and distribution assets as well as inefficient third-party access to the transmission network (IFIEC 2000, p. 1). Furthermore, the energy intensive consumers evaluated the first electricity directive as insufficiently ambitious, as it required only a minimum market opening of about 35% and most consumers still remained ineligible to choose their suppliers. In their view, the accounting separation of electricity assets, as was established in the first electricity directive, was not a sufficient harmonisation requirement for the proper functioning of the internal electricity market, because it did not lead to cost-efficient grid prices. Therefore, they saw a further harmonisation step in the legal unbundling of transmission and distribution assets from generation and supply activities (IFIEC 2000, p. 2).

On the other hand, the local public utilities that initially have voiced against the Commission's initiatives on the establishment of the internal electricity market in Europe had to work out a new position under new circumstances caused by the implementation of the first electricity directive. In view of the crucial role of the transmission network in the opening up of the energy markets they found it necessary to legally unbundle the transmission assets in order to avoid conflicts of interest between production and transmission or between transmission and sales in companies where the two functions were integrated vertically. However, they opposed a legal separation between the distribution and supply functions because they being in their large majority small or medium-sized businesses feared competition from the side of larger firms (CEDEC 2000, p. 4).

At the end of the 1990s, the European Commission realized that the participation of industry actors in the policy-making at the European level would advance market-making policies in the electricity sector. At that time the regulatory issues in the electricity sector became more complex and the Commission was in a need of technical and regulatory expertise (Eberlein 2008). Additionally, the exchange theory predicts that the policy-making institutions need close

contacts with the private sector to fulfil their institutional role. Such interaction of private and public organizations could be described as a series of interorganizational exchanges. The exchange relation between organizations would be established only in the case when exchange would be reciprocal and both sides would receive benefits from it (Bouwen 2002, p. 368). According to this theory, private actors with strong business interests, primarily electricity producers and large energy-intensive consumers, were interested to get access to the European institutions in order to protect their interests. On the other hand, the European Commission (and other European institutions such as the European Parliament or the Council) was interested in expert knowledge as well as information regarding major needs and concerns of a particular sector on the European and domestic levels (Bouwen 2002, p. 369).

Regarding the European Commission's initiative, a number of associations representing the interests of national electricity utilities were created on the European level. In 1998, the Electricity Regulatory Forum of Florence was established; it was required to consist of Member States' representatives, national regulatory authorities, the European Commission, Transmission System Operators, electricity suppliers and traders, consumers, network users and power exchanges. Furthermore, a body representing the electricity transmission system operators (TSOs), the European Transmission System Operators Association (ETSO), was created. This body was to represent a separate body from other Electricity Industry associations or bodies. In addition to this, national electricity regulators created the Council of European Energy Regulators (CEER).

In practice, the European Commission expected these organizations, through informal discussion and cooperation, to negotiate further important mechanisms of the functioning of the internal electricity market, in particular, an effective regulatory framework for the introduction of competition, a tarification system of cross-border trade and the allocation and management of interconnection capacity between national transmission systems (Eberlein 2008, p. 78). Between 1998 and 2001, the Florence Forum reached an agreement on a harmonised system for cross-border electricity tarification and discussed a number of further technical issues, such as construction of necessary and economically justified new interconnection capacity. On the other hand, the forum failed to resolve conflicts between national and stakeholder interests that were still prevalent in the sector. On this occasion, Eberlein (2008, p. 79) wrote that the forum "performed less well as a politically expedient strategy designed to compensate for the Commission's lack of hierarchical powers vis-à-vis diverging national and stakeholder interests".

Between 1998 and 2001, the forum had to confront two types of distributive conflict. The first conflict arose between network operators and network users. Vertically integrated companies, which owned major transmission networks, refused to legally unbundle their

transmission grids from power generation and distribution assets, as was required by new entrants that depended on network access. The second related conflict was between different Member States. The Member States that transited a high volume of electricity import and export and were centrally located in the European grid system were concerned about cost recovery and about the competiveness of their domestic generators vis-à-vis foreign generation firms. On the other hand, the countries that exported high volumes of energy were interested in using Member States' transmission grids in a non-discriminatory manner and at low prices (Eberlein 2008, p. 80).

Therefore, it should be concluded that, at the end of the 1990s, the European Commission undertook the initiative of introducing sectoral governance in the sphere of electricity in the form of pan-European informal forums. According to the literature, sectoral governance has important merits. It can give regulatory expertise and produce workable regulatory guidelines and rules. However, sectoral governance appears to be less successful when it acts "in the face of distributive conflict in a politicised environment" (Eberlein 2008, p. 85). Under such circumstances, when deliberations in the forum were deadlocked, as discussed earlier, the Commission's strategy was to use the legislative route and to propose legislation drafts on complicated issues.

Starting in 2003, the lobbying organizations of energy-intensive industries actively pushed towards the full opening of the internal electricity market in Europe, and their influence on the Commission increased. They welcomed the second electricity directive, in particular its requirements to fully open the national electricity markets by July 2007. Already, at that time, the consumer associations on the European level were convinced that ownership unbundling was the only effective way to avoid conflicts of interest. However, due to a majority opposition of Member States, they accepted the proposed option of legal unbundling. However, they insisted that the legal unbundling should "be subject to clearly defined principles and rules in order to prevent abuse" and had to be achieved "with the strongest possible separation between the TSO and its parent company, as well as undertakings" (IFIEC 2003, p. 1). In practice, this meant that transmission system operators and distribution system operators must be independent companies from generation and supply undertakings and have their own independent decision-making bodies.

At the same time, the energy supply industries lost their lobbying influence in Brussels, as they could not form any uniform positions on important issues discussed at that time at the EU-level, and they argued that there was some degree of inconsistency and incoherence in European electricity policy formulation. This inconsistency in energy sector policy-making was explained through the tendency of different Directorates General of the European Commission to

concentrate on the key area of their responsibility without concentrating on three main targets of the energy policy in Europe, namely, competition, security of supply and environmental protection (Eurelectric 2005, p. 10).

It should be underlined that both electricity supply companies and energy-intensive industries had always been largely pragmatic agents (see Eikeland 2008). They both, to a greater or lesser degree, supported the establishment of the free internal electricity market in Europe, but were arguing against those free-market instruments that prevented some profits for them. Thus, on one hand, the associations of electricity supply industries in Brussels supported the gradual establishment of the European internal electricity market. They argued that further hindrances to market development, such as the failure of Member States to implement the 2003 energy package effectively and orientation of transmission system operators and national regulators towards the interests of national undertakings, had to be eliminated (Eurelectric 2007, p. 2). On the other hand, they rejected ownership unbundling and the model of an independent system operator as proposed by the Commission in the third energy package, arguing that "unbundling should not be looked at in isolation but needs to be considered together with other prerequisites necessary to successfully build larger electricity markets" and, therefore, concluding that "unbundling should be viewed from the standpoint of undertaking measures that are genuinely conducive to market integration" (Eurelectric 2007, p. 3). Instead, they proposed a regional model of cooperation of legally unbundled transmission system operators. In practice, the individual regional markets had to be established together with appropriate institutions for inter-TSO cooperation such as a regional system operator.

The energy-intensive industries, on the contrary, argued that ownership unbundling of the grid-operators from integrated production and supply companies was an essential element for market competition and opening of the national electricity markets. In this connection, the IFIEC argued that full ownership unbundling was the most effective and efficient instrument to guarantee neutrality of the transmission grid, improved market integration and security of supply. Additionally, the IFIEC agreed on the alternative option of an independent system operator as was required by a number of Member States, under the condition, however, of equivalent grid independence (IFIEC 2008). On the other hand, the energy-intensive industries supported the practice of long-term contracts that, according to them, contributed to security of energy supply (BusinessEurope 2008) but contradicted the requirements of liberalisation and competitiveness of the internal European electricity market. They argued that long-term contracts could facilitate realisation of major energy investments because they gave guarantees to financial institutions and energy operators concerning the long-term viability of these investments. Additionally, long-term contractual conditions could well reflect the consumption

patterns of energy-intensive industries. Finally, according to consumer industries associations, long-term contracts could provide visibility of the economic conditions for future energy supplies, where the lack of such visibility could lead to underinvestment of energy-intensive industries (BusinessEurope 2008, p. 2). The electricity producers and consumers were of the same opinion that long-term commercial arrangements between energy users and suppliers could mitigate the negative consequences of a still insufficiently competitive and interconnected European electricity market and the negative impacts on competitiveness of the Emission Trading Scheme. Their suggestion was to eliminate all burdens at the national and European level that prevented entering into long-term contracts. At the national level, the elimination of any uncertainty regarding the effective duration of contracts due to the *de jure* or *de facto* possibility of terminating contracts with a short notice was suggested. Additionally, they encouraged the state to play a vital role in the development of the practice of long-term contracts. At the European level, they wanted to prevent "uncertainties generated by the European Commission's decisions and thinking in connection with competition law" (BusinessEurope 2008, p. 3). According to their position paper:

> The Commission is focusing a great deal of attention on possible negative effects on competition, but it is important also to look at the potential positive effects in terms of increased efficiency gains and guarantees of optimal levels of investment in the sector that can be reached while providing energy users a fair share of resulting benefits (BusinessEurope 2008, pp. 3 – 4).

Therefore, the position paper of electricity suppliers and consumers from 2008 reflected their support of some parts of the pre-internal electricity market in Europe.

Summing up the degree of influence of interest groups on policy-making in Europe in the sphere of energy, it must be assumed that in the 2000s, energy consumers gained more influence and better access to the Commission and other European institutions than energy producers. This shift could be explained by two factors. First, in the 2000s, the Competition DG of the European Commission gained more agenda-setting and policy-making powers in energy matters and was in need of technical and expert knowledge of energy-intensive industries whose interests it wanted to protect. Therefore, it worked closely together with different associations that protected energy consumers at the European level, in order to obtain expert knowledge. Second, the energy-intensive industries were able to formulate a strong united position on the vital energy issues that were discussed in Europe at that time. On the contrary, energy supplier associations failed to provide a cohesive and consistent position on further harmonisation requirements at the internal electricity market in Europe.

3.2.4 Mode of Actors' Interaction and Its Effectiveness

After issuing reports about the need for further harmonisation rules at the European electricity market, the Commission realized that the best strategy would be to continue with the negotiated agreement. At the end of the 1990s, the high political salience of electricity liberalisation in Europe remained. The first electricity directive provided only for a minimum market opening and left Member States the right to decide between three models for the functioning of their national electricity markets. Therefore, the Commission had not taken into consideration the use of "coercive" instruments to force liberalisation on the national electricity markets based on the community law provisions regarding monopolies and abuses of market power. It continued with the acknowledgement that the further harmonisation rules necessary for the establishment of the truly competitive electricity market in Europe should be drafted as a Council and European Parliament directive.

However, the Commission had a freedom to opt for a directive that must be defined in relation to the internal market and handled, therefore, through majority, rather than unanimous, rule according to Article 100a, introduced with the Single Act and further developed in the Maastricht and Amsterdam Treaties. The Commission argued that the high degree of monopolistic tendencies in the energy sector and the barriers to trade between countries were strong arguments for defining future electricity directives in relation to the European internal market.

Apart from the necessity of placing further harmonisation requirements on the development of the European electricity market into the new draft directive, the Commission was not able to operationalise the threat of instigating ECJ proceedings because the ECJ was unwilling to deny competences to Member States in the area of the delivery of public service obligations as long as appropriate legislation had been adopted at the EU level. In addition to this, since the end of the 1990s, the pro-competitive position of the ECJ had modified and the Court started to give much greater weight to public service obligations in energy supply.

In such a position, the Commission had begun to build coalitions with interest groups in order to delegate some policymaking responsibilities to them and, in this way, to gain additional capacity and legitimacy outside the legislative as well as judicial arena. The main sectoral governance institutions that were established at the end of the 1990s and the beginning of the 2000s were the Electricity Regulatory Forum of Florence, which consisted of Member States' representatives, national regulatory authorities, the European Commission, Transmission System Operators, electricity suppliers and traders, consumers, network users and power exchanges; the

European Transmission System Operators Association (ETSO), which represented the electricity transmission system operators from the Member States; and the Council of European Energy Regulators (CEER) created by national electricity regulators.

The established network mechanisms with private interests, as well as sectoral governance actors, helped the Commission to coordinate Member States' policies under the circumstances of difficulties within the legislative and judicial arena and provided a new structural framework for negotiation that was described by Eberlein as "a politically expedient delegation of powers" (2008):

> This delegation is politically expedient, as a strategy to work around the lack of supranational governmental powers, by establishing network mechanisms that can coordinate member state policies. The strategy involves building coalitions with private stakeholders and sub-state regulatory agencies. These transnational coalitions are designed to further domestic reforms without having to resort to the level of political decision-making by governments and legislators. Regulatory capacity and authority available in sub-state, domestic arenas are thus leveraged to compensate for incomplete vertical delegation (Eberlein 2008, p. 77).

Apart from the supportive role of sectoral governance networks, the macro-political climate at beginning of the 2000s contributed to the possibility of further negotiations on the new electricity liberalisation legislation. First, some Member States, such as Denmark, Finland, Germany, Sweden and UK, have opened their markets more quickly than required. The Commission could count on these Member States by arguing that further harmonisation steps were necessary in order to eliminate asymmetric electricity market opening in Europe. Second, in March 2000 the European Council drew attention to a number of unsatisfactory aspects of the harmonisation reforms in the electricity industries of the Member States and empowered the Commission to complete the internal market in electricity and gas.

During 2001 – 2003, the negotiations on the second electricity directive shifted to the council level and were influenced by some external factors, such as the California electricity crisis and higher electricity prices that the countries that liberalised their electricity industries experienced. Additionally, because of their national policies, France pledged support for a more gradual opening of the national electricity markets and Germany was against the *ex-ante* regulation of national regulatory authorities. However, the Member States agreed that the single buyer model, the negotiated third-party access and the accounting separation of power generation, transmission and distribution assets, which were the main instruments established by

the first electricity directive, had not succeeded in the establishment of the competitive internal electricity market. The countries agreed that these old instruments had to be substituted by new ones, such as the regulated third-party access and the legal separation of the transmission grid from the generation and distribution assets. Full ownership unbundling had been proposed by some actors, such as large industrial consumers, but the Commission failed to include it into the proposal because many Member States opposed it. The Member States agreed to the gradual opening of their national electricity markets to competition by July 2007. Additionally, the directive instructed the governments of the Member States to set up national regulatory agencies with well-defined functions and greater transparency.

Therefore, the outcome of the preparation and adoption of the second electricity directive can be explained through the learning and gradual changing of the positions of the governments from the Member States that occurred through the negotiations in the Council and its working groups as well as due to permanent contacts with the European Commission and its reporting about the developments that occurred at national electricity markets. Since the first electricity directive was adopted, no Member State opposed the establishment of the common internal electricity market in Europe. However, most Member States, led by Germany and France, supported the gradual path to the opening of national electricity markets.

After the adoption of the second electricity directive, the establishment of the truly competitive internal electricity market in Europe remained one of the cornerstones of the Commission's policy. In 2004 – 2007, it used three policy instruments to push the Member States to change their positions. First, it launched electricity sector inquiries, issued annual reports about the state of national electricity markets, proposed a new European energy strategy and adopted the strategic energy review in which it reported that the internal electricity market in Europe still had a number of significant distortions. Second, it underlined that, if necessary, it would make full and combined use of the Commission's powers under antitrust rules (Articles 81, 82 and 86 EC), merger (Regulation (EC) No 139/2004) and state aid control (Articles 87 and 88 EC) in order to assure that competition was not distorted. Finally, the third instrument the Commission had at its disposal was that the Commission voiced the necessity for further regulatory action on the community level.

According to the Commission's position, the full ownership unbundling of the transmission grid from the power generation and supply assets was the most effective means of ensuring the truly competitive functioning of the European internal electricity market, and further regulatory action was necessary in order to substantially strengthen the independent powers of national regulators.

However, negotiations in the Energy Council revealed that there was a blocking minority that strongly opposed ownership unbundling. In the negotiated agreement, there is always the necessity of consensus, and the Commission had to make concessions to find such a consensus. The Commission made three concessions during the negotiations on the third electricity directive. First, it retained a "fallback option" of the Independent System Operator for those Member States that rejected ownership unbundling. Second, the Commission included in the draft directive the "last minute reciprocity clause" (Eikeland 2008, p. 16), which specified that ownership unbundling would also apply to third country companies in order to prevent takeover of transmission systems by vertically integrated companies outside the EU. Finally, because of strong opposition from Austria, Bulgaria, France, Germany, Greece, Luxembourg, Latvia and the Slovak Republic the Commission agreed to include into the third electricity directive a third option of "effective and efficient unbundling of transmission system operators" (EurActiv 2008).

The negotiations on the third electricity directive occurred within a new specific institutional setting that was developed between 2004 and 2007. It should be underlined that the issue of ownership unbundling was highly sensitive and unacceptable for most Member States since the first discussions on the internal European electricity market. The Commission did not dare suggest ownership unbundling in the second electricity package, while having already at that time the opinion that ownership unbundling was the most effective instrument for the establishment of the competitive internal electricity market in Europe. However, in 2007, because of the new institutional setting, the Commission was able to propose the option of ownership unbundling in the new draft legislation and to manage for it to remain in the adopted third electricity directive.

The new institutional setting, which impacted the negotiations on the organization of the internal electricity market on the European level in 2007, was characterized by policy-learning of national governments during Council negotiations and internal institutional changes within the Commission on one side, bargaining behaviour of the Member States, combined with the pragmatic positions of the European Parliament, and the European interest representations of energy-intensive consumer industries on the other side. During 2006 – 2007, Member States began to see the development of the internal electricity market in Europe as an important part of the European energy agenda that became a core issue of EU policy at that time. In addition, the DG Competition of the European Commission obtained access to policy-making in the common energy policy and strongly pushed for a more radical energy liberalisation package. The collaboration between DG TREN and DG Competition strengthened the role and the voice of the Commission in the policy-making on the establishment of the internal electricity market.

On the other hand, in some Member States, led by Germany, France and the new member States that joined the EU in 2004, the issue of security of supply dominated the national debates on the restructuring of electricity industries, and they took bargaining positions in the Council with the purpose of making concessions on other issues, but preventing all measures that would open their national electricity markets to greater vulnerability concerning security of supply.

The European Parliament was divided along national and not political party lines. Thus, parliamentarians from France, Germany and the new Member States strongly opposed ownership unbundling. Furthermore, the European Parliament took different positions concerning various issues of the common internal energy market. Thus, in 2008 the Parliament voted by a majority for the ownership unbundling of the electricity assets but rejected the Commission's initiative on the new renewable energy directive.

The position of the European interest representations of electricity supply and energy-intensive consumer industries was pragmatic, rather than truly supportive of liberalisation. The interest representations of electricity supply industries failed to come up with a single position concerning the third electricity directive. On the contrary, the energy-intensive consumer industries strongly supported the liberalised electricity market in Europe and ownership unbundling but opposed some of its features, such as the abolishment of long-term supply contracts that brought disadvantages for consumers.

How effective were the negotiations during the adoption of the second and the third electricity directives? From the analysis of actors' constellations, as well as modes of interactions, it shall be concluded that negotiations contributed to the gradual change of Member States positions concerning the reform of their national electricity markets and the establishment of the internal electricity market in Europe and provided an opportunity for the Commission to come up with its initiatives and proposals. The negotiations on the EU level were an arena in which a wide range of actors were able to discuss complicated issues concerning the electricity sector restructuring and share their knowledge. Such a possibility is only partly provided in other modes of actors' interaction.

3.3 Sub-conclusion

The analysis of the actors' constellations in the policy-making in the electricity sector in Europe allows deriving the conclusion that the preferred mode of the actors' interaction in the 1990s as well as 2000s was a negotiated agreement. However, the institutional context in the

1990s differed from the institutional context that was established after the introduction of the second electricity directive in 2003.

In both institutional settings the European Commission has played a major role in the policy-setting in the electricity industry. In the 1990s the Commission's autonomous supranational authority was strengthened by the Single European Act and the Maastricht Treaty. The new Treaties have established a new institutional framework that allowed the European institutional actors such as the Commission, the European Parliament and the European Court of Justice to define their new autonomous competences which were not written down in the Treaties. Due to this political spillover the Commission could argue that the internal electricity market in Europe was a part of the common internal European market and that the Commission had, therefore, certain supranational competences in this area. Apart from that, the Commission could argue that all issued electricity directives must be defined in relation to the internal market and handled, therefore, through majority, rather than unanimous, rule according to Article 100a introduced with the Single Act and further developed in the Maastricht and Amsterdam Treaties. In the 2000s the Commission strengthened its powers in the electricity policy-making because of the collaboration of DG TREN and DG Competition after the DG Competition obtained access to policy-making in the common energy policy and strongly pushed for a more radical energy liberalisation package.

The positions of two other autonomous European institutional actors, the European Court of Justice and the European Parliament, were different in the 1990s and the 2000s. Their positioning impacted the action possibilities of the Commission. In the first half of the 1990s the European Court of Justice established in its rulings that the internal electricity market was a part of the European internal market and shifted on this way the policy-making in the electricity industry to the European decision-making level. However, already at the end of the 1990s the pro-competition position of the ECJ changed. Since that time the Commission was not able to operationalise the threat of instigating ECJ proceedings because the ECJ was unwilling to deny Member States competences in the area of the delivery of public service obligations as long as appropriate legislation has been adopted at the EU level.

Very much the same as that of the Council, the position of the European Parliament in the 1990s and its pragmatic stance on energy policy-making in the EU in the 2000s underpinned the negotiation powers of the Commission. In the 1990s, the Parliament guided the Commission towards significant changes in its policy-setting in electricity liberalisation. During the negotiations on the first electricity directive it rejected one of the main policy instruments proposed by the Commission in the first draft directive – the mandatory third-party access – and supported the Council discussions about the introduction of another possible option of negotiated

third-party access. After the bargaining between France and Germany on the issue of the single buyer model that was introduced in the draft directive as a third possible option of the electricity market organization and that certainly weakened the negotiation powers of the Commission the Parliament accepted this outcome of bargaining between the Member States. In the 2000s, the European Parliament was divided along national and not political parties' lines on the issues of the establishment of the European internal electricity market. Apart from this, the European Parliament took a pragmatic position on the EU common energy policy and did not hold a truly liberal line in its voting on energy policy issues. Thus, in 2008 the Parliament voted with its majority for the ownership unbundling of the electricity assets but rejected the initiate of the Commission on the new renewable energy directive.

While broadening its competences in the energy policy-making the Commission had to cope with two issues that were of their strategic importance for national security for each Member State – security of supply and public service obligations. Because the Member States saw the development of the common electricity market as a danger for national energy security the Commission had to cope with political silence of the Member States on this subject. The adoption of the first electricity directive was, therefore, an outcome of the changing institutional context at the EU level from one side and the possibility of bargaining between France and Germany based on the least common denominator that, in turn, was impacted by negotiations at the EU level from the other side.

The EU negotiations on the electricity liberalisation contributed to the policy-learning of the policy actors from the Member States and caused them to change their preferences. The first evidence of that policy-learning was the fact that some Member States have exceeded the minimum requirements of the first EU electricity directive when implementing it. This evidence is particularly strong in those countries that preferred to agree on the lower common policy denominator. One prominent example was Germany who fully opened its electricity market to competition in 1998 despite the requirement of the EU electricity directive of a 30% market opening. Furthermore, France' policy preferences in electricity liberalisation at the EU level have been gradually changing as well. Thus, during the negotiations on the second electricity directive France took the position of the majority of the Member States that the Single buyer model that it preferred during the 1990s was not an effective instrument for the establishment of the liberalised electricity market. It agreed on the legal unbundling of the electricity generation, transmission and distribution assets, a position that would have been unbelievable for France in the middle of the 1990s. During the middle of the 2000s the adoption of European energy agenda contributed to further policy-learning in the electricity liberalisation within a broader policy framework in Europe.

In the 2000s, interest representations of the electricity supply and energy-intensive consumer industries accessed as new actors the negotiations on electricity liberalisation. The Commission initiated network mechanisms with private interests as well as sectoral governance actors in order to delegate some policy-making responsibilities to them and, on this way, to gain additional capacity and legitimacy outside the legislative and the judicial arena. Such established network mechanisms were helped the Commission to coordinate Member States policies under the circumstances of difficulties within the legislative and judicial arena. From the other side, the positions of the European interest representations of electricity supply and energy-intensive consumer industries on electricity liberalisation in Europe was pragmatic, rather than truly supportive of liberalisation. From one side they supported the establishment of the liberalised electricity market in Europe. But from the other side, they declined those policy instruments that brought disadvantages to them, for an example, the abolishment of long-term supply contracts.

Because of the high political sensibility of the energy issue the elements of the bargaining between the Member States on the least common denominator were present in the electricity negotiations in the 1990s as well as in the 2000s. However, the policy-learning of the Member States during the negotiations at the EU level as well as the preparedness of the Commission to make concessions necessary for the consensus-finding made the negotiations on electricity liberalisation in the EU a success story and did not lead them to policy deadlock.

4. Case Study II. Politics of Electricity Liberalisation in Ukraine (1990 – 2010)

4.1 The Organization of the Soviet Power Industry

During the Soviet era, the electricity sector was organized in the form of a state-controlled electricity monopoly, "Unified Electricity System" (UES). The origins of this monopoly are found in Lenin's initiative to electrify the newly-founded Soviet Union. Already in 1920, the Communist Party and Soviet government approved the world's first state plan for the economic, political and social reconstruction of a country by electrification. According to the plan of the State Committee for the Electrification of Russia (GOELRO), wide-spanning transmission networks would be built in order to electrify entire regions of the Soviet Union (Coopersmith 1993). The GOELRO plan was intended for 10 – 15 years. It was planned to construct 30 new regional electric power stations with a total capacity of 1,500,000 kW, including 10 hydraulic and 20 thermal, and also the reconstruction and expansion of existing power stations with a capacity of 250,000 kW. Over the next 10 years, 40 regional power stations had been constructed, rather than 30. In the year 1940, the installed capacity of power stations of the country reached 11.2 million kW and production 49 billion kW (Neporozhnii 1980). During the Second World War, 60 large stations were destroyed. However, in 1946, the capacity of power stations returned to the pre-war level.

The creation of the unified power system started in the Soviet Union in 1956. By 1978, it included all of the Soviet Union and was run by the Ministry of Energy and Electricity, a hierarchically-organized bureaucracy directed from Moscow (see Figure 4.1).

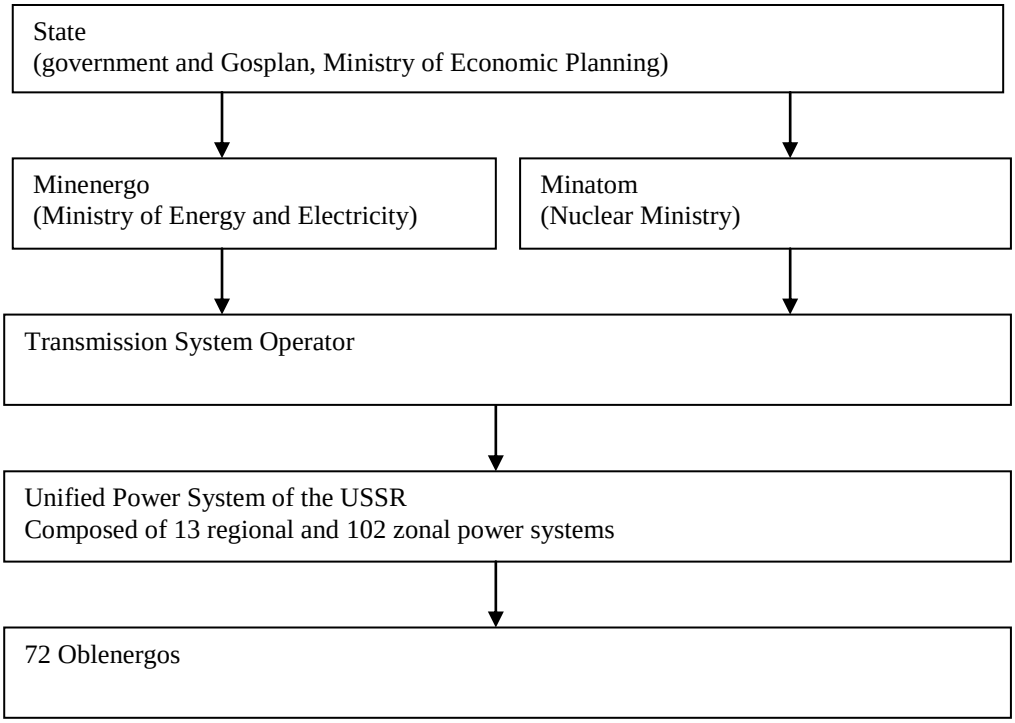
Ukraine's and Russia's power engineering sectors were part of the power engineering industry of the former USSR. After the dissolution of the USSR, the energy systems of member countries were separated.

Ukraine inherited a rather developed power engineering sector which was provided by 44 thermal power plants either gas-fired or coal-fired, 7 hydro power plants and 6 nuclear plants (Razumkov Centre 2012, Ryding 1998). At that time, the Ukrainian Ministry of Energy and Electrification (Minenergo) coordinated 8 vertically integrated regional utilities, hydropower generation association and a national dispatch centre. (Ryding 1998, p. 4).

Russia inherited generation capacity of 212 GW (70% thermal, 20.5% hydro and 9.5% nuclear) and 700,000 km of high-voltage and low-voltage transmission lines from the Soviet

unified power system (Opitz 1999). During the Soviet era, the Russian part of the unified power system was organized into six interconnected regional sub-systems: the Northwest Region, Central Russia, the Volga Region, the Urals, the North Caucasus and Siberia. The seventh regional sub-system the Far East was not integrated into the unified system.

Figure 4.1 Structure of the Soviet Power Industry



Source: Engoian 2006, p. 3234.

4.2 Electricity Market Reform in Ukraine under Kuchma (1994 - 2004)

4.2.1 Basic Features of the Ukrainian Power Industry in the 1990s

The following Tables 4.1 and 4.2 present indicators that characterize electricity generation and consumption in Ukraine during the 1990s. As seen in these tables, the total electricity gross production in Ukraine dropped by 43% in 2000, as compared to the year 1990. In 2000, thermal power plants accounted for 48% of energy production, nuclear power plants for 45% and hydroelectric power plants for 6%. If the production of electricity from nuclear power plants and hydroelectric power plants was relatively stable during the 1990s, the production of electricity from coal, oil and gas energy sources decreased by more than half (see Table 4.1).

Table 4.1 Total Electricity Gross Production in Ukraine in 1990 – 2000 (GWh)

Production from:	***1990***	***1995***	***2000***
Coal	114,003	70,228	51,514
Oil	48,011	10,391	1,187
Gas	49,889	32,726	29,947
Biofuels	0	0	0
Waste	0	0	0
Nuclear	76,179	70,523	77,341
Hydro	10,723	10,150	11,450
Solar	0	0	0
Wind	0	0	6
Other sources	0	0	0
Total Production:	298,835	194,018	171,445

Source: International Energy Agency Statistics for Ukraine.

According to the International Energy Agency's data, the volumes of exported and imported electricity in Ukraine remained very low during the 1990s. Thus, in 2000 Ukraine imported 2,679 GWh and exported 6,528 GWh of electricity; these numbers were very low in comparison with the annual domestic production of 17,1445 GWh.

Table 4.2 Final Domestic Electricity Consumption in Ukraine in 1990 – 2000 (GWh)

	1990	***1995***	***2000***
Energy Industry Own Use	42,900	29,016	23,141
Industry	145,373	71,208	60,300
Transport	14,475	10,777	9,236
Residential	17,194	35,960	30,123
Commercial and Public Services	0	12,802	8,811
Agriculture/ Forestry	28,490	12,748	5,021
Fishing	0	0	0
Other sector non-specified	0	0	0
Losses	21,932	18,555	30,964
Total domestic consumption:	270,364	191,066	167,596

Source: International Energy Agency Statistics for Ukraine.

Electricity consumption dropped in Ukraine in the 1990s as well. In 2000, Ukraine consumed only 62% of the amount of electricity that it consumed in 1990 (see Table 4.2). Such a

decrease in electricity consumption is explained by the financial and economic crisis Ukraine underwent in the 1990s, after the fall of the Soviet Union.

The industrial sector's energy consumption comprised 36% of total electricity consumption in Ukraine, in 2000. Total electricity consumption in the residential sector declined during the ten-year period from 1990 to 2000 and comprised 18% of total electricity consumption in Ukraine, in 2000. During the 1990s Ukraine witnessed high amounts of energy loss (see Table 4.2).

4.2.2 Regulatory Policies

The overall economic situation and the situation in the energy sector in independent Ukraine worsened in 1991 – 1994. Thus, data indicate that by 1994 the budget deficit in Ukraine reached 10% of GDP and annual inflation 5%; coal production decreased by 30% and the debt of Ukraine to Russia for unpaid fuel imports surpassed USD 5 billion.[7] (Lovei and Skorik 1999). All available energy utilities, electricity, gas and district heating networks, could not cover their operations costs and were subsidized by the state.

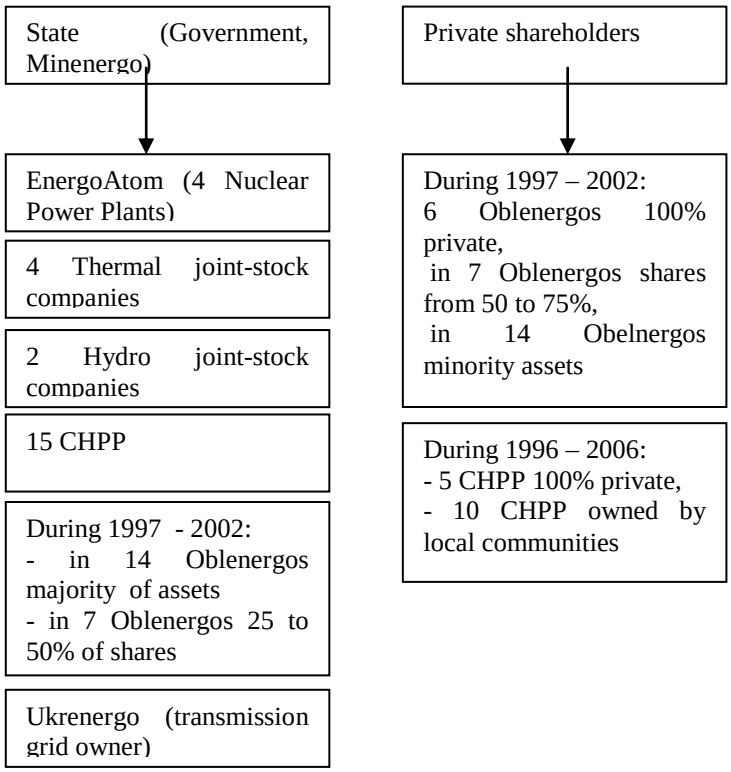
The power engineering sector in Ukraine was in desperate need of reform. It was the Ministry of Power and Electrification (Minenergo) that regulated the entire power industry in Ukraine and originated the proposal to introduce reforms into the power engineering sector, in the middle of the 1990s. As an example for the reform direction, the ministry proposed to the president the modernisation of the electricity sector in the United Kingdom in 1989 – 1990. The British model of power sector restructuring foresaw the creation of a wholesale market pool for electricity, with private generators competing on price to supply demand. The supply companies should buy energy from the pool and deliver it over common transmission and distribution networks while competing with other supply companies on customer service[8].

[7] For more data as well as a description of the economic and financial situation in Ukraine in the first half of the 1990s see Lovei and Skorik 1999.

[8] The pool model foresees a partial liberalisation of the electricity industry and an introduction of competition into the power generation and retail trade segments of the electricity market. In this model, the wholesale electricity market remains closed to competition, as wholesale trade is organized by a pool. The rationale of the introduction of this model is to make both generating and supply companies more efficient. The natural monopoly remains only in transmission, which is normally controlled by the state. The unbundling of power generation, transmission, distribution and supply assets forces the separation of costs between them and, therefore, makes their control more transparent and more economically rational.

In May 1994, president Kuchma issued a decree requiring the liberalisation of the power sector. The purpose of the reform was to unbundle the vertically integrated organization of the power sector and open generation and retail trade to competition, while high-voltage transmission would remain a natural monopoly. Restructuring began in 1995 and was supported by extensive technical assistance from multilateral and bilateral donors, in particular through performance of the World Bank Group (WBG) in promoting private sector development in the electric power sector.

Figure 4.2 Ownership Structure of the Ukrainian Electricity Market Between 1996 and 2004



Source: Own Compilation based on Presidential Decree No 244/94 and Presidential Decree 282/95 of the president, Ryding 1998, Lovei and Skorik 1999.

Presidential Decree No 244/94 and Presidential Decree 282/95 established the following organisation of the Ukraine's power sector:

- ✓ The 14 thermal power plants are operated by four joint-stock generation companies: Donbassenergo operates five plants, Dnyproenergo operates three plants, Tsentrenergo operates three plants, and Zakhidenergo also three plants. In all four generation companies the state remained the main shareholder.
- ✓ Eight hydropower stations on the Dnypro river and three hydropower stations on the Dniester river are operated by two joint-stock companies that are 100% state owned.

- ✓ A state grid company Ukrenergo owns and operates the high-voltage networks and 27 joint-stock companies (oblenergos) own and operate the low-voltage networks in the 25 oblasts and two city administrations (Kyiv and Sevastopol). The majority of the shares of the oblenergos were state owned (see Figures 4.2 and 4.3).
- ✓ Regulated tariff suppliers and non-regulated tariff suppliers are functioning at the electricity market. The regulated tariff suppliers are the oblenergos that are obliged to sell electricity to all household customers wishing the buy the electricity at the regulated by the state retail price. Private non-regulated tariff suppliers could get the licences from the governmental structures to purchase electricity from the wholesale market and resell it to non-household consumers.

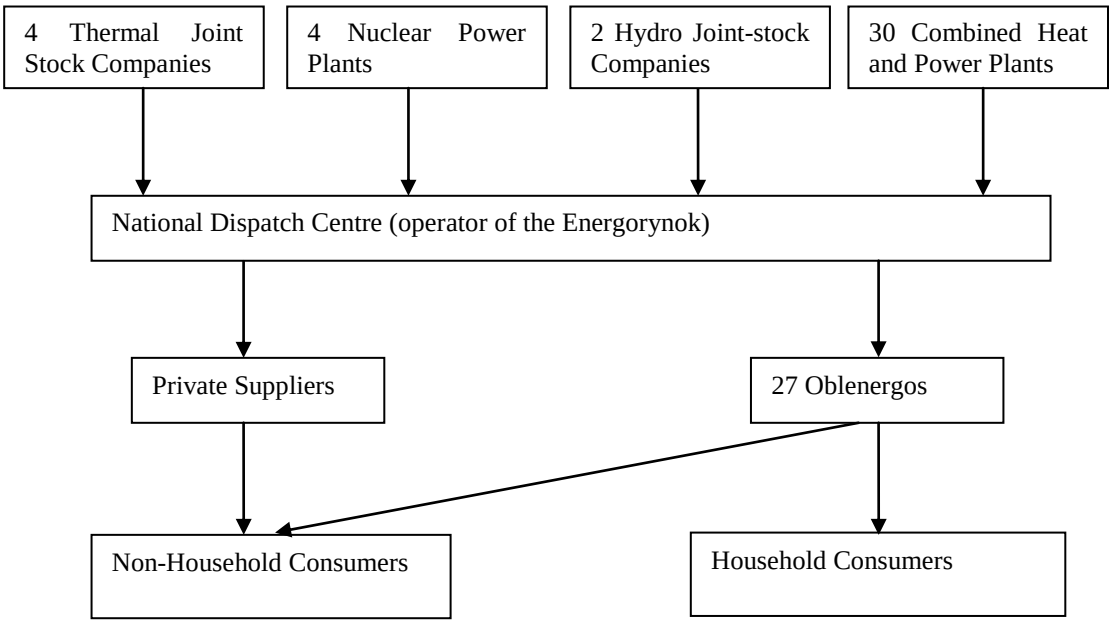
In 1996, the Members Agreement was signed by active participants in the electricity market, namely, power generation companies, the grid company and electricity suppliers. It was agreed that the state-owned company, the National Dispatch Centre (NDC), was a purchasing and dispatching agency and had the right to control and finance the high-voltage network and to administrate the system of settlements. In 1995, a National Electricity Regulation Commission (NERC) was established as an independent sector regulator. The NERC would have important functions in issuing and monitoring licenses for electricity generation, high-voltage transmission, low-voltage distribution and tariff and non-tariff supply; protecting consumers; regulating high-voltage and low-voltage transmission tariffs and retail electricity prices.

The Law on Electricity introduced in 1997 could be defined as being in the public interest. First, competition was introduced into the power generating and supply businesses; several generators who obtained licenses from the government were able to offer their electricity at the wholesale market and several licensed suppliers were able to compete by selling electricity to final non-household consumers at a non-regulated tariff. By the year 1997, the share of electricity sold by privately owned non-regulated tariff suppliers reached 20% (Lovei and Skorik 1999, p. 336). Additionally, the reform suggested the establishment of independent regulatory authorities and the possibility of selling shares of power generation and supply joint-stock companies to private companies. However, the government that was empowered to launch privatisation tendering was reluctant to sell shares in the state's power generation joint-stock companies. Concerning regulated tariff suppliers, electricity distribution companies, the picture looked more positive. In the year 2002, 6 oblenergos were privately owned; in 7 oblenergos, 50% to 75% of all shares belonged to private stakeholders, and, in 14 oblenergos, private stakeholders owned a minority of assets (see Figure 4.2).

The reform which would have established the pool model in Ukraine's wholesale electricity market was not fully implemented. The loan from the World Bank was suspended, in July 1997, due both to unsatisfactory financial performance of the entire power sector and to a new government prohibition on the increase of electricity tariffs for household consumers and finally cancelled at government request in 1999 due to the impact of the Russian financial crisis on the Ukrainian economy (World Bank Group (2003)). Regarding the situation in the power generation sector in Ukraine at the end of the 1990s, the World Bank concluded the following:

There is little merit in pursuing comprehensive power sector reform policies (legislation, regulation, unbundling, competition, privatisation, regulation) in a country suffering a major economic crisis. The project shows that in an economy that was barter-based, with salaries and pensions in arrears, and where the government condoned the culture of non-payment, there was no way to make consumers to pay for electricity in cash. In such an environment, the introduction of an advanced model of a competitive power market was bound to be a losing proposition. Project objectives should have been more modest and targeted to improving well-delineated technical, institutional, and financial problems" (World Bank Group 2003, p. 42).

Figure 4.3 Organization of the Ukrainian Electricity Market since 1997



Source: Own organization based on Presidential Decree No 244/94 and Presidential Decree 282/95.

Therefore, the efforts to introduce competition-oriented reforms to the Ukrainian power sector in the 1990s had not succeeded. Ukraine failed to introduce competition into the power

generation sector. The power generation companies were forced to sell all generated electricity to a state-owned reseller and privatisation of generation companies was not a part of the reform (Hirschhausen and Opitz 2001, p. 19). The power sector lacked clear regulation rules and provided insufficient incentives for individuals to establish independent, profit-oriented enterprises. The National Energy Regulatory Agency, which was politically controlled by Minenergo, fixed the level of electricity prices. In fact, at the end of the 1990s, a hybrid form, between a monopoly and a pool system, was established in the Ukrainian electricity industry; overall policy-making on electricity sector restructuring in the 1990s was impacted by a path-dependency in the form of decisions made by the old Soviet bureaucracy, which had saved its political position in independent Ukraine. One of such path-dependent regulations obliged regional distributors to supply electricity to communal consumers at very low prices. Large industrial consumers were largely unable to pay for electricity, which resulted in a lack of payment to the pool and, finally, to the generators, which were then unable to pay for their fuels. At the end of the 1990s, payments to Oblenergos were less than 40% (Hirschhausen and Opitz 2001, p. 19).

4.2.3 Actors' Constellations on Electricity Liberalisation Policy-Making

This chapter discusses the constellations of policy-making actors in the area of electricity liberalisation in Ukraine in the 1990s. The decision-making powers of the legislative, the executive, the regional administrative actors as well as non-state actors were taken into account. The judicial power in Ukraine, in the 1990s, was weak, politically dependent on the government and without any independent powers of control over the structural reforms pursued in Ukraine (Tiede and Rennalls 2012). Although according to the 1996 Constitution, appellative courts and over-arching special tribunals were created and the right to issue arrest warrants was transferred from the prosecution service to the judges, the key provisions of this reform were not implemented within the appropriate time period and the courts operated until 2002 under the Soviet framework (Tiede and Rennalls 2012, p. 96). In 2002, the Law on the Judiciary came into the effect in Ukraine; it provided for the organization of the judiciary and its administration in accordance with the rule of law, subject to the 1996 Constitution, and strengthened the judges' capacity to self-govern, which was indispensable for the judiciary's independence. However, Kuchma's government failed to implement this law. From all these reasons the judiciary was not taken into account in this analysis.

4.2.3.1 Interaction between the Executive and the Legislative

The specific factor of Kuchma's political system in Ukraine, in 1994 – 2004, was the extraordinary presidential power. Kuchma rendered executive power in Ukraine independent from parliament and civil society. Thus, the 1995 Power Bill shifted the decision-making powers from the parliament to the president. This was the "partial reform equilibrium" that sealed the alliance between Kuchma's executive and oligarchic groups in the second part of the 1990s. In words of Puglisi (2003, p. 100), "in this Ukrainian-style neo-patrimonialist regime, president Kuchma established and maintained his authority through an extensive network of personal patronage, the redistribution of economic favours and privileged access to economic resources, rather that ideology or the impersonal rule of law".

The main decision-making actor in the power engineering sector in Ukraine in the period 1994 – 2004 was the executive body – Ministry of Power and Electrification (later renamed into the Ministry of Fuel and Energy). The leadership of Minenergo desired to restore Ukraine's place as a leading force in the power industry in Eastern Europe because of some particularity of the electricity sector in Ukraine. Ukraine was the only republic from the Soviet era that had its own Ministry of Power. The electricity sphere was of particular importance to Ukraine because the first large hydropower plant and the largest nuclear power plant in the Soviet Union were built in Ukraine. Moreover, Ukraine controlled the transmission lines which exported electricity to Central Europe during that time (Lovei and Skorik, 1999).

After the introduction of reforms in the power engineering sector in the years 1994 – 1996, Minenergo continued to take responsibility for the entire power industry. Minenego was a main policy-maker in the sphere and represented the state as the owner of key electricity assets.

During the 1990s, Kuchma's government looked at the energy sector as an instrument of industrial and agricultural policy and of the social safety net (Lovei and Skorik 1999). In order not to lose control over this instrument, Kuchma's government refused to implement some parts of the reform on the establishment of the pool model and the introduction of competition into the wholesale electricity market. In particular, the government prevented the privatisation of strategic power assets in the middle of 1990s.

The government and Minenergo instructed the National Dispatch Centre (NDC) not to cut electricity deliveries to those oblenergos that could not pay for energy. Such state instructions did not comply with market rules according to which oblenergos could cut energy deliveries to delinquent customers and in turn, the National Dispatch Centre could cut electricity deliveries to those oblenergos that could not pay for it. On the contrary, the local and central governmental

officials put pressure on oblenergos not to reduce or cut off electricity deliveries to important institutions, among which municipal services, budgetary organizations, agricultural cooperatives and coal mines were counted. “By determining which individuals and enterprises should be allowed to consume energy without a corresponding payment, the government was able to cushion selectively the impact of macroeconomic stabilisation and structural adjustment on enterprises, workers, and the population at large” (Lovei and Skorik 1999, p. 337). All governing bodies that were established according to the reform, in the first line the NERC, were under the control of Minenergo, and its management did not oppose non-compliance with the market rules.

4.2.3.2 Interaction between Central and Regional Authorities

Administratively, Ukraine was divided into 24 oblasts, the Autonomous Republic of Crimea and the cities of Kyiv and Sevastopol. Among the regions, there were disparities resulting from historically based sociocultural diversity and different experiences with centre–region relations (Zimmer 2007, p. 117); however, there had never been any serious separatist regional challenges within the state, with the exception of the Crimean Peninsula. From 1991 to 1994, the regions enjoyed considerable freedom from central control. However, after the 1994 presidential election, Kuchma began to restore central authority in Ukraine. According to the Constitutional Treaty that was signed between the president and the Verkhovna Rada in 1995, Kuchma obtained the right to appoint all chairmen of raion (municipalities), oblast (regions) and parliaments (radas) as heads of the oblast and raion state administrations. This led to a fusion of oblast radas (as self-governing bodies) and bodies of state power. Additionally, oblast and raion radas delegated many tasks to the oblast and raion state administrations and lost a lot of their ability to act autonomously (Zimmer 2007, p. 118). The 1996 Constitution had established a unitary state in Ukraine.

This power centralization, in the middle of the 1990s, impacted the establishment of new rules governing the electricity sector. The 1994 presidential decree established the centralized National Electricity Company, which would be created from the high-voltage operations of the eight regional utilities. Already, in May 1995, the Regional Dispatch Centers were transferred to the National Dispatch Centre (Ryding 1998). Therefore, according to the reform, the majority of generation, transmission and dispatch assets were removed from oblenergos, the regional authorities that governed regional utilities. Minenergo divided and relocated the remaining assets between 27 energos. During the 1990s, the energos did not achieve independence based on the

licenses issued by the NERC and operated under the control of Minenergo. They had no right to negotiate the price at which they could buy and sell electricity (Ryding 1998, p. 16).

This centre-regional relationship in Ukraine changed somewhat in the second half of the 1990s. Kuchma lacked strong party structures in the regions and failed to institutionalise unitary state structures. Facing the 1996 presidential elections, the president was forced to rely on his regional appointees. In exchange for unprecedented powers over key regional assets, regional governors organized electoral campaigns for Kuchma and mobilized the voters (Konitzer-Smirnov 2005). These Kuchma policies led to the transfer of control over regional energy assets from the centre to regional business elites, which transfers occurred mostly between 1997 and 2002.

4.2.3.3 Access of Interest Groups to Policy-Making

During the second half of the 1990s, oligarchic groups in Ukraine had emerged by making money, mostly in commodities, in the first line in trading natural gas, oil, coal and exporting steel products. With time, the oligarchs started the political expansion that in turn led to the emergence of the neo-patrimonial state in Ukraine based on no clear separation of private and public spheres. In the literature, neo-patrimonialism mostly refers to "the coexistence and mutual penetration of patrimonial and legal-rational bureaucratic elements in a densely intertwined structure" (Zimmer 2007, p. 117).

During the Kuchma regime, three wealthy regional oligarchic groups emerged: (1) Rinat Akhmetov's System Capital Management (Donetsk group); (2) Viktor Pinchuk's Interpipe (Dnipropetrovsk group); and the group of Hrihoriy Surkis and Viktor Medvedchuk (Kyiv group) (Aslund 2005, p. 335). These oligarchic groups' means of influence on political actors and institutions were various, from maintaining direct connections with president Leonid Kuchma and directing large party factions in parliament to having their "own people" in the executive branch and owning media. Aslund (2005) concludes that Ukrainian oligarchs during Kuchma's time were much more powerful and influential than those in Russia.

But how did the oligarchs impact the development of the electricity sector in Ukraine? Until 1997, the government was reluctant to privatise power engineering assets. However, the non-payment problem pushed the government to acknowledge that only the privatisation of distribution assets would be an initial major step in improving the payment collection and generating income into the state budget. In 1997, the State Property Fund (SPF) and Minenergo

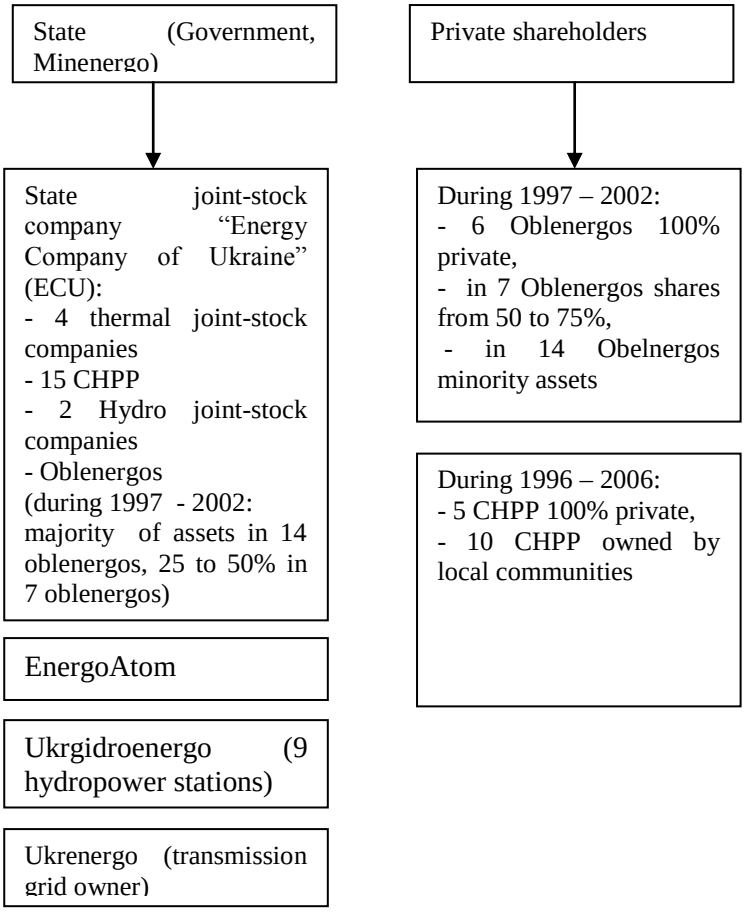
prepared the privatisation plan. However, originally the privatisation plan highlighted that the government prioritized selling only the minority of shares in the oblenergos to private companies after satisfying the demands of managers and workers on getting shares in the companies. However, foreign companies had little interest in buying minority shares and the government was pushed to sell controlling stakes of some oblenergos to private companies. This was one of few cases in the history of the reform of the Ukrainian economy in which vested interests had not yet grown strong, and liberal reforms were pushed by market forces and private companies (Aslund 2002, p. 186).

The interests of Ukrainian oligarchs started to emerge in the power engineering sector after the end of 1997. In 1998 and 1999, numerious large enterprises in the power engineering sector were privatised by few oligarchs. Thus, Hryhoriy and Ihor Surkis from the Kyiv group acquired 9 regional electricity distribution companies in these years (Aslund 2009, pp. 138 – 141). In this way, electricity obtained another major source of rents. The rent-seeking in this sector occurred through non-payment. State-owned power generation companies produced electricity which was then distributed by regional monopoly distributers. One-third of these distribution companies were already controlled by Hryhoriy Surkis. The distributors extracted payments from the final household and industrial customers but afterwards paid only 6 to 7% for received electricity to state-owned generation plants and even less in taxes (Aslund 2009, p. 138).

At the end of 1999, a broad coalition of center-right party factions appointed Viktor Yushchenko, the head of the Central Bank, as prime minister, because they were facing external default. Yushchenko promoted wide economic reforms, among which tackling the problem of non-payment in the electricity sector and insisting on full payment of electricity and taxes in real money. This reform was promulgated as a law in the parliament (Aslund 2009, pp. 138 – 141). In 2000 – 2002 another wave of large-scale privatisations occurred in the power engineering sector in Ukraine. This time, Yushchenko insisted on selling large enterprises in tenders. Most of them were sold to large Russian private enterprises or international companies and not to Ukrainian oligarchs, because the latter had less money to propose for tender. The privatisation of six oblenergos mostly occurred between 2000 – 2002. Private shares in distribution companies were primarily represented by Russian businessman K. Grigoryshyn, VS Energy International (the Netherlands), which is controlled by a group of Russian businessmen, and the US company AES Washington Holdings. In total, in 2004, the state owned 50 + 1% of shares or more in 14 out of 27 oblenergos, from 25 + 1% to 50% of shares in seven oblenergos, and six oblenergos were privately owned (Herasimovich and Tsarenko 2008).

Yushchenko's and Timoshenko's reforms in the power engineering sector in Ukraine between the end of 1999 and the beginning of 2001 were criticized by oligarchs from the electricity and gas branches. In April 2000, the Social Democratic Party (United), led by Medvedchuk and Surkis, and the fraction, led by Volkov and Bakai, voiced concerns regarding the government's reform program. The oligarchs and President Kuchma himself especially criticized Tymoshenko's energy policies (Aslund 2009, pp. 145 – 146). Finally, Kuchma dismissed Tymoshenko in January 2001, and, in April 2001, four centrist oligarchic parties together with the left declared the work of the cabinet of ministers unsatisfactory and voted Yushchenko out of power (Aslund 2009, p. 146).

Figure 4.4 Ownership Structure of the Ukrainian Electricity Sector since 2004



Source: Own Compilation based on Herasimovich and Tsarenko 2008.

Between 2002 and 2004, no further large-scale privatisation of power engineering sector enterprises occurred. However, during that period another rent-seeking tendency in the electricity sector emerged – the emergence of the Donetsk clan in this sector and a new source of rents – the export of electricity. Thus, in 2001, the private company Shidenergo was established, and, in

2002, it acquired three thermal power plants (TPP) on lease from Dobasenergo. Later on, these three TPPs were placed under control of the private owner Tekhrempostavka, which was an intermediary company through the bankruptcy mechanism. Shidenergo belonged to DTEK with the owner Rinat Achmetov, one of the main oligarchs in the Donets clan and the closest friend of the former governor of Donetsk Victor Yanukovych, and was the first private company that obtained a license for electricity production and supply from NERC (Herasimovich and Tsarenk 2008).

In June 2004, the government took a step back from privatisation and, following a respective presidential decree, the state holding company "Energy Company of Ukraine" (ECU) was created. The ECU obtained an operational control over power distribution and supply companies with state-owned stakes varying from 25% to 100%, power generating companies and Ukrinterenergo, the state enterprise dealing with exports to Moldova and Eastern Europe (IMEPOWER 2005). However, such a decision was placed in contradiction with the Concept of the Functioning of the Wholesale Electricity Market that was introduced in 2002. The ECU owned most of generating and distribution companies. While controlling 40% of the country's power generation output and 65% of power supply, ECU became a dominant player in the Ukrainian electricity market (IMEPOWER 2005) (see Figure 4.4).

Thus, it should be concluded that since 1999 the reform of the electricity sector in Ukraine was highly impacted by the emerging oligarchic clans. The oligarchs created their own political parties and exercised their influence through presence in the Ukrainian parliament, the Verkhovna Rada. Between 1997 and 2004, their interest was to obtain shares in the power distribution and sales companies and prevent the reform-minded government of Yushchenko-Timoshenko from establishing transparent procedures of tendering.

4.2.4 Mode of Actors' Interaction and Its Effectiveness

The analysis of actors' constellations on electricity liberalisation policy-making in the 1990s allows for the derivation of the conclusion that the main mode of actors' interaction was hierarchical direction by Kuchma's government with elements of bargaining with interest groups. The direction of the reform was administratively driven by central officials from Minenergo. No negotiations occurred between the government and political parties.

President Kuchma was able to centralize executive power in the state and to broaden presidential authority over the government so that he obtained the right to staff the entire executive hierarchy at all levels. One institutional feature, which highly impacted policy-making

in the country, during the 1990s, was that state building and institution building were subordinated to personal interests of accumulation of political power and economic wealth. Kudelia (2012) describes this institutional context in the following way:

> Initial power advantage of decentralized elite networks and the dominance of informal rules locked the state in a dysfunctional equilibrium at the very onset of its independence. Since then Ukraine has oscillated between a highly centralized and a fractured executive while preserving the informal norms guiding elite relations within the state and with various non-state groups. Patrimonial bureaucracy, limited government accountability and a weak rule of law have emerged as the key structural characteristics of a Ukrainian state (Kudelia 2012, pp. 417 – 418).

The Ukrainian state during Kuchma's presidency did not possess institutional elements that were necessary for effective governance and effective policy-making. Among such institutional elements belong rational-legal autonomous civil service, effective legal institutions that constrain actions of executive authority as well as a system of institutions that hold political authority accountable vertically (for example elections, civil society and media) and horizontally (courts, law-enforcement, parliament) (Kudelia 2012, p. 418).

After achieving independence Ukraine was not able to develop such necessary institutional elements because of weak institutionalisation inherited from the Soviet era and persistency of various non-state groups such as family clans, old nomeklatura and business groups that developed cliente networks with state officials. Under such circumstances, Kuchma was able to obtain power over the distribution of rents but at the same time in order to maintain control over the bureaucratic hierarchy he had to exchange special privileges, public sector employment and distribution of rents for political loyalty. Such new institutional setting did not contribute to effective policy-making.

Therefore, the specific choice of organization of the electricity industry in Ukraine during the 1990s emerged as a consequence of a complex bargaining game between Kuchma and his government on one side and Kuchma and power industry as well as rent-seeking elites on the other side. The outcome of this bargaining was the Members Agreement that was signed by state-owned power generation companies, the state-owned grid company and private as well as public electricity suppliers in 1996. The agreement lead to a number of concessions from the side of the government to power generation companies that obtained subsidies from the state and the guarantees that the state would buy all of their produced electricity as well as supplier companies that often did not pay for electricity that they received from the grid company. The government

attempted to control overall organization of electricity industry; therefore, it politically controlled a regulatory body, the NERC, which had important functions in issuing and monitoring licenses for electricity generation, high-voltage transmission, low-voltage distribution and tariff and non-tariff supply.

4.3 Electricity Market Reform in Ukraine under Yushchenko (2004 – 2010)

4.3.1 Basic Features of the Ukrainian Power Industry in the 2000s

After 2000, electricity production and consumption grew due to economic recovery in Ukraine. In 2005, about 45.5% of power production in the Ukrainian power industry consisted of thermal plants, 7% of hydro plants and 47.7% of nuclear plants. Between 2000 and 2010, energy production in Ukraine increased by about 10% (see Table 4.3).

Table 4.3 Total Electricity Gross Production in Ukraine in 2000 – 2010 (GWh)

Production from:	***2000***	***2005***	***2010***
Coal	51,514	50,013	69,516
Oil	1,187	586	822
Gas	29,947	34,157	15,703
Biofuels	0	0	188
Waste	0	0	0
Nuclear	77,341	88,756	89,152
Hydro	11,450	12,505	13,152
Solar	0	0	1
Wind	6	38	50
Other sources	0	0	0
Total Production:	171,445	186,055	188,584

Source: International Energy Agency Statistics for Ukraine.

In 2010, consumption of electricity in Ukraine increased by 10%, in comparison with the year 2000. In 2010, 97% of all electricity produced in Ukraine was consumed domestically. Electricity consumption in the industrial sector comprised 35.7% of annual national electricity consumption; the residential sector made up circa 20%, commercial and public services circa 10% and transport 4.8% (see Table 4.4).

However, old technology had underpinned the further development of the sector in the 2000s. Production capacities in the electricity sector remained mostly outdated. 95% of power units had already worked out their useful life (100,000 hours); more than a half had been working for 200,000 hours. 80% of power plants had been operating for 30 years. Such deterioration was stipulated by low quality of fuel, fickle regime of work of power generating plants due to poor manoeuvrability and lack of funds for reconstruction (Herasimovich and Tsarenko 2008).

Table 4.4 Final Domestic Electricity Consumption in Ukraine in 2000 – 2010 (GWh)

	2000	***2005***	***2010***
Energy Industry Own Use	23,141	29,801	28,809
Industry	60,300	65,709	65,911
Transport	9,236	9,483	8,972
Residential	30,123	26,064	36,740
Commercial and Public Services	8,811	18,555	19,121
Agriculture/ Forestry	5,021	2,250	3,281
Fishing	0	43	0
Other sector non-specified	0	0	0
Losses	30,964	24,797	21,695
Total domestic consumption:	167,596	177,702	184,529

Source: International Energy Agency Statistics for Ukraine.

In 2004, the market-oriented pool model of electricity sector organization had not been implemented, and the state continued to own most power generation and power distribution assets (see Table 4.5).

The electricity tariff policy, in the first half of the 2000s, was characterized by understated electricity tariffs for household consumers and their subsidizing at the expense of overstated rates for enterprises, in addition to the practice of selective preferences for some business entities. Ukraine's electricity sector had been facing a problem of non-payment since 1994. The worst example was the annual payment situation in 1998, during which the payment for electricity bills in cash was 7 – 10% with 77% paid by barter and the rest unpaid (Herasimovich and Tsarenko 2008, p. 15). The main debtors in the whole system were the consumers. However, Kuchma's government had never dared to increase electricity prices for consumers, because this reform was highly unpopular and household, as well as non-household, consumers were used to low prices such as those they had experienced during the Soviet era. Despite this path-dependency, in 2002, after the national economy recovered from the 1998 economic crisis, the

government took measures to eliminate a huge non-payment debt. According to the Cabinet of Ministers' 2001 Decree "On Energy Settlement System" and a new 2002 NERC Decree "On Transfer of Payments," barter schemes were eliminated and a system of reconciliation of debts for fuel supplying and energy supplying companies was introduced. However, these reforms were of the non-systematic character and did not introduce the increase in electricity tariffs for all groups of consumers. The debt in the electricity industry continued to grow during the first half of the 2000s (see Table 4.6).

Table 4.5 Organization of the Ukrainian Electricity Sector (2004)

		Company
Generation		
Fossil-fuelled	TPPs	Centerenergo, Dniproenergo, Donbasenergo, Zakhidenergo (state controlled)
		Shidenergo (private)
	CHPPs	About 30 large CHPPs
Hydro		Ukrgidroenergo, a state company, operates 9 hydropower stations
Nuclear		Energoatom, a state-owned nuclear generation company, owns and operates 4 nuclear palnts
Transmission		Ukrenergo, a state company, is an administrator of the National Dispatch Centre. The company owns and operates the high-voltage network.
Distribution	Regulated tariff distributors	27 regional distribution companies "oblenergos" own and operate the low-voltage networks and some generation capacity in the twenty-five regions and two city administrations (Kiev and Sevastopil). The state owns the majority of the shares in most oblenergos. As regulated tariff suppliers, olenergos have an obligation to serve all customers who wish to buy electricity at the regulated retail price.
	Non-regulated tariff distributors	Independent non-regulated tariff distributors purchase electricity from wholesale market and resell it to large consumers. They pay to regulated tariff distributors for low-voltage networks utilization.
Export		Ukrinterenergo, a state-owned enterprise, exports electricity produced by Burshtynska TPP to Hungary and Slovakia, Dobrotvirska TPP – to Poland and electricity from wholesale market to Moldavia.
Wholesale market administration		Energorynok, a state-owned company, is an operator of the Wholesale Electricity Market (WEM). The company operates as an administrator of payment system of WEM, manager of the money funds of WEM, and a chief operator of the electricity accounting system in Ukraine.

Source: Herasimovich and Tsarenko 2008, p. 8.

The sufficient volumes of electricity produced, as well as low prices for household consumers, were main factors explaining why there was no domestic demand to solve the electricity sector's problems. Ukraine had the lowest electricity prices in the world. Between 1999 and 2006, there was no change in electricity tariffs for households. Thus, in 2005, average weighted electricity tariff for non-households accounted for UAH 0,198 per kWh and UAH 0,156 per kWh for households (Herasimovich and Tsarenko 2008, p. 17).

Table 4.6 Debt Dynamics in the Ukrainian Electricity Sector between 2000 and 2006

Date	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
Consumer debt to distribution companies, mln UAH	6,711	8,431	9,559	10,108	10,417	10,496	9,590
Increase/decrease, mln. UAH	n/d	1,720	1,128	550	309	79	-906
Increase/decrease, %	n/d	25.6	13.4	5.7	3.1	0.8	-8.6
Gross debt of distribution companies to Energorynok, mln UAH	9,006	12,264	14,027	15,138	15,730	15,962	15,279
Increase/decrease, mln. UAH	2,312	3,258	1,763	1,111	592	233	-682
Increase/decrease, %	34.5	36.2	14.4	7.9	3.9	1.5	-4.3
Net debt of distribution companies to Energorynok, mln UAH (debt of distribution companies without consumer debt to distribution companies)	2,295	3,833	4,468	4,829	5,312	5,465	5,689
Gross debt of Energorynok to creditors, mln UAH	11,301	14,651	16,180	17,293	18,106	18,323	17,587
Increase/decrease, mln. UAH	25,888	3,350	1,529	1,113	813	217	-736
Increase/decrease, %	29.7	29.6	10.4	6.9	4.7	1.2	-4.0
Net debt of Energorynok to creditors, mln UAH (debt of Energorynok to creditors without consumer debt and debt of distribution companies)	2,295	2,387	2,153	2,155	2,377	2,361	2,308

Source: NERC Annual Report 2006, Herasimovich and Tsarenko 2008, p. 15.

4.3.2 Regulatory Policies

When Yushchenko became president, the electricity sector of Ukraine was in need of reform, because it had never functioned efficiently. However, there was no public demand to introduce reforms into the sector because of very low electricity prices. In 2005, there was little progress in the power sector reform. The Orange Coalition government tried to obtain strong state control over the country's energy companies, and there was no plan within the Orange Coalition to sell further stakes in regional distribution companies and thermal power plants. Furthermore, during Yulia Tymoshenko's period as prime minister, she started discussions regarding a review of non-transparent privatisations of several distribution and supply assets during the Kuchma era. This review of non-transparent privatisation had to concern only national private companies and not international companies, such as AES and VS Energy International.

In 2005, there were no discussions regarding the elimination of the national holding company Energy Company of Ukraine (ECU) that consolidated state power engineering and distribution and prevented competition and efficiency at the WEM. The main discussion at that

time was over the subordination of the ECU to the Ministry of Fuel and Energy, instead of the Cabinet of Ministers. At the end of 2005, the Cabinet of Ministers transferred powers for managing ECU to the Ministry of Fuel and Energy.

On the other hand, the Orange Coalition removed cross subsidies and tried to overcome a debt problem. Thus, the new government cancelled "privileged" tariffs for plants that benefited from "special" electricity prices. In June 2005, the parliament adopted the law "On Arrangements Aimed at Stable Operation of Enterprises in the Fuel and Energy Sector" (the so-called Debt Law), which provided the framework for a resolution of the debts of power, coal, gas and district heating companies. The wholesale market operator Energorynok created a Special Settlement Centre that managed the mechanisms of debt restructuring, such as write-offs, offsets, partial payments, refinancing of debts, and provided various incentives for energy companies to participate in these settlements, such as tax privileges and a temporary ban on bankruptcy proceedings (Data are taken from IMEPOWER Consulting, various years). However, according to Ukrainian experts, the new government failed to implement the roadmap within the deadlines (Herasimovich and Tsarenko 2008).

Thus, between the years 2005 – 2007, the post-Orange Revolution government kept major power engineering assets in state hands and took measures to increase the efficiency and stability of the operation of state-owned energy companies by restructuring their debts. The electricity market continued to operate in its hybrid form, between the monopoly and the pool model.

Yushchenko clearly confirmed Ukraine's course towards European integration and the willingness to implement European standards. The EU-Ukraine Action Plan signed in 2005 established a set of objectives for converging Ukraine's energy policy towards EU internal energy policy. Among general objectives established by the Action Plan, were gradual convergence towards the principles of the EU internal electricity and gas markets, progress regarding energy networks, progress on energy efficiency and the use of renewable energy sources, cooperation on nuclear energy and nuclear safety. Based on the Memorandum of Understanding signed by the EU and Ukraine in 2005, the sides defined four roadmaps for bilateral cooperation in energy security, to which a fifth was added later. These covered (1) the safety of operating Ukrainian nuclear power plants that should be compliant with the IAEA's Safety Standards requirements; (2) the integration of electricity and gas markets and fulfilment of requirements of the Energy Community Treaty; (3) the security of energy supplies and the transit of hydrocarbons that included the modernisation of the Ukrainian Gas Transit and reforms related to the corporatisation and financial transparency of monopoly oil and gas company

"Naftogas of Ukraine"; (4) the coal sector cooperation via "Coal Sector Policy Support Programme" financed by the EU to support institutional strengthening in the Ukrainian coal sector; (5) energy efficiency and renewable energies.

On 28 November 2007, the Cabinet of Ministers adopted an action plan that aimed at electricity market liberalisation. On 29 September 2008, the Ukrainian government held the First Ukrainian Electricity Market Reform conference, outlining core directions for the WEM reform. According to this reform, the competitive wholesale electricity market should be established. The market should be divided into several parts according to how generation companies would sell their output: bilateral contracts, day-ahead market, balancing market, system/ancillary services market and export/import electricity auctions. This should be done in compliance with the WEM concept approved by the government in 2002 and re-confirmed in 2007. Therefore, the transition from the single buyer model to direct contracts between electricity producers and electricity suppliers and eligible customers was envisaged. It was planned that the introduction of the competitive wholesale electricity market model in Ukraine would be carried out after 1) achievement of full payments for electricity, resolution of problems of accumulated debts and price imbalances, cancelling the cross subsidizing and withdrawing privileges awarded to individual categories of consumers, technical modernization of systems for commercial metering and information exchange; 2) development and adjustment of the adequate legal framework and the creation of the infrastructure for the new Wholesale Electricity Market (NERC 2006 Annual Report, p. 10).

In 2006 – 2010, the electricity market in Ukraine functioned according to the single buyer model. The main participants in the electricity market were power generators, suppliers of electricity at non-regulated tariffs (independent electricity suppliers), electricity suppliers that owned or control networks and supplied electricity at regulated tariffs in the corresponding area, the electricity wholesaler (Energorynok) and a company carrying out centralized dispatch of the Power Grid of Ukraine (NERC Annual Report 2007, p. 8). Heat power generating companies and three cogeneration plants had sold electricity competitively based on daily (hourly) bids per unit. Nuclear, hydropower, wind power plants and cogeneration plants sold electricity on the WEM as charged by the National Electricity Regulatory Commission (NERC). The NERC was responsible for setting the wholesale electricity price.

Apart from defining the direction of the electricity liberalisation reform, the government undertook the increase of the electricity tariffs for all groups of consumers. In 2005, the Cabinet of Ministers made a decision on the introduction of a single retail electricity tariff for commercial and industrial customers. The retail electricity tariffs had to be fixed by suppliers

based on the wholesale market price and transmission and supply charges approved by NERC. In 2006, the retail electricity tariff increased by 27.7%, primarily caused by changes in the wholesale market price (NERC Annual Report 2007, p. 16)

In 2006, NERC revised transmission and supply charges for most supplying companies, taking into account the change in transmission volumes and structure of consumption, indexation of the company's material costs, revised wages fund, carrying out investment programmes, etc. Household electricity prices that remained unchanged since 1999 recovered only 36.5% of power generation, transmission and supply cost. In order to change this, the government increased electricity prices for household consumers. Thus, since 1 September 2006 the household electricity prices were raised to 58% of economically sound costs recovery (NERC Annual Report 2007, p. 17).

In 2009, Ukraine expressed its desire to join the Energy Community Treaty[9] and signed the Memorandum on Competing the Accession Negotiations. The main condition for entering the organization was the adoption of the Gas Market Liberalisation Law. In 2011, the country joined the Energy Community Treaty. According to the requirements of the organization the gradual transition to the liberal electricity market of bilateral contracts and liberalising relations between electricity generators, suppliers and consumers was foreseen in Ukraine. Ukraine obliged itself to implement the Second and the Third Energy Package of the European Union including all European electricity legislation.

4.3.3 Actors' Constellations on Electricity Liberalisation Policy-Making

This chapter discusses the constellations of policy-making actors in the area of electricity liberalisation in Ukraine in the 2000s. The decision-making powers of the legislative, the executive, as well as the impact of non-state actors were taken into account. The judicial power in Ukraine, in the 2000s, remained weak, and a coherent strategy of the judicial reform was absent (Tiede and Rennalls 2012, p. 97). Only some reform initiatives were discussed by the government. In 2006, President Yushchenko passed a draft paper on the establishment of the stable judiciary in Ukraine, which core element was the implementation of European best-practice norms in the judicial sphere and announced the amendment of the Law on the Judiciary

[9] The Energy Community Treaty (ECT) was signed between the European Union and the southern European countries that were candidate members in 2002. The Treaty set the deadlines for the implementation of the First, Second and Third Energy Packages of the EU concerning the establishment of common rules in the electricity and gas markets as well as environmental requirements of the functioning of the EU internal energy market in the southern European countries that took the obligations to implement the relevant directives by signing the treaty.

and the Law on the Status of Judges. However, due to political tensions between the president and the parliament legislative review process came to a halt. The Yushchenko government disregarded, as well, the judiciary's requirements, such as those over funding levels. According to the available data, the administrative court of justice of Ukraine had obtained, from the state, funding in the amount of UAH 75 million in 2008, UAH 60 million in 2007, and UAH 50 million in 2006. The court administration received UAH 2.5 billion in 2008, UAH 1.6 billion in 2007, and UAH 1.4 billion in 2006. The highest court of justice received UAH 122 million in 2008, UAH 107 million in 2007, and UAH 128 million in 2006. This funding covered only around 50% of the financial requirements of the Ukrainian justice sector (Tiede and Rennalls 2012, p. 97).

Also the regional administrative authorities are not relevant for the following analysis. In March 2005, Yushchenko signed a decree regarding the appointment of new governors on the recommendation of the prime minister, not the full cabinet of ministers. However, this decree contradicted Ukraine's revised Constitution, according to which regional governors had to be appointed by the government and the president. In a short time, the decree was withdrawn and the old procedure of the appointment of governors by the president and the government was re-established. The fact that governors were appointed by the central power and not freely elected strengthened the central power and diminished the role of Ukrainian regions in policy-making (Konitzer-Smirnov 2005).

From all these reasons the powers of the judiciary as well as of regional administrative authorities were not taken into account in this analysis.

4.3.3.1 Interaction between the Executive and the Legislative

After the Orange Revolution, Yushchenko and his bloc faced the question of dealing with the structural and institutional factors established during Kuchma's governing period, namely, the dominance of various oligarchs and ill-acquired privatisation, the influence of old elites and the powerful oppositional Party of Regions centred on Viktor Yanukovych that had a support from the side of oligarchs in the industrialized Donbas Region and the absence of a system of checks and balances together with independent political institutions. Time has shown that Yushchenko was not able to tackle the old structural factors successfully.

The political system under Yushchenko was characterized by the rivalry between opposition parties and reform-minded parties that came to the power under the Orange

Revolution. The cornerstones of this rivalry were the different oligarch groups that stood behind every political party. As Kubicek (2009) underlines,

> The central problem was not simply a few bad apples in the barrel. Rather, this was more of a structured problem lying at the heart of the Orange Coalition itself. The Orangists were composed of numerous actors and fractions, some of whom became fabulously wealthy thanks to dubious actions under the Kuchma regime and were themselves members of oligarchic political parties (Kubicek 2009, p. 331).

The reform-minded Orange Coalition, with its attempts to establish a political system of checks and balances, had to cope with the powerful old elites. Yushchenko attempted to break with the so-called presidential authoritarianism (Kubicek 2009) and to introduce independent political institutions. Following this goal, in 2004, Yushchenko agreed to place limitations on presidential power and to revise the 1996 Constitution. This deal was secured between Kuchma and Yushchenko. Yushchenko agreed to place limitations on the powers of the president, whereby Kuchma agreed to go along with plans for an additional round of voting (Kubicek 2009, p. 327).

Table 4.7 Constellation of Parties in the Verkhovna Rada after the Parliamentary Elections 2006 and 2007 in Ukraine

	Party of Regions with Yanukovych	**Yulia Tymoshenko Bloc**	**Our Ukraine with Yekhanurov**	**Socialist Party with Moroz**	**Communist Party with Symonenko**	**Our Ukraine People's Self-Defense Bloc with Kyrylenko**
Parliamentary Elections 2006	186 seats	129 seats	81 seats	33 seats	21 seats	-
Parliamentary Elections 2007	175 seats	156 seats	-	-	27 seats	72 seats

Note: Total amount of the seats in the Verkhovna Rada is 450. For formation of the majority 226 seats are needed. Shadowed numbers of seats the parties got during the elections belong to the parties that form the majority and the government.

Source: Central Election Commission of Ukraine.

The 1996 Constitution was revised in December 2004. "The revision was aimed at adjusting the rules of the game to the new political realities, since those associated with Kuchma's regime had no chance to win the 2004 presidential elections" (Solonenko 2009, p.

721). The revised Constitution introduced the transition from a presidential-parliamentary to a prime-ministerial-presidential system and much of the president's power was transferred to the parliament. In addition, a new party list proportional election system was introduced. According to new rules, the parliamentary elections, from 2006 onward, were to be conducted on a proportional basis, in which the people voted for the parties; this abolished the old system, in which one half of the parliament deputies was selected by the people according to the proportional election system and the other half according to the single-mandate rules. Accordingly, the parliament, from 2006 onward, would name the prime minister, and the party that would have the majority in parliament would obtain the right to form the government. It was agreed that Ukraine would have a proportional representation system and political parties would have to achieve a 3% threshold to be represented in the parliament. In addition, a new rule of "imperative mandate" was established, meaning that deputies would be dismissed if they switched to another party. However, these reforms brought more advantages for old elites, who under new circumstances were able to influence policy-making in the country and more disadvantages for Yushchenko, because the parties supported by oligarchs, who appeared to be in opposition after the election of Yushchenko, obtained the possibility to influence decision-making in the country by forming a majority in parliament during 2006 – 2007, and, after the new 2007 elections, becoming the opposition parties by blocking decisions in parliament (see Table 4.7). As Solonenko (2009) predicted, "the transition from a presidential-parliamentary to a prime-ministerial-presidential system, as reflected in the revised version of the Constitution, was seen as a chance for the losers of the presidential elections to regain access to power through the 2006 parliamentary elections, whereby according to the new rules much of the president's power would be transferred to the parliament" (Solonenko 2009, p. 721).

In spite of the fact that many of Yushchenko's supporters were against these reforms, the new president believed that changes to the political system were necessary to move to consolidated democracy. However, the incoherence of the Orange Coalition and its internal schisms prevented the president from incorporating the ideas of parliamentarism into practice. The practical result of the changes in the political system in Ukraine after the Orange Revolution was the impossibility of the president to pursue structural reforms in the economy.

4.3.3.2 Access of Interest Groups to Policy-Making

The 2004 revised Constitution transferred much of the president's power to the parliament. According to new rules, the government obtained full authority to set economic

policies in the country, but the parliament obtained the power of appointing most of the cabinet of ministers. From 2006 onward, the parliament named the prime minister and the party that would have the majority in the parliament and formed the government. As discussed earlier, this new political system brought more advantages to old elites and interest groups, which exercised influence over policy-making in the country, in the parliament by supporting opposition parties or being elected themselves as deputies from the opposition parties. Therefore, the 2004 revision of the Constitution led to the "power-sharing scheme" among different policy-making actors and business groups in Ukraine (Kudelia 2012, p. 423).

The division of rent-distribution and appointment powers, the major interest spheres of oligarchs and powerful business elites, occurred between the president, the government and the parliamentarian coalition. The president was left the powers of exercising influence over monetary policy and making appointments within the Presidential Secretariat, the National Bank of Ukraine, the Security Service of Ukraine, Foreign Intelligence Service, regional governorships and first-time judges. The government maintained control over distribution of rents in the spheres of regulatory politics, property management and use of state budgetary funds, as well as appointments of government ministers by a parliamentary vote (Kudelia 2012, pp. 424 – 425).

The dominant theme of the new government, beginning in 2005, was reprivatisation. The new prime-minister Timoshenko suggested the renationalisation of previously unfair privatised enterprises and their renewed sale to new owners. President Yushchenko opposed the intention of the government by stating, "I am against new redistribution of property, but the oligarchs are going to pay the real price for enterprises, which they are seizing for a trifle. . . ." (Aslund 2005, p. 340). However, new political elite actors in the government and the parliament, which mostly provided protection to particular businesses, voiced for reprivatisation of big businesses of the rival groups. In words of Kudelia (2012),

> The fracturing of the executive expanded the government's opportunities for patronage and rent-seeking, while parliament acquired additional influence over agencies of coercion. This put key elite actors at odds as they tried to exploit these new opportunities at each other's expense. However, even before the constitutional changes went into effect in 2006 the new leadership proved unwilling to give up on the informal practices of their predecessors. While eliminating some rent opportunities by abolishing tax exemptions and liberalising trade in early 2005, Yushchenko's team engaged in a fierce battle to redistribute major industrial assets privatised under Kuchma (Kudelia 2012, p. 423).

The executive elites used their powers to blackmail and to prosecute rival big businesses. President Yushchenko condemned the plans of the government to review the privatisation deals,

but he was not able to reconcile rival elite fractions. Under such circumstances, he reshuffled powers and dismissed the government.

The government of Yanukovych (2006 – 2007) continued to exercise its powers in rent-distribution in the spheres of regulatory policies, property management as well as use of state budgetary funds. Among the major rent-seeking schemes of Yanumovych's government that became well-known in the Ukrainian print media belonged the awarding of a licences for the development of the Black Sea and gas fields to Vanco Prykerchenska, a company partially owned by Akhmedov, awarding of licenses for the exploration of gas resources to allied private companies and favouring of allied businesses in privatisation deals and tendering (Kudelia 2012, pp. 424 – 425). One privatisation deal was pursued in the electricity industry. In 2007, the government issued shares of the state-owned thermoelectric plant "Dniproenergo" and its share capital was increased in favour of DTEK, which was a minority shareholder, in order to pay outstanding debts. DTEK belonged to Akhmetov who was closely allied with Yanukovych. The deal gave DTEK a 44% stake in the power generating company (IMEPOWER Investment Group of Ukraine, 2008).

Tymoshenko's second government (2007 – 2010) introduced the practice of holding tenders with one pre-selected participant in order to allow governmental officials to provide contracts to preferred companies. At that time the rent-seeking of Tymoshenko's government impacted the electricity industry as well. In March 2008, Tymoshenko's government announced that it was going to sell 60 + 1% of shares of its four thermal power producers Dniproenergo, Tsentrenergo, Zakhidenergo and Donbassenergo and to eliminate the previous deal of the share increase in Dniproenergo that occurred under Yanokovych's government. However, Yushchenko suspended this governmental resolution by arguing that the privatisation of electricity generating companies threatened the country's national security (Ukrainskaya Pravda, 24 April 2008). The privatisation of power generating companies was not held under Tymoshenko's government and Yushchenko's presidency. In the year 2011, the government owned 70 to 85% of shares at Donbasenergo, Zakhidenergo and Tsentrenergo.

4.3.4 Mode of Actors' Interaction and its Effectiveness

The major institutional shift in Ukraine in the 2000s was the revision of the 1996 Constitution in December 2004. According to this reform, Ukraine moved from a presidential-parliamentary to a prime-ministerial-presidential model of political organization. The government obtained full authority to define the direction of the country's economic policies. Much of the president's power was transferred to the parliament. The parliament obtained the

power to name the prime minister and the party that had the majority in the parliament, as well as the power to form the government.

The revision of the Constitution led to power-sharing among policy-making actors and influential oligarchic interest groups in the country. Kudelia (2012) called this new institutional context "a power-sharing scheme":

> Recognizing the risks of transferring monopoly control over informal powers into someone else's hands, Kuchma decided to redistribute them among several actors. While the president would still control most coercive resources, the leaders of the parliamentary majority in parliament would gain great influence over staffing high-ranking executive positions and influencing the rent distribution. Since the largest business groups had political parties represented in the parliament, the amended constitutions would create a power-sharing scheme serving both their and Kuchma's interests (Kudelia 2012, p. 423).

Therefore, after the constitutional reform, the degree of access of different actors to policy-making changed. The president lost many of his rights in the national distribution of resources and the government and the parliament gained more control over it. Yushchenko could still influence the distribution of rents in the country through his appointment powers, but, because of the constitutional changes, he could only govern rent-distribution in cooperation with the government. According to the constitutional changes, the president was left the powers of exercising influence over monetary policy and making appointments within the Presidential Secretariat, the National Bank of Ukraine, the Security Service of Ukraine, Foreign Intelligence Service, regional governorships and first-time judges. The government maintained control over distribution of rents in the spheres of regulatory politics, property management and use of state budgetary funds and appointment of government ministers by a parliamentary vote.

The rent-seeking preferences of the new elite actors in the government and the parliament and their close ties with big businesses negatively impacted the effectiveness of policy-making of the Tymoshenko governments (2005, 2007 – 2010) and Yanukovych's premiership (2006 – 2007). The intention of the government and its new prime-minister Tymoshenko to start reprivatisation in 2005 led to blackmailing and prosecution of business rivals. In 2005, Yushchenko reshuffled the powers and dismissed the prime-minister in order to prevent the emergence of competing power centres among the governmental and parliamentarian elites. Among major rent-seeking schemes during Yanukovych's premiership belonged the awarding of licenses for the development of the Black Sea oil and gas fields to Vanco Prykerchenska, a company partialy owned by Akhmedov, the awarding of licences for the exploration of gas reserves to alliance business companies, and the favouring of alliance private companies during

conducted privatisation deals. The rent-seeking covered the electricity industry as well. In 2007, the government issued shares of the state-owned thermoelectric plant "Dniproenergo" and its share capital was increased in favour of the minority shareholder DTEK, the company that belonged to Akhmetov who was closely allied with Yanukovych. According to the deal DTEK obtained a 44% stake in the power generating company "Dniproenergo". Tymoshenko's second government offered rent-seeking opportunities to friendly businesses by introducing the practice of holding tenders with one pre-selected participant. In the electricity industry, the main intention of Tymoshenko's second government was to privatise 60 + 1% shares in the four thermal power producers, Dniproenergo, Tsentrenergo, Zakhidenergo and Donbassenergo as well as to eliminate the previous deal of the share increase in the Dniproenergo that occurred under Yanokovych's government. However, Yushchenko suspended this governmental resolution by arguing that the privatisation of electricity generating companies threatened the country's national security. Apart from rent-seeking in the electricity sector of economy, the government and the parliament blocked the increase of electricity tariffs for household and non-household consumers. Thus, in 2006 the Verkhovna Rada passed the moratorium law on the increase of electricity and gas tariffs (Ukrainska Pravda, 22 September 2006).

Therefore, a slow implementation of reforms in the electricity industry between 2005 and 2010 in Ukraine could be explained by the political division between the president and the government and rent-seeking opportunities of ruling elites in the government and the parliament. The electricity reform was driven hierarchically by the government and the president with elements of bargaining with political and business elites. However, the 2004 constitutional reform led to the diffusion of power among a variety of actors and, therefore, to horizontal bargaining among them. This established mode of actors' interaction on electricity liberalisation policy-making in the 2000s in Ukraine, which can be characterized as the hierarchical direction by the government and the president with elements of horizontal bargaining with political and business elites, was ineffective and did not lead to the effective implementation of the electricity liberalisation reform.

4.4 Sub-Conclusion

Ukraine inherited the Soviet legacies in the national institutional context that caused a number of similar path-dependent decisions in the 1990s. At the beginning of the 1990s, this country did not possess and only slowly developed after the fall of the Soviet Union institutional elements that were necessary for effective governance and effective policy-making, such as

rational-legal autonomous civil service, effective legal institutions that constrain actions of executive authority as well as a system of institutions that keep political authority accountable vertically and horizontally (in the first line free elections, strong civil society and media as well as effective law-enforcement).

The Ukranian government's intention to implement the liberal pool model of electricity sector organization led, in the 1990s as well as in the 2000s, to the hybrid form of the functioning of the national electricity market in Ukraine, in which the state electricity monopoly was saved but access to the power generation and supply segments of market for private firms was formally possible. None of the modes of actors' interaction on electricity liberalisation employed by the governments were effective.

In the 1990s, Ukraine was not able to develop institutional elements necessary for the effective governance because of the persistency of various non-state groups, such as family clans, old nomeklatura and business groups that developed client networks with state officials. Under such circumstances, Kuchma was able to obtain power over the distribution of rents but at the same time, in order to maintain control over the bureaucratic hierarchy, he had to exchange special privileges, public sector employment and distribution of rents for political loyalty. The policy-making in the electricity sector of economy in Ukraine in the 1990s was hierarchically directed by Kuchma's government which, however, was constrained by the necessity of complex bargaining between Kuchma and his government, on one side, and power industry as well as rent-seeking elites, on the other. The outcome of this bargaining was the Members Agreement that was signed by state-owned power generation companies, the state-owned grid company and private as well as public electricity suppliers, in 1996. The agreement led to a number of concessions from the side of the government to power generation companies that obtained subsidies from the state and the guarantees that the state would buy all of their produced electricity, as well as supplier companies that often did not pay for electricity that they received from the grid company.

In the 2000s, Ukraine witnessed changes in the national institutional context. The major institutional shift in Ukraine in the 2000s was the revision of the 1996 Constitution in December 2004. According to this reform, Ukraine moved from a presidential-parliamentary to a prime-ministerial-presidential state. The government obtained full authority to define the direction of the country's economic policies. Much of the president's power was transferred to the parliament that obtained the power to name the prime-minister and the party that had the majority in the parliament, as well as the power to form the government. The president lost many of his rights in the national distribution of resources, and the government and the parliament gained more

control over it. In spite of the fact that the president could still influence the distribution of rents in the country through his appointment powers, he could only govern rent-distribution in cooperation with the government. The president was left the powers of exercising influence over monetary policy and making appointments within the Presidential Secretariat, the National Bank of Ukraine, the Security Service of Ukraine, Foreign Intelligence Service, regional governorships and first-time judges. The government maintained control over distribution of rents in the spheres of regulatory politics, property management and use of state budgetary funds; it was also able to appoint government ministers by parliamentary vote. Therefore, the 2004 constitutional reform in Ukraine contributed to power-sharing among political and business elites, which, in turn, led to the necessity that they bargain horizontal among themselves on policy-making in the country. Horizontal bargaining among political and business actors on electricity liberalisation was ineffective in Ukraine in the 2000s because of different policy preferences, rent-seeking on the part of the new elite actors in the government and the parliament and their close ties with big businesses. Therefore, Ukraine was not able to promulgate the electricity law in parliament. The government re-confirmed the 2007 concept of the competitive wholesale electricity market that was approved by the old government in 2002. However, the reform implementation failed and, during the 2000s, the electricity market in Ukraine operated as a single buyer with the majority of electricity generation and distribution assets owned by the state.

5. Case Study III. Politics of Electricity Liberalisation in Russia (1990 – 2008)

5.1 Electricity Reform in Russia under Yeltsin (1991 – 1999)

5.1.1 Basic Features of the Russian Power Industry in the 1990s

The following Tables 5.1 and 5.2 present indicators that characterize electricity generation and consumption in Russia in the 1990s. When comparing installed capacity, the Russian power industry in the 1990s was about the same size as the French and German power industries combined. Between 1990 and 2000, energy production in Russia declined by about 19% (see Table 5.1). In 2000, thermal power plants accounted for about 66% of energy production, nuclear power plants for about 15% and hydroelectric power plants for about 19% (see Table 5.1).

Table 5.1 Total Electricity Gross Production in Russia in 1990 – 2000 (GWh)

Production from:	***1990***	***1995***	***2000***
Coal	157,032	160,528	175,615
Oil	128,639	67,890	33,091
Gas	512,194	354,056	370,372
Biofuels	37	29	22
Waste	0	1,550	2,516
Nuclear	118,305	99,532	130,715
Hydro	165,917	176,412	165,375
Solar	0	0	0
Wind	0	0	2
Other sources	0	0	0
Total Production:	1,082,152	860,027	877,766

Source: International Energy Agency Statistics for the Russian Federation.

According to the International Energy Agency' data, volumes of exported and imported electricity in Russia remained very low during the 1990s. Thus, in 2000 Russia imported 8,795 GWh and exported 22,850 GWh electricity; these numbers were very low in comparison with the annual domestic production of 877,766 GWh.

An outstanding feature of the structure of electricity consumption in the Russian Federation in the 1990s was the large share, about 60%, of industrial consumers. Between 1990

and 2000, however, all consumption sectors demanded less energy because of the post-Soviet economic decline and transformation processes. In comparison with the year 1990, the industry in Russia in 2000 demanded 35% less electricity. Even higher decline of electricity demand in relative terms happened in transport and agriculture; in the year 2000, these sectors demanded, respectively, 41% and 51% less electricity than in 1990 (see Table 5.2). It should be underlined that the decline of electricity demand in Russia between 1990 and 2000 was not caused not by introduction of energy saving and energy efficient technologies, but solely by economic decline.

Table 5.2 Final Domestic Electricity Consumption in Russia in 1990 – 2000 (GWh)

	1990	***1995***	***2000***
Energy Industry Own Use	162,948	138,617	153,544
Industry	481,722	314,015	312,403
Transport	103,768	65,160	60,916
Residential	106,947	126,064	140,723
Commercial and Public Services	66,884	60,052	64,271
Agriculture/ Forestry	67,310	53,039	30,213
Fishing	0	0	0
Other sector non-specified	0	0	0
Losses	84,261	83,475	101,641
Total domestic consumption:	1,073,840	840,422	863,711

Source: International Energy Agency Statistics for the Russian Federation.

5.1.2 Regulatory Policies

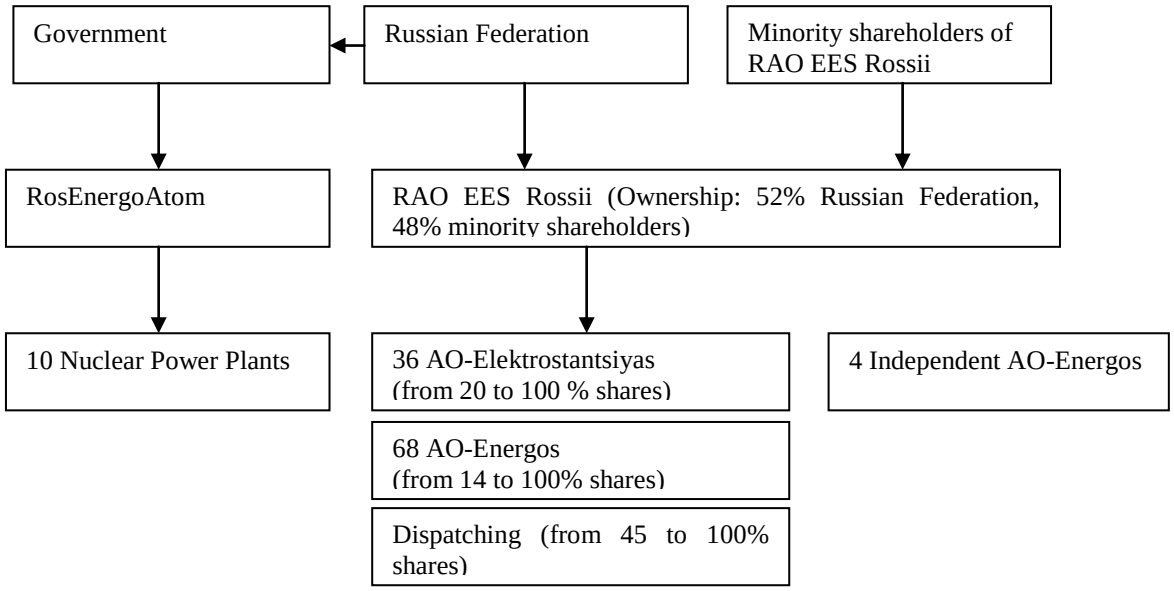
The independent Russian Federation needed to organize its large electricity assets, after the Soviet unified system of electricity industry was divided among former Soviet republics. In accordance with the Decree of the President of the Russian Federation of 10.07.92 No. 721, "On Organizational Measures of Transforming State Enterprises and Voluntary Associations of State Enterprises into Stock Companies," the power industry of the Russian Federation had to be restructured from the Unified and Regional Power Systems into a multitude of self-governing joint-stock companies. The implementation of this decision in the power engineering sector was in the hands of the Committee on Electric Power Industry of the Ministry of Fuel and Energy of the Russian Federation.

The ensuing Decree of the President of the Russian Federation No. 923 of 15 August 1992, "On the Organization of Management of the Electric-Energy Complex of the Russian

Federation under Privatisation," introduced the reorganization of the Russian electricity market in the following way:

- The Russian joint-stock company of energy and electrification RAO ""EES Rossii" is established;
- Managerial bodies of regional power systems are transformed into subsidiary companies called AO-Energos;

Figure 5.1 Ownership Structure of the Russian Electricity Market according to the 1992 Reform



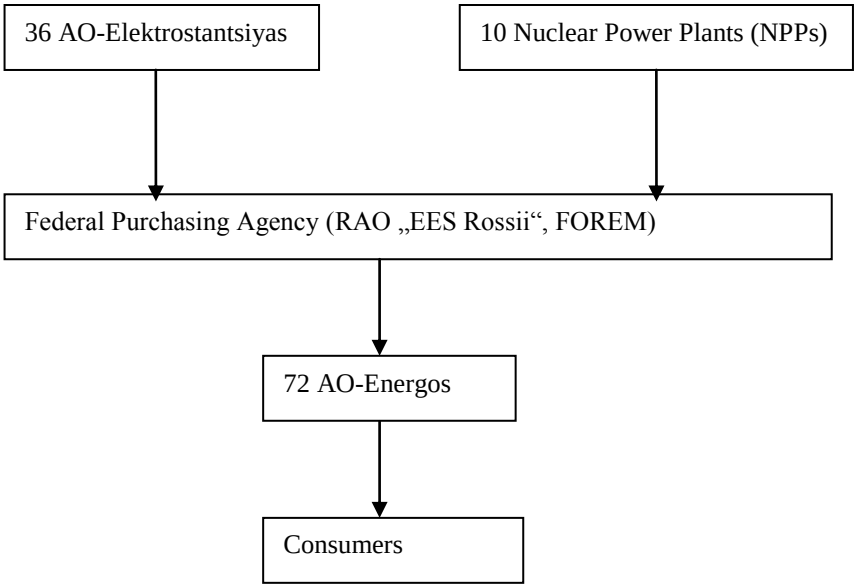
Source: Own Compilation based on The Decree of the President of the Russian Federation No. 923 of August 15, 1992, Opitz 2000, Rutland 2005.

- Power plants with a capacity of 1,000 MW and higher are condensed, and hydropower plants with a capacity above 300 MW are removed from regional power systems and transformed into subsidiary companies called AO-Elektrostantsiyas that function independently from regional power systems;
- Central Dispatching Board and Regional Dispatching Centres are transformed into joint-stock companies as well.

As a result of implementation of this decree, 72 AO-Energos and 36 AO-Elektrostantsiyas were created. Four AO-Energos were independent from RAO EES Rossii and from 14 to 100% of shares of other 72 AO-Energos belonged to RAO EES Rossii (Belyaev 2011, p. 204) (see Figure 5.1).

Apart from the change of the ownership structure, the reform introduced a pool model to the organization of the power engineering sector, in which competition had to be introduced into power generation and retail trade sectors and which was largely based on the Anglo-Saxon model. A federal wholesale market of electricity and capacity (FOREM) was established. AO-Elekrostansiyas and nuclear power plants supplied electricity to this wholesale market for prices regulated by the Federal Energy Commission (FEC) and RAO EES Rossii acted as a single buyer of whole electricity and sold it to AO-Energos, which distributed electricity to consumers at tariffs fixed by the Regional Energy Commissions (REC). The controlling block of shares of RAO EES Rossii remained state-owned. The Government was responsible for state electricity tariff regulation (see Figure 5.2).

Figure 5.2 Organization of the Russian Electricity Market since 1992



Source: Belyaev 2011, p. 204, own organization.

However, the pool model was only partially implemented in Russia. RAO EES Rossii became the operator of the wholesale market that controlled a Federal Energy Commission (FEC), the owner of the majority of power generation and power distribution assets and the single owner of the transmission grid. Although the new regulation established the transformation of power generation and distribution facilities into corporations, it did not legally introduce the real separation of generation, transmission and distribution. Unbundling was only implemented in the form of accounting. The wholesale market FOREM was established as a hybrid form between the monopoly and the pool model. Generators did not have access to the transmission grid on equal terms and consumers had no right to choose their suppliers because

power generation and distribution assets were not properly unbundled and did not function efficiently. RAO EES Rossii had a sole right to govern the wholesale market and to decide which generating companies should supply energy to the market and in which amount. In April 1997, three governmental resolutions and the corresponding decree of the president were issued in order to legally unbundle power generation and distribution businesses. However, these documents remained on paper and were not implemented.

Table 5.3 Revenues and Tariffs for Electricity in Russia in 1995 and 2000

Groups of Consumers	**Revenues (bln. $)**		**Tariffs ($/MWh)**	
	1995	***2000***	***1995***	***2000***
Total supply	15.84	7.50	27	13
Including:				
Industry (≥ 750 kWA)	9.32	4.19	31	14
Industry (≤ 750 kWA)	0.76	0.45	41	19
Railways	0.95	0.35	37	13
Municipal Transport	0.20	0.07	44	16
Commerce	1.58	0.84	40	19
Agriculture Consumers	0.97	0.27	21	11
Residential Consumers	0.31	0.38	9	8
Residential Areas	0.17	0.13	10	9
Resellers	1.54	0.78	14	7
Transmission	2.41	1.08	13	6
Total output	18.25	8.59	24	11

Source: Hubert, Mattey, Andrianov 2003, p. 14.

As in other post-Soviet states, the electricity industry in the 1990s was heavily used to subsidize the Russian economy by supplying electricity at low prices to state enterprises and household consumers (see Table 5.3). A large portion of payments was accepted in barter or mutual debt write-offs. Energy prices were subject to state regulation; therefore the Federal Energy Commission (FEC) and the Regional Energy Commissions (REC) were not really independent in price setting. During the 1990s, tariff prices for different groups of consumers differed greatly. Thus, the average tariffs for industrial consumers were about 2.2 times as high as average tariffs for residential consumers and about 1.5 times those for consumers in the agricultural sector (Opitz 2000, p. 152).

In order to overcome the non-payment and non-cash-payment problems, the government introduced some transformation of the hybrid regulation model of the functioning of the electricity sector in the second half of the 1990s by allowing direct supply contracts between power generators, suppliers and consumer industries that were able to pay in cash for delivered electricity and negotiating access to the transmission grid for charge with them.

However, during the 1990s, RAO EES Rossii and most regional energos ran at a loss. Since 1998, the RAO EES Rossii was losing USD 1 billion annually on revenues of USD 7

billion, while functioning inefficiently. Thus, Russian thermal efficiency in generation was about 18% compared with 40% in Western Europe. Losses in transmission averaged 12% compared with 5% in Western Europe (Rutland 2005, p. 281).

5.1.3 Actors' Constellations on Electricity Liberalisation Policy-Making

5.1.3.1 Interaction between the Executive and the Legislative

The reform of the electricity industry in 1992 was one of the results of the policy of radical market reforms launched by Yeltsin. He formed the government that consisted of young reformists ages 35 to 40 (Aslund 2007), among them Gaidar, Burbulis and Chubais. Aslund described them in the following way:

> Gaidar's new ministers were professional economists with doctoral degrees who knew English and had studied mainstream Western economics, although largely on their own in the Soviet Union. They were the most intelligent and well-educated children of the foremost intellectual *nomenclatura* (Aslund 2007, p. 93).

The electricity sector reforms during the 1990s in the Russian Federation were the outcome of the presidential initiative and the government formatted by Yeltsin and not the proposals of the deputies of the Russian parliament. According to the 1993 Constitution, the president was equipped with strong constitutional and administrative capacities and was perceived as the unifying factor of the new state between democrats and communists and between federalists and regional leaders (Grigoriadis and Torgler 2006, p. 2).

The formation of the State Duma was a major shift in the Russian institutional structure in the second half of the 1990s. According to the 1993 Russian Constitution, the Duma is not an autonomous public policy player in the Russian Federation, because it is not able to enforce any policy measures without presidential approval, but the Duma introduces important internal constraints on presidential power, because all federal laws, in order to pass, had to have a majority of the total number of its members' votes in three consecutive readings. The draft law proposals may be submitted by the legislative chamber of the State Duma, the president, the government, local legislatures, the Supreme Court, the Constitutional Court or the Higher Arbitration Court. In other cases, the power of the Duma is limited. Thus, the State Duma confirms the appointment of the prime minister, but does not have the right to confirm the appointments of other Government ministers. If the Duma rejects three candidates for the post of

the prime minister nominated by the president the president has the right to appoint the prime minister on its own, dissolve the parliament and schedule new parliament elections (Grigoriadis and Torgler 2006).

Table 5.4 Political Parties in the First and Second State Duma in Russia

Political Parties	**Ideology**
First Duma (1993 – 1995)	
Choice of Russia	Center
Women of Russia	Center
Agrarian Party of Russia	Left
Block "Yavlinskii-Baldyrev-Lukin"	Center
Democratic Party of Russia	Right
Deputy Group "Russia"	Center
Deputy Group "Stability"	Center
Communist Party of Russia	Left
Liberal-Democratic Party of Russia	Right
New Regional Policy – Duma 96	Center
Party of Russian Unity and Agreement	Right
Not affiliated with any fraction	Independent
Second Duma (1996 – 1999)	
Communist Party of Russia	Left
Liberal-Democratic Party of Russia	Right
Fatherland-All Russia	Center
Union of Right Forces	Right
Yabloko	Center
Agrarian Deputy Group	Left
Deputy Group "People´s Power"	Left
Deputy Group "Russian Regions"	Center
Not affiliated with any fraction	Indepedent

Source: Grigoriadis and Torgler 2006, p. 43.

In the second half of the 1990s, the Duma, with a communist majority, in its first and second term (see Table 5.4) prevented the president and the government from their intention of proceeding with the reform of the electricity industry. In its first term, the Duma passed the Federal Law on Natural Monopolies and State Regulation of Energy Tariffs. This law classified the oil and gas pipelines networks, the electricity industry, railways, telecom and airports as natural monopolies. However, this law did not specify the rules of the functioning of the electricity sector.

During its second term, the Duma demonstrated that it was an independent veto player in reforming the electricity industry. A major political move by the deputies in the second Duma term was to vote for the cancellation of the governmental decision to appoint Chubais, who pledged support for full liberalisation of the national electricity industry, as executive chief of RAO EES Rossii. The majority of deputies expressed their political will to undermine any reform project that would leave the state with less than 51% of the shares of RAO EES Rossii. On 7 May 1999, the State Duma overrode the president's veto and adopted a law restricting foreign shareholders' stake in RAO EES of Russia to 25% (Kommersant Daily, 25 December 2002).

5.1.3.2 Interaction between Central and Regional Authorities

In the 1990s, President Yeltsin attempted to preserve his central power and prevent the country from disintegration. Soviet Russia was itself a multinational federation as a part of the Soviet Union and consisted of 16 autonomous republics, 5 autonomous regions and 10 autonomous areas, all of which had enjoyed different degrees of sovereignty (Filippov and Shvetsova 1999, p. 67). Federalism appeared to be appropriate for the territorial building of the modern Russian state because of the wide diversity that existed in the regions of the Russian Federation along demographic structures, economic profiles, geographical and climatic conditions and varying levels of facilities and services (Gill 2007, p. 2). However, the problem was that, in the Soviet Union, Russian politicians had very limited means of influencing regional leaders, because the regional elites in Russia answered directly to the centre and not to the Russian government. Thus, 15–20% of Russian administrative units were subordinated to Russian structures, and the rest were subordinated to the Soviet Union's central structures. Russia, as one of the Soviet republics, had relatively weak economic and political institutions compared to other republics in the union (Filippov and Shvetsova 1999, p. 71). To hold the federal units together, Yeltsin promised wide sovereignty rights to the federal units and declared the right of federal republics and regions to the natural resources in their territories. Additionally, between July 1990 and July 1991, 11 regions received the official status of 'free economic zones' and wide economic freedoms (Filippov and Shvetsova 1999, p. 71).

In the first stage (1991–96) of Yeltsin's policy, the federal government and most of the republics of the Federation signed a federal treaty that, in general, accepted the powers of regional authorities and their claims to republican sovereignty. The treaty also accepted the so-called bifurcated nature of the federal structure. The bifurcated nature of federalism meant the

acceptance of two different principles for the federal units, ethnic and territorial. Based on this principle, some units of the Russian Federation were formed along ethnic lines and others along territorial lines. Of the 89 subjects of the Russian Federation, 32 were ethnically-defined, 21 republics, 10 autonomous okrugs and one autonomous oblast; the other 57 were territorially-defined, 6 krais, 49 oblasts and 2 federal cities (Gill 2007, p. 4).

The 1993 Constitution listed a number of areas that were subject to federal jurisdiction and a number of areas subject to the joint jurisdiction of the federation and its subjects. According to Articles 11 and 78 of the Constitution, 21 republics had the greatest powers among all subjects of the Russian Federation. According to the Constitution, the federal units enjoyed a wide range of areas of sole regional responsibilities or joint regional responsibilities. Among those areas were defined protection of human and civil rights and freedoms, issues relating to the ownership and use of all natural resources, delimitation of state property, environmental protection, education, the coordination of public health, social protection, the establishment of general principles of taxation and the levying of duties, personnel of judicial and law-enforcement bodies, etc. On the other hand, as Gill (2007) points out, regional units never sought to represent themselves in the main law-making body of the Russian Federation, the State Duma. According to his data, the deputy fractions in the Duma were generally not organized along the lines of the federal units. Despite the fact that some factions had regional roots, there have never been political parties in the Russian Parliament which protected regional interests. The political parties that were formed in regions, such as New Regional Policy in the first Duma and Regions of Russia in the second, did not pursue their goals to protect interests of certain regions but concentrated on the realization of specific economic interests. (Gill 2007, p. 7).

Regional interests in Russia in the 1990s, on the federal level, were mainly represented in the Federation Council that was comprised of two representatives from each subject of the federation. The Federation Council had the responsibility of examining and approving all laws adopted by the State Duma. Until 1995, the representatives to the Federal Council were popularly elected, but, from 1995 onward, the heads of the legislative and executive branches of regional governments represented respective regions in the Council (Gill 2007, p. 8). However, one important rule underpinned the controlling role of the Council. Thus, according to the 1993 Constitution, a law was to be deemed passed if it was supported by more than half of the total number of members of the Council or if it was not examined by the Federation Council within fourteen days (Gill 2007, p. 8). According to the data of Gill (2007), between 1996 and 2000, significant amounts of legislation went through without review.

During the second stage (1996–99), the central administration attempted to gain control over 89 regional units by legal means (Zimmer 2007). However, the weakness of the presidential power led to Yeltsin's dependence on regional governors during his re-election in 1996 and the economic crisis in 1997 – 1998.

In the 1990s, the leakage of power from the federal centre to regions mainly through the signing of power-sharing agreements occurred. Regional leaders signed bilateral treaties with President Yeltsin on the division of responsibilities with the federal centre. Between 1994 and 1998, 47 treaties were signed between the federal government and federal units (Gill 2007, p. 4). Zimmer (2007 p. 115) underlines the informality and the high degree of personalization of these relationships that were not signed by the legal representatives of the federal subjects, but personally by the leaders of single regions and the federal authorities.

At the same time that it stabilised the Russian state and preventing it from falling apart, the power-sharing agreements strengthened governors' powers in their respective regions and their ties with strong business actors. Concerning the governing of the power engineering industry, local authorities were very reluctant to accept reforms in the electricity sector. Therefore, they reacted differently on the law about transferring 50% of their shares to the state company RAO EES Rossii in 1992. Some of them even transferred 100% of the shares. In other cases, Energos transferred less than 50% of their shares. Thus, instead of the planned 51 large power generators, only 35 were transferred from Energos into the ownership of RAO EES Rossii (Opitz 2000, p. 150). The shares of Tatenergo in Tatarstan and Bashkirenergo in Bashkortotostan remained due to political causes in the ownership of regional authorities. The powerful regional parliaments in Irkutsk and Novosibirsk, as well, proclaimed that all power assets were property of the region in spite of the fact that RAO EES Rossii strongly opposed it. In the face of public protests, Yeltsin was forced to accept that these two AO-energos were joint property of the federal and regional governments.

The attempt of the president and the government to introduce the separation of generation and local utilities failed in 1997 because of the opposition of local authorities who governed regional power generation and transmission utilities. In the opinion of Russian energy experts, the 1997 reform "did not take into account the salient characteristics of local utilities and was not supported by local authorities" (Palamarchuk at al. 2001, p. 54). Especially during the economic crisis of 1997 – 1998, regional governors in Russia strengthened their power consolidation through the acquisition of partial regional ownership in various enterprises. In exchange for controlling stakes, they offered to forgive the federal government its federal debt to regions or to give tax breaks in banking to federal governments. In the midst of crisis and growing debts,

Yeltsin made the 1997 decision to transfer 33% of the national electric power grid monopoly to regional governments (Petkov and Shklyar 1999).

5.1.3.3 Law Enforcement and Powers of Judicial Institutions

In the 1990s, the judicial system in the Russian Federation went through major changes that, in a large degree, reduced the Soviet legacy of dependent judges and weak courts. The legal infrastructure that was necessary for the development of the market economy was established. A number of new legal institutions, such as commissions dealing with antitrust, bankruptcy and securities, were created. Starting in 1992, judges were appointed for unlimited terms and they could be removed from office only by a special committee of their peers, a Judicial Qualification Commission (JQC) (on more information see Solomon 2002).

However, two issues underpinned the effective and independent functioning of Russian courts in the 1990s. First, the courts were highly underfinanced by the federal government. Because of this, the courts were widely bribed and influenced by local and regional governments and wealthy business groups. Even the federal government's attempt to block this channel of local influence over judges, through the introduction of the 1992 law that guaranteed judges some social benefits and the 1993 Constitution that contained the provision regarding the solely federal financing of courts, failed (Solomon 1997).

Second, the courts' authority was weakened by the state's uneven implementation of constitutional, commercial and civil judgments and unclear division of respective powers and rights between the federal government and the governments of the subjects of the federation. Regional authorities impacted the cause of the development of the court reform. Thus, the Law on the Court System was approved by the Federal Council only after the reached compromise on the issue that the legislatures of the federal subjects would have to consent to the nominations proposed by the judicial qualifications commissions before they were forwarded to the president (Solomon 1997, p. 54). Autonomous republics often refused to accept the supreme authority of federal courts and treated the Supreme Courts of the republics as final resorts. For that reason, some laws that were implemented on the level of federal units did not comply with the Russian Constitutions, because they were not sent to the Federal Constitutional Court.

In the public sphere, the courts were mostly seen as inefficient and judges as dependent and corrupt. Russian economic actors did not actively participate in the legal reform process, because, in the Russian tradition, the law had always been generated in a top-down fashion and

was a prerogative of the state. Naturally, economic actors did not perceive law as the means to protect their interests (Hendley 1997).

The biggest problem in the 1990s remained, however, the unsystematic right of the courts to challenge the regulations and legislation of federal and regional governments. In the middle of the 1990s, the regular courts in Russia obtained the right to review laws of the subjects of the federation including their charters, federal laws and even the Constitution of the Russian Federation. However, in 1998, the Constitutional Court overruled the previous laws insisting that only the Constitutional Court could rule on the constitutionality of normative acts and that the regular courts could review the legality of laws only in the cases when legislators had given clear direction. This ruling led to the only partial judicial review of normative acts implemented in the country (Salamon 2004).

5.1.3.4 Access of Interest Groups to Policy-Making

The rise of the Russian business groups and oligarchs occurred in the first half of the 1990s and resulted from chaotic liberalisation in 1992 – 1994 and non-transparent auction privatisation in 1994 – 1996. Two groups of business elites emerged. The first were business elites that mostly owned the banking sector because the banks obtained large profits resulting from selling natural resources abroad and receiving revenues in dollars. At the top, a group of superrich emerged, whose assets typically combined banking, sectors of industry and the mass media (Kryshtanovskaya and White 2005). They became known as the "oligarchs" (see Table 5.5). Precisely this group dominated economic as well as political life in Russia during the 1990s.

The second group of business elites were the so-called financial industrial groups (FIG) (Schröder 1999) that emerged during privatisation of state enterprises and large industrial assets. These new property owners were often the representatives of the old Soviet nomenklatura. In 1994, 6 financial industrial groups were registered; in 1995, 20 and, in 1998, 83 (Schröder 1999, p. 963).

Table 5.5 Most Powerful Oligarchs in Russia in 1997

Name	**Initial core assets**
Boris Berezovsky	ORT (TV station), Logovaz (auto dealer), Aeroflot (airline)
Vladimir Potanin	Interros (metals)
Mikhail Khodorkovsky	Rosprom (industrial holding company), Menatep (bank)

Vladimir Gusinsky	Most Bank, NTV (TV station)
Oleg Deripaska	Rusal (aluminium)
Vladimir Vinogradov	Inkombank (bank)
Mikhail Fridman	Alfa Group (bank)
Pyotr Aven	Alfa Bank (bank)
Alexander Smolensky	SBS-Agro (bank)
Rem Vyakhirev	Gazprom (natural gas)

Source: Rutland 2009, p. 4.

The business elites exercised their influence through close links with central and regional governments. Especially after the supportive re-election of Yeltsin in 1996, the business elites started to dictate their own terms in the presidential administration. Within the government they had their "own people". In addition to direct approaches to government officials, business groups penetrated the legislative branch as well. In the Duma elections of 1995 and especially those of 1999, many businessmen acquired seats in the parliament (see more Rutland 2009). Apart from exercising power at the federal level, incumbent economic elites from major economic enterprises aligned themselves with local political elites and gained power at the regional level in respected regions (for further reading, see Gill 2007). This regional struggle for power and influence strongly coincided with the flow of power from the centre into the regions and the sovereignty the regions enjoyed in policy-making. In turn, regional political authorities structured economic reform in such a way that their local allies among economic elites benefited from privatisation of assets. Gill (2007, p. 9) refers to the restriction of the privatisation provisions to locals as the major means of such politics.

These informal means of influence of business elites on the political life of the country were very effective and led to their acquisition of political power. This observation is also supported by the ranking of Russia's 100 leading politicians conducted by the polling institute Vox Populi and the Russian newspaper Nezavisimaya gazeta (see Table 5.6).

From the table it can be derived that, after Yeltsin's second election as president in 1996, the executive together with the regional representatives and economic elites predominantly from the bank sector dominated political policy-making in the country. Precisely speaking, the reform-minded government had to take the interests of business and regional elites into consideration in the process of defining the direction and the cause of reforms.

Table 5.6 Perception of the Political Significance of Elite Groups in Russia between 1993 and 1998 (%)

	President, Government	*Economic policy makers*	*Power structures*	*Regions*	*Judiciary*	*Parliament, Parties*	*Media*	*Academia, Foundations*	*Church*	*Business associations*	*Banks, Businesses*	*No identified*
April 1993	30	4	7	12	2	35	3	0	1	4	0	1
September 1994	28	7	13	12	1	26	6	0	1	2	1	2
February 1996	21	11	10	18	2	27	7	0	2	2	0	0
January 1997	21	8	9	18	2	20	11	0	1	2	8	0
March 1998	23	11	11	22	2	11	8	0	1	1	10	0

Source: Schröder 1999, p. 960.

However, only a small part of emerged business elites and financial industrial groups was able to impact policy-making on the federal level. Thus, in meetings with the president and the government in 1997 and 1998, the director of EES Rossii, the president of Gazprom, the directors of the oil companies LUKoil and NK Surgutneftegaz, and the founders and directors of leading financial and industrial groups ONEKSIMbank/Interros, Most-Group, YuKOS-Rosprom/MENATEP, SBS-Agro, Al' fa-Group and Rossiiskii kredit were represented (Schröder 1999, pp. 970 – 971).

5.1.4 Mode of Actors' Interaction and its Effectiveness

The analysis of actors' constellations on electricity liberalisation policy-making allows for the derivation of the conclusion that two parallel modes of actors' interaction impacted the outcome of the reform on electricity liberalisation in Russia during the 1990s. On one hand, one dominant mode was the hierarchical direction by the Russian government with elements of bargaining between the liberals and the reformers in the government and the electricity industry itself. Among the ruling elite of the electricity sector belonged regional governors and republican presidents who obtained control over the electricity distribution assets in their regions, regional business elites and energy intensive consumer industries. Rutland (2005) described such an institutional context in the following way:

On the political front, the maintenance of the infrastructure monopolies became an integral part of the political, economic and social fabric of Russia during the 1990s. For the men in charge of those companies, it meant fortunes were made, and empires were built. But for the ordinary people too it meant basic services – heat, light, transport – continued to be provided at low cost. A huge number of vested interests had a stake in the preservation of the status quo (Rutland 2005, p. 276).

Additionally, from the very beginning, there were controversial positions towards the main direction of the electricity reform between the Russian government and the Russian parliament and the second main mode of actors' interaction, the negotiations and the outcome of the majority vote in the State Duma, emerged in the second half of the 1990s, impacting, to a large degree, the outcome of policy-making on electricity liberalisation.

The electricity sector reform during the 1990s in the Russian Federation was the outcome of the presidential initiative and the government that mainly consisted of liberals and reformers. However, from the very beginning, they had to bargain on the direction of reforms with regional, political and business elites that were very powerful and tried to acquire the control over natural monopolies in their respective regions. In order to prevent the Russian state from falling apart, power-sharing agreements were signed between the centre and the regions that had strengthened governors' powers and their ties with strong business actors.

The implementation of the pool model of the organization of the electricity industry contained two main bargaining deals with regional, political and business elites. First, because of protests from regions, only an accounting separation of electricity generation and distribution assets was introduced, rather than the legal separation necessary for the proper functioning of the pool model. Additionally, the new rules required that regional administrations had to transfer 50% of their shares in regional distribution companies to the state company RAO EES Rossii. Although the government saw this requirement as a good deal with regional elites some of them refused to transfer their shares and continued to control power generation and distribution assets on their respective territories. The outcomes of these policies were mixed. First, instead of the planned 51 large power generators. only 35 were transferred from Energos to the ownership of RAO EES; second, AO-Energos reacted differently on the requirement to transfer 50% of their shares in regional distribution companies to the state company; some of them transferred 100% of shares, some less than 50%, and four AO-Energos in Tatarstan, Bashkortostan, Irkutsk and Novosibirsk refused to do so. In the case of Tatarstan and Bashkortostan, the government had to accept this situation due to political causes and the special status of Tatarstan and Bashkortostan in the Russian Federation. In the case of Irkutsk and Novosibirsk, the regional parliaments proclaimed that all power assets were a property of the region. The president and the

government's 1997 attempt to introduce legal separation of power generation and distribution assets also failed because of regional authorities' opposition.

During the economic crisis of 1997 – 1998 regional governors in Russia strengthened their power consolidation through acquisition of partial regional ownership in various enterprises. In the midst of crisis and growing debts, Yeltsin made the 1997 decision to transfer 33% of the national electric power grid monopoly to regional governments.

The formation of the State Duma was a major shift in the Russian institutional structure in the second half of the 1990s. According to the Russian Constitution 1993, the Duma was not an autonomous public policy player in the Russian Federation, because it was not able to enforce any policy measures without presidential approval, but it introduced important internal constraints on presidential power, because all federal laws, in order to pass, had to have a majority of the total number of its members' votes in three consecutive readings. During its second term, the Duma demonstrated that it was an independent veto player in reforming the electricity industry. At that time, the majority of deputies in the communist-dominated Duma had the position to undermine any reform project of the government that would leave the state with less than 51% of the shares of RAO EES Rossii and to block any reforms on the restructuring of this monopoly. The Duma was able to override the president's veto on those laws initiated in the parliament that legally regulated these requirements.

In this way, the regional, political and business elites, on one side, and parliament, on the other, placed serious constraints on the government's electricity liberalisation politics. Under such circumstances, the government made the decision to bargain with business interests and regional leaders and together originated a plan that could be passed into law by the parliament. However, the bargaining and the negotiations with parliament were unsuccessful, and the government's plan to introduce the liberalised pool model of the functioning of the electricity market failed, when the electricity market was organized into monopolies at the federal and regional levels. From this, it is concluded that none of the modes of interaction among policy-making actors on the issue of liberalisation of national electricity industry was successful in Russia in the 1990s. Too many vested interests preferred to preserve the status quo and refused to interact with actors that had other interests in finding a possible common solution that had a probability of satisfying both sides.

5.2 Electricity Market Reform in Russia under Putin (2000 – 2008)

5.2.1 Basic Features of the Russian Power Industry in the 2000s

About 65.7% of electricity generated in the 2000s in Russia was produced at thermal plants, 16% at hydro plants and 18.3% at nuclear plants. Between 2000 and 2010, the energy production in Russia increased by about 18% (see Table 5.7).

Table 5.7 Total Electricity Gross Production in Russia in 2000 – 2010 (GWh)

Production from:	***2000***	***2005***	***2010***
Coal	175,615	165,451	166,094
Oil	33,091	21,218	9,312
Gas	370,372	439,312	520,529
Biofuels	22	41	36
Waste	2,516	2,597	2,738
Nuclear	130,715	149,446	170,415
Hydro	165,375	174,604	168,397
Solar	0	0	0
Wind	2	7	4
Other sources	58	410	505
Total Production:	877,766	953,086	1,038,030

Source: International Energy Agency Statistics for the Russian Federation.

An outstanding feature of the electricity industry in Russia in the 2000s remained its technical and technological obsolescence. In 2000, 51.6% of the generating capacity was in need of renovation or maintenance, rising to 57.8%, in 2003. Additionally, the majority of generation capacity in European Russia and the Urals was comprised of steam-powered gas-cycle stations, which were only 50–60% as efficient in burning gas as their equivalents in the EU.

Table 5.8 Final Domestic Electricity Consumption in Russia in 2000– 2010 (GWh)

	2000	***2005***	***2010***
Energy Industry Own Use	153,544	178,145	188,967
Industry	312,403	329,877	326,849
Transport	60,916	83,170	85,284
Residential	140,723	108,915	129,695
Commercial and Public Services	64,271	110,947	168,886
Agriculture/ Forestry	30,213	16,838	15,689

Fishing	0	226	280
Other sector non-specified	0	0	0
Losses	101,641	112,587	104,933
Total domestic consumption:	863,711	940,705	1,020,583

Source: International Energy Agency Statistics for the Russian Federation.

Between 2000 and 2010, electricity consumption increased by 18% in Russia. In 2010, the Russian Federation consumed domestically 98% of all produced electricity (see Table 5.8).

5.2.2 Regulatory Policies

5.2.2.1 Electricity Reform and Elimination of RAO EES Rossii

In December 2000, the new administration of RAO EES Rossii with the company's CEO Anatoly Chubais submitted the concept of restructuring RAO EES Rossii to the government. The concept foresaw the establishment of a fully competitive energy market in Russia and was prepared by RAO EES Rossii in collaboration with Arthur Andersen Consulting and the Ministry of Economic Development of the Russian Federation. The concept called for the unbundling of vertically integrated regional subsidiaries (AO-Energos) and the introduction of competition into the electricity generation and supply sectors. All power generators were to be reorganized as independent joint-stock Companies. The transmission and distribution segments were to remain natural monopolies governed by state regulatory authorities.

However, the concept was criticized by the federal government and, in particular, presidential advisor Andrei Illarionov on one side and regional authorities on the other side. The regional authorities feared the loss of control over their distribution networks and regulatory power over regional retail markets. Their position was to consolidate regional energos and retain vertical integration on the regional level. In addition, RAO EES Rossii minority shareholders feared the violations of their property rights in the case of the potential division and redistribution of power generation and supply assets and suggested a pro-rata sharing of property rights (Hubert, Matthey and Andrianov 2003). During 2000 – 2001, four modifications to RAO EES Rossii and 14 alternative proposals to the government were submitted (Engoian 2006).

After parliament hearings and expert discussion, the government issued the Decree, "On Restructuring the Electric Power Industry in the Russian Federation of July 11, 2001, No. 526". According to the decree, a state-owned National Grid Company (NGC) and a state-owned National Control Company (NCC) (system operator) would be established. The NGC was planned to buy transmission lines from local utilities. The NCC would take the functions of

managing electricity trade and supervising contractual discipline on the wholesale market. The main point of the decree was the separation of transmission from power generation and the insurance of free and non-discriminatory access to the transmission grid to all participants in the wholesale market. The decree foresaw three phases of the reform:

a. In the first stage (2001 – 2004), the legislative basis should be developed and non-payments should be eliminated. The NGC and NCC should be established and the audit of the assets of RAO EES Rossii and debts should also be completed.

b. In the second stage (2004 – 2006), RAO EES Rossii would be divided into independent NGC, NCC and generating companies. The state business should be reduced in the power generation.

c. In the third stage (2008 – 2010), the local power utilities should be restructured and competition should be introduced among electricity suppliers (Palamarchuk at al. 2001).

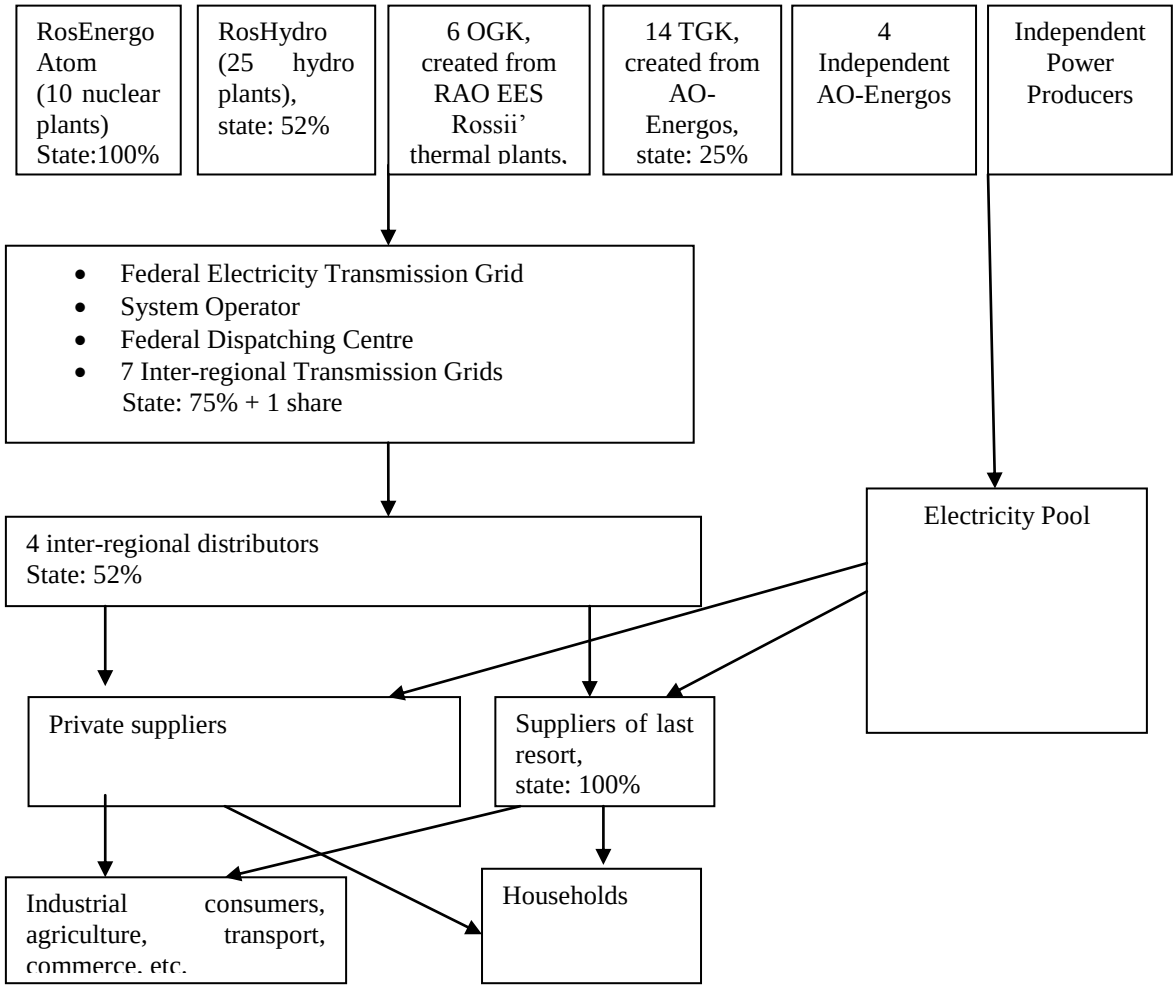
At the end of 2001, the Government introduced a draft law on the electric power industry to the State Duma. The State Duma introduced a wide list of amendments to the law that were mainly related to strengthening the role of the state and the government in implementing the reforms (Belyaev 2011, p. 210). The final version of the law "On the electric power industry" was adopted by the State Duma on 21 February 2003 and signed by the president on 26 March 2003 (see Figure 5.3). According to the law, the key element of electricity market regulation is the separation of transmission and dispatching of energy from its generating and selling or buying. The transmission facilities form the unified national electricity grid (UNEG), which is operated and maintained by the Federal Grid Company (FGC), with the largest part of stocks belonging to the state. Any other companies, bodies or individuals have a right to construct new transmission lines and connect them to existing electric networks. The System Operator (SO) establishes prices and tariffs for electricity transmission lines and connection to networks taking into account costs of construction and maintenance of transmission lines, standardized profit and other costs of services provided by the System Operator. Electricity transmission and dispatching control services are considered, according to the law, natural monopolies and to these businesses the Law "On Natural Monopolies" is applied. The energos were to be consolidated to form 40 instead of the previous 70 companies. The energos were left to manage regional distribution networks. Therefore, the energos remained regionally consolidated and controlled distribution networks and supply businesses in respected regions.

In May 2003 the Board of Directors of RAO EES released the "5 + 5 Strategy" for restructuring the electricity sector by 2008. The strategy foresaw two distinctive unbundling

processes. One involved the unbundling of the assets of the RAO EES Rossii and the other the assets of the energos at the regional level. All transmission assets were to be transferred to the Federal grid Company and to inter-regional transmission companies. Regional dispatch-unit assets were to be transferred to the System Operator. The remaining assets of the energos were to be unbundled and regional generation companies, as well as regional distribution and supply companies, were to be created.

Originally, it was supposed to legally unbundle generation, transmission and distribution assets by the year 2005. However, because of the replacement of Mikhail Kasyanov by Mikhail Fradkov as prime minister no changes in the restructuring of the electricity industry occurred between March and December 2004 (Skyner 2010). In December 2004, the deadline for compulsory separation of natural monopoly assets was prolonged to 1 April 2006.

Figure 5.3 Organization of the Russian Electricity Market according to the 2003 Reform



Notice: OGK is the abbreviation for the federal wholesale generator, TGK is the abbreviation for the wholesale territorial generator.

Source: IEA 2005, p. 33.

In 2006, the government agreed with the RAO EES Rossii plan for privatisation of the wholesale generation companies and territorial generation companies, and the necessary legislation in the form of the Federal Law "On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Accomplishment of Measures for the Reform of the Unified Energy System of Russia" was passed.

Table 5.9 Consolidation of Power Generating Companies' Assets in Russia (2008)

Pre-reform state	*Generating companies*	*Largest Owners (2008)*
RAO EES	WGK-1	Roshydro
RAO EES	WGK-2	Gazprom
RAO EES	WGK-3	Norilsk Nikel
RAO EES	WGK-4	Eon
RAO EES	WGK-5	Enel
RAO EES	WGK-6	Gazprom
RAO EES	TGK-1	Gazprom, Fortum
RAO EES	TGK-2	Sintez
RAO EES	TGK-3	Gazprom
RAO EES	TGK-4	Kvarda
RAO EES	TGK-5	RUSAL
RAO EES	TGK-6	RUSAL
RAO EES	TGK-7	RUSAL
RAO EES	TGK-8	Lukoil
RAO EES	TGK-9	RUSAL
RAO EES	TGK-10	Fortum
RAO EES	TGK-11	SUEK, Lukoil
RAO EES	TGK-12	SUEK
RAO EES	TGK-13	SUEK
RAO EES	TGK-14	Energopromsbit
RAO EES	RosHydro	Federal Government
RosEnergoAtom	RosAtom	Federal Government

Note: WGK is the abbreviation for a wholesale generating company; TGK stands for a territorial generating company.

Source: Gore et al. 2012, p. 681, Annual Reports of RAO EES Rossii.

The privatisation of 6 OGK and 14 TGK occurred in the autumn of 2007 and the spring of 2008 and raised $43 billion (Skyner 2010, p. 1392). Private companies, which owned the generation assets, were domestic monopolists in the gas, oil and coal sector, such as Gazprom, IESholding, Norilsknikel and SUEK and some foreign investors such as Fortum, Enel and Eon

(Gore and et al. 2012) (see Table 5.9). According to the table, four large generators, Gazprom, RosAtom, RusHydro and SUEK, controlled about 44% of total electricity generation after the privatisation.

In accordance with Government Resolution No. 643 of 24 October 2003, "On Establishing the Rules of the Wholesale Market for Power during the Transition Period," producers were allowed to sell 15% of their produced electricity on the wholesale market either through bilateral contracts or through a day-ahead market. In 1 September 2006, this transitional model was replaced by the new Government Resolution No. 529 of 31 August 2006, "On the Improvement and Functioning of the Wholesale Market for Power". According to this regulation, the regulated sector of the wholesale market should function in the form of regulated contracts concluded between market participants with durations of one to three years. Non-contracted volumes of electricity were to be sold and bought on the day-ahead market at freely negotiated prices in free bilateral contracts.

According to the instruction of Government Resolution No. 530 of 31 August 2006, "On Establishing the Rules for the Operation of Retail Markets for Electricity during the Transition Period," during the transition period, electricity to retail customers should be supplied at regulated prices and partially at prices that reflect cost of electricity in the competitive wholesale electricity market within the limits of threshold levels of unregulated prices. In the long term, retail tariffs are expected to be cost-reflective and the price on electricity would include the actual cost of electricity on the wholesale market, the cost of the transmission service and the charge of the supply company. In the long term, it is expected that retail market transactions were to happen on the basis of free bilateral contracts. According to Skyner (2010), however, in the foreseeable future consumer protection would be addressed primarily through the network of licensed Guaranteeing Suppliers that are obliged to supply energy to any eligible retail consumer

Table 5.10 Major Governmental Bodies in Russia Determining the Development of Electricity Industry

Government of the Russian Federation			
Ministry of Energy	***Federal Antimonopoly Service***	***Federal Tariff Service***	***Ministry of Natural Resources and Ecology***
Definition of Energy Policy	M&A	Tariff Regulation	***Federal Engineering Supervision Service (Rostehnadzor)***
Legal Regulation	Non-Discriminatory Access		
Public Property Management	Market Power Mitigation		Supervision over the observance of environmental and technical specifications
Standards Determination			

Source: Abdurafikov 2009, p. 23.

On 1 July 2008, the former monopoly RAO EES Rossii ceased to exist as a centralized control centre in the power engineering sector. The role of the government in the power engineering industry increased. The methods available for the state to exert influence on companies' behaviour, and thus on the development of power industry are economic regulation (tariffs, taxes, duties, price caps, antitrust regulations, etc.), investment support and technical regulation (Abdurafikov 2009). The main authorities that have the powers to regulate the electricity sector through these methods are the government, the Ministry of Energy, Federal Antimonopoly Service, Federal Tariff Service, Ministry of Natural Resources and Ecology and Federal Engineering Supervision Service (Table 5.10).

Formation of a new tariff regulatory framework will be finished in 2011–2014. By 2014, electricity tariffs for households will be raised to an economically justified level.

5.2.3 Actors' Constellations on Electricity Liberalisation Policy-Making

5.2.3.1 Interaction between the Executive and the Legislative

The actors who stood behind the reform on the power engineering sector in Russia were the CEO of RAO EES Rossii Anatoly Chubais, a managerial board of RAO EES Rossii, the government and the Working Group on Power Industry Restructuring at the Presidium of the State Council of the Russian Federation, which was created by the president's resolution.

After stabilizing the situation with cash payments in the power generating sector in 1998 – 2001, by increasing cash payments from 35% in 1999 to 92% in 2001, (Aron 2003, p. 4) Chubais and the managerial board of RAO EES Rossii proposed a radical reform, restructuring RAO EES Rossii and introducing competition into the retail and wholesale markets. The main purpose of the reform according to Chubais was to achieve efficiency and attract investment into the national electricity market by privatising state-owned assets, introducing competition into the power generation and supply sectors and reducing electricity prices. According to him,

> The electricity still operates in the Soviet style. The consumer is chained to the producer. There is no choice, no competition and no stimulus to save costs or to invest. Reform and liberalisation is the only realistic way to cut costs. Nothing in the past 2,000 years of world history has been more effective for that than competition (Financial Times (UK), February 5, 2003, by Andrew Jack).

However, those who criticized the proposed reform were numerous. First, there were single policy advisors in the Kremlin and government bureaucracies who had control over electricity prices and distribution. One of those proponents was Andrei Illarionov, Putin's economic advisor, who argued that Chubais has devised the reform of the electricity sector in a way that left too much power over the electricity distribution to executives of RAO EES Rossii (Financial Times (UK), February 5, 2003, by Andrew Jack).

Table 5.11 Political Parties in the Third State Duma in Russia (2003 – 2007)

Political Parties	**Ideology**
Third Duma	
Communist Party of Russia	Left
Liberal-Democratic Party of Russia	Right
Fatherland-All Russia	Center
Union of Right Forces	Right
Yabloko	Center
Agrarian-Industrial Deputy Group	Left
Deputy Group "People´s Deputy"	Center
Deputy Group "Russian Regions"	Center
Interregional Movement "Unity"	Center
Not affiliated with any fraction	Independent

Source: Grigoriadis and Torgler 2006, p. 43.

The third Duma, elected in December 1999, also demonstrated the veto against the electricity reforms launched by the government. In July 2000, Duma deputies submitted an appeal to president Putin in which they stated their worries that the restructuring of the electricity monopoly would threaten the economic activity of small enterprises and place the rights of its stakeholders at risk (Grigoriadis and Torgler 2006, p. 9). In particular, strong opposition came from the Yabloko liberal opposition party in the Duma and its leader Grigory Yavlinsky who argued that transition to market-based electricity prices would result in a huge increase of electricity tariffs for all groups of consumers. Additionally, he stressed that politically influential oligarchs might buy up large parts of the sector at the expense of minority stakeholders. In words of Yavlinsky,

Chubais accepted the creation of bandit capitalism and so long as he is in power, the backdoor will always be the widest. It is extremely important for our democracy and for the development of small and medium-sized business to undermine oligopolistic control (Financial Times (UK), February 5, 2003, by Andrew Jack).

In February 2003, during work on the draft law it came to the new escalation against the electricity reform in the Duma. Deputies criticized the actions of the Federal Energy Commission, when it ordered the Regional Energy Commissions to increase energy tariffs 14% over the legal limit (Grigoriadis and Torgler 2006, p. 9). Putin, the government and RAO EES Rossii realized that the law on the electricity sector reform could only be adopted in the Duma, when a number of amendments were included. For the Duma, with an uneven majority of communists (see Table 5.11), it was important to strengthen the role of the government in the electricity industry. Before the final approval of the bill on electricity reform in the Duma on 21 February 2003, it received 70 amendments. Among the most important amendments belonged the statement that the state's share in the electricity industry assets should not fall below 52% and could be increased up to 75%. In addition, the state must keep control over the transmission and distribution grids and there must be clear distinction of capacities between federal and regional regulatory authorities. Finally, tariffs were to be set in conjunction with the federal budget and to take into consideration regional and social conditions. (Grigoriadis and Torgler 2006, p. 9).

5.2.3.2 Interaction between Central and Regional Authorities

Between 1998 and 2000, the merger between politics and business in nearly all Russian regions strengthened. This became possible after the business elites, which emerged in 1994 – 1998 at the federal level, predominantly in the banking sphere, collapsed because of the financial and economic crisis of 1998. As a result, property assets on the regional level were removed from their former owners because of debts and were either returned back to the state or sold to new private owners. These new regional industrialists directly exercised political influence through participation in the regional elections. Thus, in the elections in the late 1990s, representatives of the industrial and financial elite took 80% of seats in the Perm' region, about 70% in Smolensk region, about 60% in Penza, Tambov and Tomsk regions, and more than half in Primorskii territory and in Belgorod, Leningrad, Nizhnii Novgorod, Omsk, Rostov and Stavropol' regions (Kryshtanovskaya and White 2005, p. 304).

President Vladimir Putin attempted to strengthen central state power. Shortly after being elected as president, he initiated a broad campaign. According to the Presidential Decree of 13 May 2000, he divided Russia's 89 federal subjects into seven bigger administrative districts. Putin initiated several laws allowing for the legal removal of governors and parliaments once it was proven in court that they had consciously passed legislation contradicting the Russian

Constitution. In December 2004, the president was given the power to appoint new regional leaders (Zimmer 2007, p. 116). Since that time, all governors and republic presidents have been nominated by Putin, subject to approval by regional legislatures.

The centralization of power in the Russian Federation led to the introduction of the centralizated system of the wholesale electricity market organization. First, according to the government's modified version of the concept, the federal grid company should manage the high-voltage transmission grid and the single system operator should unify the central dispatch unit and the regional dispatch units within a hierarchical structure. On the other hand, the government was constrained by the old rules of the power engineering sector organization, which is the power of regional authorities, to manage low-voltage distribution grids and set regional electricity retail prices. Therefore, the modified version of the electricity sector reform envisaged the consolidation of energos and left the powers to manage distribution and retail sales of electricity behind them.

The evolution of the regulatory governance in the electricity sector in Russia came through two phases (Engoian 2006). From 1995 to 2004, the regulation of the electricity sector was based on the 1995 Public Law FZ-41, "On government regulation of electric and heat energy tariffs in the Russian Federation". During this time, the regulator of the electricity industry consisted of the Federal Energy Commission (FEK), the Ministry of Anti-Monopoly Policy and the Regional Energy Commissions (REKs). The president of the FEK was appointed by the Russian head of the state and had broad jurisdiction in setting annual electricity generation levels, proposing new legislation and controlling third-party access to networks. The REKs had the powers to set electricity rates at the regional and local level in the agreement with the FEK (Engoian 2006).

The situation changed after the introduction and implementation of new legislation in 2003 – 2004. In March 2004, the executive branch agencies were reorganized and the FEK became the Federal Service for Tariffs (FST) overseen by the Ministry of Economic Development and Trade. According to the new legislation, the Ministry of Economic Development and Trade now decided on regulatory methods and approaches. The Federal Service for Tariffs had the jurisdiction to control prices and to settle disputes between the monopolies and consumers. However, the government had the sole right to set prices on electricity. In this way, the government strengthened its powers in the regulation of the electricity sector and the role of the independent regulator was significantly undermined.

5.2.3.3 Law Enforcement and Powers of Judicial Institutions

Shortly after being elected president, Putin undertook judicial reform. Already, in 2000, a presidential working group headed by deputy chief of the presidential administration Dimitri Kozak was formed to prepare the reform. By May 2001, a package of draft laws on judges and courts had been submitted to the Duma and approved in the first reading in June 2001 (see Solomon 2002). The new law introduced a number of changes to the Russian national judicial system. To begin, the membership in the Judicial Qualification Commissions, which were responsible for appointments and promotions of judges, as well as their removal from office, was to be broadened. According to the new law they had to consist in two thirds of judges and in one third of locally based lawyers and legal scholars. In order to put limits on the power of court chairs, it was regulated that the court chairmen had to hold their administrative positions for fixed periods. Apart from that, the judges' protection from prosecution for criminal and administrative offenses was decreased significantly. The whole reform was undertaken with the purpose of improving guarantees for the human rights and protection of individuals. Thus, in July 2002 a new Criminal Procedure Code was introduced that largely improved the position of individuals in light of the arbitrariness of the state. Additionally, the number of judges was increased from the 17,000 to about 20,000, and their salaries were raised fourfold (Solomon 2002). Following the implementation of reforms, regional authorities were no longer able to interfere in judicial appointments.

Although the new law positively transformed the national judicial system in Russia, experts pointed out the increasing dependency of judges on the executive and the lack of law enforcement. As Popova (2006) demonstrates, the judges remained dependent in cases that were of concern to the authorities. In words of Popova (2006, p. 412), "hybrid regimes that hover in-between full democracy and consolidated authoritarism have proliferated in the 1990s and the judiciary usually plays a prominent role in their politics".

5.2.3.4 Access of Interest Groups to Policy-Making

Beginning in 1998, new business elites started to emerge in Russia. The main reason for emergence of new business players was the 1998 economic crisis that shook up the oligarchy that dominated Russian politics and economics in 1996 – 1998. After the government's default on its treasury obligations and the devaluation of the Russian ruble many banks, which were the major source of profit and influence in Russia, were pushed to the brink of bankruptcy.

Between 1998 – 2002, the consolidation of new economic elites occurred (see Table 5.20). The great majority of new business elites were regional industrialists. Thus, 25% of them came from Moscow or St Petersburg, 33% from other big cities and 42% from small towns and villages (Kryshtanovskaya and White 2005, p. 300). This new elite introduced a new influence on the political life in the country. In the words of Kryshtanovskaya and White (2005, p. 302), "it was no longer individual mavericks – the Borovois, Bryntsalovs and Berezovskys – who stood out on the political arena, but a series of more shadowy figures representing the most powerful corporations – Gazprom, Lukoil, Yukos, Alfa and so forth". Furthermore, Kryshtanovskaya and White (2005) argue that, despite the change in the influence strategy, an overall number of business elites that were represented in political institutions at the federal and regional levels significantly increased since Putin became president. A particularly crucial case represents the percentage of representatives of business elites in the Russian parliament significantly growing from 4.2% in 2001 to 30% in 2003 (see Table 5.12).

Table 5.12 Business Representation among Elite Groups in Russia in 1993, 2001 and 2003 (in %)

	Top leadership	***Duma deputies***	***Government***	***Regional elite***	***Overall***
Yetsin's Presidency (1993)	2.3	12.8	0	2.6	4.4
Putin's Presidency (2001)	15.7	17.3	4.2	8.1	9.3
Putin's Presidency (2003)	9.1	17.3	20	12.5	14.7

Source: Kryshtanovskaya and White 2005, p. 303.

In 2000, with the help of President Putin, the Russian Union of Industrialists and Entrepreneurs (RUIE) was created as a major lobbying group at the federal level. The creation of these groups served Putin's attempt to abolish the old personal system of ties between executive power and business groups (Barnes 2003, p. 178). Additionally, when Putin came to power he said that he would set similar rules for all players on the economic stage. The president met the country's largest businessmen, in July 2000. This meeting served to conclude a deal between the oligarchs and the president. Putin suggested not to raise questions about the privatisation that occurred in the 1990s and not to challenge the ownership of private companies. In exchange for this, the economic elites had to make their business more transparent, respect the state economic regulation and, most importantly, refrain from getting involved in politics.

Table 5.13 Leading Industrial Groups in Russia (2002)

Name of Industrial Group	**Name of Leader(s)**	**Major Assets**
Gazprom	Miller (replaced Vyakhirev)	Assets of former Soviet Ministry of Natural Gas
RAO EES Rossii	Chubais	Assets of former Soviet electrical monopoly
LUKoil	Alekperov	Oil fields, processors and pipelines
Menatep/ Rosprom	Khodorkovskiy	Yukos (oil), Rosplan (gas), regional power stations (electricity)
Surgutneftegaz	Bogdanov	Surgut oil fields and affiliated enterprises
Interros	Potanin	Norilsk Nikel (metals), Perm Motors, Silovyye Mashiny (mashine-building), Agros (agriculture)
Severstal	Mordashov	Cherepovetskiy Metallurgical Combine, its suppliers, and several constumers
Metalloinvest	Kiselev	Rossiyskiy Kredit's metallurgical holdings
Alfa/Renova	Fridman, Aven/ Vekselberg	Oil (TNK, Onako, Sidanko), Aluminium (SUAI), Cement (Alfa Cement), Telecommunications (Golden Telecom, Vympelcom, Vympelcom-R), food products (United Food Company), Banking (Alfa Bank)
Bolshaya MADAM Millhouse Group	Abramovich	Sibneft (oil), KrAZ, BrAZ (aluminium), Aeroflot (airlines)
Base Element (SibAL)	Deripaska	SaAZ (aluminium), GAZ, PAZ (automobiles)
UGMK/ Yevrazholding	Makhmudov/ Abramov	Urals Mining and Metallurgical Combine (metals), Magnitogorsk Metallurgical Combine (metals), coal mines
MDM Group	Melnichenko	MDM Bank (banking), coal, steel, pipes, fertilizer
Sistema	Yevtushenkov	Telecom companies

Source: Barnes 2003, p. 162.

The electricity generation assets were sold in 2007, primarily to domestic monopolists in the gas, oil and coal sector, such as Gazprom, IESholding, Norilsknikel and SUEK and to some foreign investors such as Fortum, Enel and Eon (Gore and et al. 2012). The outcome of the privatisation of power generation assets was that four private companies, Gazprom, RosAtom, RusHydro and SUEK, controlled about 44% of total electricity generation.

The tendency to make a few large companies beneficiaries of state economic policy (Wengle 2012) underpinned the new institutional context of the Russian electricity industry in the 2000s. The merger between corporate capital and political power or the so-called "state-corporate capitalism" (Aslund 2006, 2007) emerged in the electricity industry. Instead of the creation of many private electricity generation companies competing with each other for electricity costumers, in 2006 – 2008, only 20 new private generation companies were created, which were owned by oligarchic conglomerates. In the words of Wengle (2012, p. 82), "the liberal logic of creating bustling competition among private power generators was apparently

subordinated to another logic of asset redistribution—that of selectively awarding ownership to different conglomerates with large shares in valuable power plants".

5.2.4 Mode of Actors' Interaction and its Effectiveness

The analysis of actors's constellation in electricity liberalisation policy-making during the 2000s in Russia allows one to make the conclusion that the preferred mode of actors' interaction was the hierarchical direction by the government, with elements of bargaining with regional and business elites. This mode of actors' interaction was effective because the electricity monopoly was abandoned and the fully liberalised model of the electricity market regulation introduced.

It was the new institutional context that made the hierarchical direction of the reform by the government in Russia effective in the 2000s, in comparison with the same preferred mode of actors' interaction in the 1990, which, however, failed to produce an intended outcome. This new institutional context can be characterized as power consolidation by the government in three spheres: the centre-regional relationship, organization and regulation of the electricity industry and the state-business relationship.

First, the new government strengthened the central state's power at the expense of the powers of regional elites. According to the Presidential Decree of 13 May 2000, Russia's 89 federal subjects were divided into seven bigger administrative districts. These administrative districts were headed by presidential representatives that allowed the president to exercise direct control of power organs in all Russian regions. Apart from that, the government had initiated several laws allowing for the legal removal of governors and parliaments, once it was proven in court that they had consciously passed legislation contradicting the Russian Constitution. In December 2004, the president was given the power to appoint regional governors and republican presidents.

Second, the organization of the electricity industry witnessed consolidation moves as well. The reform introduced the centralized system of the wholesale electricity market organization, in which the federal grid company managed the high-voltage transmission grid, and the single system operator unified the central dispatch unit and the regional dispatch units within a hierarchical structure. Regional generation and distribution companies were horizontally integrated and became organized inter-regionally. The government strengthened its powers in the regulation of the electricity sector by obtaining a strong control over the settlement of the electricity tariffs.

Finally, the third consolidation concerned the state-business relationship. First, the government distanced the oligarchs from the political centre of power and replaced the old horizontal bargaining with the oligarchs with vertical bargaining. The core of this new vertical bargaining between the state and business was that the state allowed business settlement for those undertakings that were loyal to the government. This new institutional context of the state-business relationship in the 2000s was well described by Rutland (2009):

> The oligarchs underestimated Putin's power and his political acumen. Putin had the vast resources of the Russian state at hand, a cornucopia of sticks and carrots that soon won the loyalty of virtually all the regional bosses and business leaders. The security apparatus of the Soviet state, the renamed Federal Security Service, had shrunk in size, but was still intact and eager to expand its sphere of action once its former leader became president. Putin also enjoyed huge popular legitimacy, having been directly elected in March 2000, and again in March 2004, and maintaining approval ratings above 70% in the intervening period.
>
> The new business corporations were very powerful political actors, with considerable economic resources and direct access to the political power elite. But the headlong speed of their rise meant their popular legitimacy was fragile and their base of support in society very narrow (Rutland 2009, p. 7).

The consolidation of power put the government at the top of the policy-making and gave it a preferential position in the bargaining on the electricity liberalisation policy-making with political and business elites who opposed the reform. The electricity liberalisation reform was attacked by many actors. These were regional elites who feared to lose their control over regional power generating and distribution assets, some governmental officials that wanted to keep control over electricity assets, the communist fraction and the Yabloko liberal fraction in the State Duma, as well as minority share-holders in RAO EES Rossii. While bargaining with these actors the government made a number of concessions to them. Thus, it left the powers of regional authorities to manage low-voltage distribution grid, set the regional electricity retail prices and exercise the control over some power generation stations that were not transferred to the property of the wholesale generating companies. The Duma's requirements not to allow the state's share in the electricity industry assets to fall below 52%, to maintain the state's control over the transmission and distribution grids, to introduce a clear distinction of capacities between federal and regional regulatory authorities and to set electricity tariffs in conjunction with the federal budget, while considering regional and social conditions were incorporated into the new electricity law. Concerning the minority stakeholders in RAO EES Rossii, shares in the inter-

regional power generating companies were offered to these stakeholders in proportion to their existing stake.

Within the government and RAO EES Rossii, which implemented the reform, there were private interests in the electricity industry. As stated by presidential advisor Andrei Illarionov, the electricity liberalisation reform in Russia in the 2000s was "a case of privatisation when Cabinet officials are 'privatised' by private companies and corporations" (re-quoted from Rutland 2005, p. 294). In literature, this merger between corporate capital and political power is also known as "state-corporate capitalism" (Aslund 2006, 2007). The outcome of applying state-corporate capitalism to electricity industry reforms in the 2000s in Russia was that electricity generation assets were in their majority privatised by domestic monopolists in the gas, oil and coal sector that stood close to political elites, such as Gazprom, IESholding, Norilsknikel and SUEK, and that four of them, Gazprom, RosAtom, RusHydro and SUEK, controlled about 44% of total electricity generation after the privatisation.

5.3 Sub-Conclusion

It must be concluded that the implementation of the liberal models of electricity sector organization in Russia were ineffective in the 1990s and successful in the 2000s.

The intention of the Yeltsin government to implement the liberal pool model of the organization of the electricity sector in the 1990s led to the hybrid form of the functioning of the national electricity market in which the state electricity monopoly was saved, but access to the power generation and supply segments of market for private firms was formally possible.

The mode of actors' interaction on electricity liberalisation that was employed by the government in the 1990s was effective. This was due to the fact that too many vested interests preferred a status quo in the electricity sector and the preservation of the monopolist organization of the electricity industry. Among those vested interests belonged the political and business elites that stood behind the monopolistic electricity structures, large energy-intensive consumer industries as well as ordinary people. On one hand, business interests could make larger profits in the monopolist structures because of the absence of competition and the long-term contracts between electricity producers and consumers. On the other hand, the monopoly in this industry allowed it to dictate prices and to sell cheap electricity to people and consumer industries, which would become immediate losers in the event that the government decided to effectively implement the liberal pool model of electricity market organization.

As the number of vested interests in Russia was higher than in Ukraine, due to the larger power generating industry and policy-making powers of Russian regions, the actors' interaction on electricity liberalisation policy-making here was more complex than in Ukraine. Russia experienced two parallel modes of actors' interaction that have impacted the outcome of the reform on electricity liberalisation in the 1990s. One dominant mode was the hierarchical direction by the Russian government with elements of bargaining between the liberals and the reformers in the government and the electricity industry itself. Among the ruling elite of the electricity sector belonged regional governors and republican presidents that obtained control over the electricity distribution assets in their regions, regional business elites and energy intensive consumer industries. From the other side, there were controversial positions towards the main direction of the electricity reform between the Russian government and the Russian parliament and the second main mode of actors' interaction, the negotiations and the outcome of the majority vote in the State Duma, emerged in the second half of the 1990s.

The implementation of the pool model for the organization of the electricity industry contained two main bargaining deals between the Russian government and regional, political and business elites. First, because of protests from regions, only an accounting separation of electricity generation and distribution assets was introduced, rather than the legal separation necessary for the proper functioning of the pool model. Additionally, the new rules required that regional administrations had to transfer 50% of their shares in regional distribution companies to the state company RAO EES Rossii. Although the government saw this requirement as a good deal with regional elites some of them refused to transfer their shares and continued to control power generation and distribution assets in their respective territories.

The formation of the State Duma was a major shift in the Russian institutional structure in the second half of the 1990s. The Duma introduced important constraints on presidential power because all federal laws in order to pass had to receive a majority of the Duma members' votes in three consecutive readings. In this way, the Duma was able to become an independent veto player on the question of electricity liberalisation. In the second half of the 1990s the communist-dominated Duma was able to undermine any reform project of the government that would leave the state with less than 51% of the shares of the RAO EES Rossii and to block any reforms on the restructuring of this monopoly.

In the 2000s, Russia witnessed a change in the national institutional context. This new institutional context was characterized by power consolidation by the government in three spheres: the centre-regional relationship, organization and regulation of the electricity industry and the state-business relationship. First, the new government strengthened the central state

power at the expense of the powers of regional elites. Following the Presidential Decree of 13 May 2000, Russia's 89 federal subjects were divided into seven bigger administrative districts. These administrative districts were headed by presidential representatives that allowed the president to exercise direct control over the power organs of all Russian regions. Apart from that, the government had initiated several laws allowing for the legal removal of governors and parliaments once it was proven in court that they had consciously passed legislation contradicting the Russian Constitution. In December 2004, the president was given the power to appoint regional governors and republican presidents. Second, the electricity liberalisation reform introduced the centralized system of the wholesale electricity market organization, in which the federal grid company managed the high-voltage transmission grid and the single system operator unified the central dispatch unit and the regional dispatch units within a hierarchical structure. Regional generation and distribution companies were horizontally integrated and became inter-regionally organized. The government strengthened its powers in the regulation of the electricity sector by obtaining a strong control over the settlement of the electricity tariffs. Finally, the third consolidation concerned the state-business relationship. The president cautioned the oligarchs to stay out of politics and promised to maintain equilibrium and not to favour any of them. The core of this new vertical bargaining between the state and business was that the state allowed business settlement for those undertakings that were loyal to the government. In return for economic favours from the state, businessmen were expected to contribute to the socio-economic development of the country. This merger between corporate capital and political power is also known as "state-corporate capitalism".

The consolidation of power put the government at the top of policy-making and allowed the emergence of the vertical bargaining between the government and the president on one side and political and business elites on the other side. While bargaining on the electricity liberalisation reform, the government made a number of concessions to those actors who opposed the reform. Thus, it allowed regional authorities the powers to manage low-voltage distribution grid, set the regional electricity retail prices and exercise control over some power generation stations that were not transferred to the property of the wholesale generating companies. The Duma's requirements not to allow the state's share in the electricity industry assets to fall below 52%, to maintain the state's control over the transmission and distribution grids, to introduce a clear distinction of capacities between federal and regional regulatory authorities and to set electricity tariffs in conjunction with the federal budget, while considering regional and social conditions were incorporated into the new electricity law. Concerning the minority stakeholders in RAO EES Rossii, shares in the inter-regional power generating companies were offered to these stakeholders in proportion to their existing stake.

During the 2000s, in Russia, the hierarchical direction of electricity liberalisation by the government with the elements of the vertical bargaining with political and economic interest groups was effective. In 2003, the electricity law was passed by the parliament. In 2008, the state electricity monopoly was abandoned and the electricity generation assets were, in their majority, privatised by domestic monopolists in the gas, oil and coal sector such as Gazprom, IESholding, Norilsknikel and SUEK.

6. Comparison

6.1 Comparison of the Outcomes of Electricity Liberalisation Reforms in the EU, Ukraine and Russia

The countries of the EU, Ukraine and Russia, at the beginning of the 1990s, faced the need to reform the electricity industries. Although the monopolistic electricity industries had functioned well in the countries of the EU and produced sufficient amounts of energy, the demonopolization of infrastructure industries, such as telecommunications, which occurred nearly worldwide in the end of the 1980s and the beginning of the 1990s, and the experience of Great Britain with the liberalisation of its electricity industry raised voices in Europe for the emergence of a new regulatory regime in the electricity sector designed to promote competition in this imperfect market. On the contrary, Ukraine and Russia's electricity industries, after the dissolution of the Soviet Union at the beginning of the 1990s, were in the desperate need of reform and the authorities of these countries decided to use the example of Great Britain in the sphere of electricity regulation.

6.1.1 Outcome of Electricity Liberalisation in the EU

The experience of the European countries in deregulation of the electricity industries was unique, because the policy-making represented itself as a top-down process driven by the directives of the European Parliament and the Council. Already, by the end of the 1980s, the European Commission voiced the opinion that the establishment of a common electricity market in Europe was an indispensable part of the European internal market. At the end of the 1980s and the beginning of the 1990s, the Commission failed to persuade Member States to include an energy chapter into the treaties and started to develop a community strategy for energy. To a large extent, this became possible after the European Court of Justice broke the old understanding of electricity as a service of general economic interest and ruled instead that electricity was a good and consequently subject to competition rules, as established by EU treaties (see Chapter 3.1.3.1.3). The Commission used the competition law to argue that dominant positions of electricity utilities of the Member States abused competition in the EU internal market and that there was a need for the establishment of common rules that regulated the trade in electricity among the states. The Commission's intention to develop an internal

electricity market was welcomed only by the UK, Portugal and large industrial users. France, initially, supported the Commission as well because of its desire to export its surplus electricity.

The Commission's initial proposal for common rules in electricity was rejected by the Council, in particular because of its reference to an obligation to give third parties the opportunity to use transmission networks for the transport of electricity. In the literature, this proposal was evaluated as too radical for that period of time. Member States, as well as the European Parliament, pledged support for gradual harmonisation measures on the way to the establishment of the single electricity market.

Table 6.1 Outcomes of the Electricity Liberalisation Reforms in the EU, Ukraine and Russia between 1990 and 2010

	1990 - 1999	**2000 - 2010**
EU	1996 Authorisation or tendering in the generation sector, option to choose between the negotiated third-party access, regulated third-party access or the single buyer model, accounting unbundling *Implemented 1999*	2003, 2009 Regulation of the national markets according to the model of the full competitive market: authorisation procedure in the generation sector, the options of ownership unbundling of the power assets, the independent system operator or the independent transmission operator , regulated third-party access, right of consumers to freely choose their suppliers *Partial Implemented March 2011*
Ukraine	1994 and 1995 Presidential Decrees, 1997 Law about introduction of the pool model of the organization of the electricity market, authorisation in the generation sector *A hybrid form of the pool model implemented: A state-owned vertically integrated undertaking, nearly all generation assets in state property, private minority stakes in distribution companies and CHPP*	2002, 2007 Concepts about the implementation of the competitive wholesale electricity market *Not implemented during the 2000s, the electricity market still operated as a single buyer, the majority of electricity generation and distribution assets state owned, gradual transition to the liberalised wholesale market till the end of 2014 is envisaged*
Russia	1992 Presidential Decrees about the introduction of the pool model of market organization *A hybrid form of the pool model implemented: a state-owner vertically integrated joint-stock company, majority of generation and distribution assets in state property, no legal separation of power generation and distribution assets*	2003 Law about the introduction of the competitive wholesale and retail electricity market *Monopoly abandoned 2008, gradual transition to the full liberalised electricity market till the end of 2014, generation companies in the property of a few largest firms, nuclear power plants, majority of hydro power plants, transmission grid and majority of distribution assets under the control of the state, horizontal integration of regional electricity generation and supply*

Source: Own compilation (2013).

In 1993 – 1996, the Commission had to accept a number of proposals from Member States, in particular France and Germany, and from the European Parliament. Thus, it was agreed that the Member States could switch to the weaker negotiated third-party access. Also, France's alternative proposal regarding the third-party access system called the single buyer concept was accepted. Apart from the introduction of first harmonisation in the area of the third-party access to the transmission networks of the Member States, the agreement on the gradual and partial opening of the national electricity markets was reached, so that the increasing numbers of generators and consumers would have the opportunity to freely negotiate the purchase and sale of electricity. The first directive on electricity market regulation in Europe, however, was only an initial step in the process. Although it introduced competition into power generation by allowing new generators to access the industry via authorisation or tendering it only established accounting unbundling so that the possibility for vertically functioning undertakings remained.

The first electricity directive instructed the Commission to report on the range of needs for further harmonisation of national regulations of the electricity industry. In its 1998 and 2000 harmonisation reports, the Commission concluded that further harmonisation steps were necessary to eliminate a number of market distortions that restricted cross-country trade in electricity (Commission of the European Communities 1998a, 1999). At the end of the 1990s, the Commission was in a difficult position. One one hand, it did not find itself in the position to bypass the legislative procedure in the Council of Ministers and Parliament for introduction of further harmonisation rules that were necessary for the functioning of the common internal electricity market. On the other hand, the pro-competition position of the ECJ had changed since the end of the 1990s. The Court was unwilling to deny competences to Member States in the delivery of public service obligations in the electricity sector, as long as appropriate legislation was adopted on the EU level and, therefore, did not support the Commission in its strategy to initiate infringement procedures against Member States in order to press them to open their national electricity markets (see Chapter 3.2.3.1.3).

In March 2000, the European Council defined the functioning of the internal electricity market in Europe as unsatisfactory and empowered the Commission to complete the internal electricity and gas market. According to the European Council, negotiated third-party access, the single buyer model, the tendering procedure and the accounting separation of transmission assets from generation and supply were all unsatisfactory instruments for the functioning of the competitive national power generation markets. Following this empowerment, the Commission wrote a draft directive where it proposed that Member States open all electricity customers to competition to 2005, legally unbundle transmission and distribution grid from power generation

and supply, introduce the sole option of regulated third-party access for all market participants in the national electricity markets of Member States and establish independent national regulatory authorities that had to ensure *ex-ante* market regulation (Commission of the European Communities 2001a).

However, the overall position of the Member States on the internal liberalised electricity market was resistant at that time, because of the California crisis, where the liberalisation of the electricity market led to much higher wholesale energy prices, market distortions and bankruptcy of supply utilities and major disruption. Additionally, France and Germany opposed some of the Commission's concrete proposals. France strongly opposed the rush opening of the national electricity markets, and Germany was against the functioning of independent regulators and *ex-ante* regulation. Because of this, the Barcelona Council Meeting, in March 2002, decided to postpone the date for full electricity market liberalisation to 1 July 2007 and agreed to leave the regulatory authorities under the control of national governments. The second electricity directive, which was adopted in June 2003, required that Member States had legally unbundle the transmission grid from power generation and supply assets, left the sole option of regulated third-party access to national grid systems and instruct the Member States to establish national regulatory agencies with well-defined functions and greater transparency (European Parliament and the Council 2003a).

In a number of following documents, the Commission reported that the European electricity market remained national in scope, maintained a high level of concentration and scope for exercising market power and lacked a free access to infrastructure (Commission of the European Communities 2006a, 2006b and 2007a). Based on these reported market distortions the Commission proposed the third regulation initiative with the purpose of properly unbundling electricity generation, transmission and supply assets and establishing independent national regulatory authorities. During the discussion of the draft in the Energy Council, it happened that a blocking minority rejected full ownership unbundling as a mandatory measure. During the continued negotiations, the Commission agreed to include, in addition to ownership unbundling, two further options between which organization of national electricity markets the Member States, the Independent System Operator and the Independent Transmission Operator. Furthermore, the Council agreed on the establishment of the regulatory agency, which would be independent of Member States and the Commission, and which would consist of independent and transparent national regulatory authorities, adding, however, that the agency must have only tasks of an advisory nature and no decision powers concerning technical cross-border issues (European Parliament and the Council 2009a).

6.1.2 Outcome of Electricity Liberalisation in Ukraine

Ukraine's electricity sector was in a state of economic decline after the fall of the Soviet Union, although Ukraine inherited a rather developed electricity industry, as well as electricity transmission and distribution grids. In 1994, the Ukrainian Ministry of Power and Electrification (Minenergo) originated the proposal to modernize the national power engineering sector. As a reference in policy orientation, they proposed the modernisation of the electricity sector in the United Kingdom in 1989 – 1990 and the creation of a wholesale market pool for electricity in which private generators could compete in price to supply demand and private suppliers could buy electricity from the pool and sell it to large industrial consumers.

In 1994 and 1995, following the corresponding decrees of the president, a pool organization of the electricity market was introduced. This model required an unbundling of power generation from transmission and distribution and an introduction of competition into the electricity generation and wholesale trade. According to the Members Agreement that was signed in 1996 by power generation companies, the state transmission and distribution grid company and electricity suppliers, the state-owned company named the National Dispatch Centre had the responsibility of purchasing and dispatching all electricity produced by state and private power generating companies. Finally, the last legal step in reforming the national electricity market, according to the pool model, was the Law on Electricity that was adopted by the Ukrainian Parliament in 1997.

The reform of the establishment of the pool model on the wholesale electricity market in Ukraine was not fully implemented. The loan from the World Bank for the reform facilitation was cancelled at the request of the Ukrainian government in 1999, due to the impact of the Russian financial crisis on the Ukrainian economy and its unwillingness to increase electricity tariffs for household consumers.

By the end of the 1990s, a hybrid form of the functioning of the electricity market, between the monopoly and the competitive wholesale electricity market, was established in the electricity industry in Ukraine. Market regulatory institutions, such as the National Energy Regulatory Agency, and electricity prices and tariffs were controlled directly by the government. The privatisation of generation companies was not a part of the reform; therefore, no real competition happened in the power generation sector of economy. In 2004, the state holding company "Energy Company of Ukraine" (ECU) obtained an operational control over power distribution and regional supply companies with state owned stakes varying from 25% to 100%, power generating companies and Ukrinterenergo, the state enterprise dealing with exports to

Moldova and Eastern Europe. The ECU controlled 40% of the country's power generation output and 65% of power supply and became, therefore, a dominant player in the national electricity market. Aside from the ECU, the state owned all nuclear power stations and hydro power generating stations.

The new Orange Coalition government of Yushchenko and Timoshenko, starting in 2005, tried to obtain strong state control over the country's energy companies. The new government intended neither to eliminate the national holding company Energy Company of Ukraine, which consolidated power engineering and distribution assets and was a major distorter of competition in the wholesale electricity market, nor to sell stakes in regional electricity distribution companies and power generating plants to private companies.

In November 2007, the Cabinet of Ministers adopted an action plan that aimed at electricity market liberalisation. This reform envisaged the transition from the single buyer model to the competitive wholesale electricity market, with direct contracts between electricity producers and electricity suppliers and eligible customers. In order to introduce the competitive wholesale electricity market model, the government, first, intended to achieve full payments for electricity and to solve problems of accumulated debts and price imbalances and, second, to develop and adjust the adequate legal framework.

In 2006, with respect to these aims, the government, for the first time since 1999, raised electricity tariffs for household and non-household groups of consumers. Additionally, it removed cross subsidies and cancelled "privileged" tariffs for plants that benefited from "special" electricity prices. In June 2005, the parliament adopted the Debt Law that provided the framework for a resolution of the debts of power, coal, gas and district heating companies. The wholesale market operator Energorynok created a Special Settlement Centre that managed mechanisms of debt restructuring such as write-offs, offsets, partial payments, refinancing of debts and provided various incentives for energy companies to participate in these settlements, such as tax privileges and a temporary ban on bankruptcy proceedings.

Yushchenko clearly confirmed Ukraine's course towards European integration and the willingness to implement European standards in the electricity market regulation. The EU-Ukraine Action Plan, signed in 2005, established a set of objectives for converging Ukraine's energy policy towards EU internal energy policy. One of the objectives was gradual convergence towards the principles of the EU internal electricity market. Starting in 2008, Ukraine led the negotiations to access the Energy Community Treaty and join the organization in 2011. According to the requirements of the Energy Community Treaty, Ukraine is obliged to establish

a fully liberalised electricity market and to implement the Second and the Third Energy Package of the European Union.

6.1.3 Outcome of Electricity Liberalisation in Russia

In Russia, the reforms restructuring the electricity industry in the 1990s were intended to implement a pool regulation model. According to the corresponding 1992 decrees of the Russian president, enterprises in the power industry were transformed into joint-stock companies and a pool model of organization of the electric-energy complex, which was largely based on the liberal Anglo-Saxon model, was introduced.

The implementation of the decrees led to the establishment of the Russian joint-stock company of energy and electrification called RAO EES Rossii that had to hold a majority of shares in the regional power distribution joint-stock companies AO-Energos as well in the power generation joint-stock companies AO-Elektrostantsiyas. Therefore, concerning the ownership structure of the Russian electricity industry, it was regulated such that the majority of power generation and distribution assets had to belong to the state.

Apart from the ownership structure, the reform introduced a pool model of organization to the power engineering sector, in which competition had to be introduced into the power generation and retail trade sectors. According to the reform, a federal wholesale market of electricity and capacity FOREM was established. AO-Elekrostansiyas and nuclear power plants had to supply electricity to the wholesale market and RAO EES Rossii acted as a single buyer of whole electricity and sold it to AO-Energos which distributed electricity to consumers.

However, the pool model was only partially implemented in Russia. RAO EES Rossii became both the operator of the wholesale market as well as the owner of the majority of power generation and power distribution assets and the single owner of the transmission grid. The legal separation of generation, transmission and distribution assets was not implemented and the wholesale market FOREM, therefore, was established in a hybrid form that entailed elements of the monopoly and the pool model. Generators did not have access to the transmission grid on equal terms, and consumers had no right to choose their suppliers. RAO EES Rossii had the unique right to govern the wholesale market and to decide which generating companies should supply energy to the market and in which amount. The Federal Energy Commission (FEC) that had to control electricity prices was politically controlled by the state.

In April 1997, three governmental resolutions and the corresponding decree of the president were issued in order to introduce the legal unbundling of power generation, transmission and distribution assets. Despite the fact that the requirement of the legal separation of power generation and distribution assets was vital for the proper functioning of the pool model of market organization, the key issues of the proposals were not implemented.

The situation drastically changed in the 2000s, after Putin became president. In December 2000, the new administration of RAO EES Rossii with the company's CEO Anatoly Chubais submitted the concept of restructuring RAO EES Rossii to the government. The concept foresaw the establishment of a fully competitive energy market in Russia and was prepared by RAO EES Rossii in collaboration with Arthur Andersen Consulting and the Ministry of Economic Development of the Russian Federation. The concept called for the effective unbundling of electricity generation, transmission and distribution assets, introduction of competition into the electricity generation and supply sectors and non-discriminatory third-party access to the transmission and distribution assets. The concept put privatisation of generation assets at the forefront of the electricity liberalisation reform.

The concept was criticized by the federal government and, in particular, presidential advisor Andrei Illarionov on one side and regional authorities on the other. During 2000 – 2001, 14 alternative proposals to the government were submitted. After hearings in parliament and expert discussion, the government issued a decree on the restructuring of the electric power industry that combined the competitive power generation and supply sectors of the electricity industry and horizontal integration of regional distribution and supply.

The State Duma introduced a further list of amendments into the draft electricity liberalisation law of the government. The main amendments were that the state share in the electricity industry assets could not fall below 52% and could be increased up to 75%, that the state must keep control over electricity transmission and distribution assets, that there must be a clear distinction of capacities between federal and regional regulatory authorities and, finally, that tariffs were to be established in conjunction with the federal budget and were to take regional and social conditions into consideration. The final version of the electricity law was adopted by the State Duma in February 2003 and signed by the president in March 2003. According to the law, the key element of the electricity market regulation was the separation of transmission and dispatching of energy from its generating and selling or buying. The transmission grid remained the state's natural monopoly, while 6 federal wholesale power generators and 14 wholesale territorial power generators were organized and sold to private firms. The regional energos were to be consolidated to form 40 instead of the previous 70

companies. The energos were left to manage regional distribution networks and provide electricity supply businesses while competing with a vast number of private suppliers.

The privatisation of electricity generation assets occurred during the autumn of 2007 and the spring of 2008. The outcome of this privatisation was that four large domestic monopolists in the gas, oil, electricity and coal sector, Gazprom, RosAtom, RusHydro and SUEK, controlled about 44% of total electricity generation. In Juli 2008, RAO EES Rossii ceased to exist as a monopolistic regulatory centre of the national electricity industry.

6.2 Comparison of the Modes of Actors' Interactions on Electricity Liberalisation Policy-Making

6.2.1 The EU

From the analysis of the actors' constellations during electricity liberalisation policy-making at the EU level in the 1990s and the 2000s, it can be concluded that the mode of actors' interaction was a negotiated agreement. However, the institutional settings in which actors proceeded with their preferences and actions varied in the 1990s and 2000s.

The European Commission played a major role in policy-setting on electricity liberalisation in Europe in the 1990s and 2000s. This was possible because of the Single European Act and the new Maastricht Treaty which strengthened supranational authority of EU institutions in a number of policy areas. Although they had not written down the competences of the EU institutional actors in the energy policy, they contributed to the so-called political spillover where European institutional actors exploited and defined their new competences within the new institutional framework created by the treaties. Thus, such circumstances allowed the European Commission to argue that the common internal electricity market was part of the European internal market. Additionally, during the first half of the 1990s, the European Court of Justice ruled that electricity was a good and that the EU rules on the free movement of goods had to be applied to electricity as well. In this way, the competences in electricity liberalisation policy-making were shifted to the European decision-making level (see Chapter 3.1.3.1.3). External forces, such as global liberalisation of infrastructure industries, effective liberalisation of technologically advanced sectors, in particular telecommunications and the adoption of comprehensive electricity market reforms in Great Britain and Nordic countries advanced the electricity liberalisation policy-making on the EU level.

However, in the 1990s, big national utilities and national governments formed a powerful opposition to the electricity liberalisation on the EU level. Member States saw the development of the common electricity market as a danger to national security of supply and to state's public service obligations. Because of this political silence, the Commission found it impossible to proceed with liberalisation of the national electricity markets through its direct competition law powers and, thus, chose the negotiated decision route of Council legislation. The Commission was able to argue that all issued electricity directives must be defined in relation to the internal market and handled, therefore, through majority, rather than unanimous, rule according to Article 100a introduced with the Single Act and further developed in the Maastricht and Amsterdam Treaties.

The position of the European Parliament in the 1990s, which was very much the same as that of the Council, underpinned the negotiation powers of the Commission. In the 1990s, Parliament guided the Commission towards significant changes in its policy-setting in electricity liberalisation. During the negotiations on the first electricity directive, it rejected one of the main policy instruments proposed by the Commission in the first draft directive, the so-called mandatory third-party access. Together with the Council it agreed on another, less ambitious version of the electricity market organization. Furthermore, the European Parliament supported bargaining between France and Germany on the issue of the single buyer model that was introduced in the draft directive as a third possible option for the organization of the electricity market (see Chapter 3.1.3.1.2).

The adoption of the first electricity directive was, therefore, an outcome of the changing institutional context on the EU level, on one hand, and the possibility of bargaining between France and Germany based on the lowest common denominator, on the other.

The EU negotiations on the electricity liberalisation contributed to the policy-learning of states' actors and caused them to change their preferences. The first evidence of that policy-learning was the fact that some Member States exceeded the minimum requirements of the first EU electricity directive when implementing it. This evidence was particularly strong in those countries that preferred to agree on the lowest common policy denominator. One prominent example was Germany, which fully opened its electricity market to competition in 1998 despite the requirement of the EU electricity directive for a 30% market opening. Additionally, France's policy preferences in electricity liberalisation at the EU level gradually changed as well. Thus, during the negotiations on the second electricity directive, France took the position of the majority of the Member States that the single buyer model, which it had preferred during the 1990s, was not an effective instrument for the establishment of the liberalised electricity market.

It agreed on the legal unbundling of the electricity generation, transmission and distribution assets, a position that would have been unbelievable for France in the middle of the 1990s.

At the end of the 1990s, the high political salience of electricity liberalisation in Europe remained. Therefore, the Commission had not taken into consideration the use of "coercive" instruments to force liberalisation on the national electricity markets, based on Community law provisions on monopolies and abuses of market power and continued with the acknowledgement that the further harmonisation rules that were necessary for the establishment of the truly competitive electricity market in Europe should be drafted as a Council and European Parliament directive.

There were a number of changes within the institutional setting on the EU level in the 2000s. The Commission was able to strengthen its powers in electricity policy-making because of the collaboration between DG TREN and DG Competition, which occurred after DG Competition obtained access to policy-making in the common energy policy and strongly pushed for a more radical energy liberalisation package. However, the pro-competition position of the ECJ changed. Since the end of the 1990s, the ECJ was unwilling to deny competences to Member States in the area of the delivery of public service obligations, as long as appropriate legislation was adopted at the EU level (see Chapter 3.2.3.1.3). As a result, the Commission was not able to operationalise the threat of instigating ECJ proceedings against the Member States. In the 2000s, the European Parliament was divided along national, rather than political party, lines on the issues of the establishment of the European internal electricity market (for detail see Chapter 3.2.3.1.2).

Under such, partly new, difficult circumstances within the legislative and judicial arena the Commission used four main policy instruments to push for further electricity liberalisation. First, it launched electricity sector inquiries and proposed a new energy strategy for Europe in which it reported that the internal electricity market still had a number of significant distortions. Second, it underlined that, if necessary, it would make full and combined use of the Commission's powers under antitrust rules (Articles 81, 82 and 86 EC), merger (Regulation (EC) No 139/2004) and state aid control (Articles 87 and 88 EC) in order to assure that competition was not distorted. The third, policy instrument, which was completely new, was that the Commission began to build coalitions with interest groups and sectoral governance actors in order to delegate some policymaking responsibilities to them and, in this way, to gain additional capacity and legitimacy outside the legislative and judicial arenas. The main sectoral governance institutions that were established at the end of the 1990s and the beginning of the 2000s were the Electricity Regulatory Forum of Florence, the European Transmission System Operators

Association (ETSO) and the Council of European Energy Regulators (CEER). However, it should be underlined that the position of the European interest representations of electricity supply and energy-intensive consumer industries was pragmatic, rather than truly supportive of liberalisation. On one hand, they supported the liberalised electricity market in Europe but strongly opposed some of its features, which brought disadvantages for them, such as the abolishment of long-term supply contracts (for detail see Chapter 3.2.3.2). Finally, the Commission voiced the necessity for further regulatory action on the Community level.

Despite the policy-learning processes in the Council and the specific institutional setting on this level, negotiations in the Council on the second and third electricity directives contained bargaining elements as well. Thus, during negotiations on the second electricity directive, Member States had to agree with France's requirement for a more gradual opening of national electricity markets and Germany's requirement for rejecting the *ex-ante* regulation of national regulatory authorities in order to adopt the second electricity directive.

During the negotiations on the third electricity directive, the Commission had to make concessions to find a consensus. Three concessions were made by the Commission during the negotiations on the third electricity directive. First, it retained a "fallback option" of the Independent System Operator for those Member States that rejected ownership unbundling. Second, the Commission included in the draft directive the reciprocity clause that specified that ownership unbundling would also apply to third country companies in order to prevent takeover of transmission systems by vertically integrated companies from outside the EU. Finally, third, because of strong opposition that came from Austria, Bulgaria, France, Germany, Greece, Luxembourg, Latvia and the Slovak Republic, the Commission agreed to include into the third electricity directive a third option of "effective and efficient unbundling of transmission system operators".

Therefore, it could be concluded that the high political sensibility of the energy issue made bargaining elements between Member States on the lowest common denominator present in the electricity negotiations in the 1990s as well as in the 2000s. However, the policy-learning of Member States during negotiations on the EU level, as well as the Commission's preparedness to make concessions necessary to find consensus, made the negotiations on electricity liberalisation in the EU a success story and did not lead them to policy deadlock. The negotiated agreement as a prevailing mode of actors' interaction on the issue of electricity liberalisation at the EU level contributed to the gradual changes of Member States' positions, concerning the reforming of their national electricity markets and the establishment of the internal electricity market in Europe and provided an opportunity for the Commission to devise its initiatives and proposals. The negotiations on the EU level were an arena in which a wide range of actors were

able to discuss complicated issues concerning the electricity sector restructuring and share their knowledge. Such a possibility is only partly provided in other modes of actors' interaction.

6.2.2 Ukraine and Russia in the 1990s

Ukraine and Russia represent a comparative case study of the modes of actors' interaction in electricity liberalisation. First, both of them inherited the Soviet legacies in the national institutional contexts that caused a number of similar path-dependent decisions in the 1990s. At the beginning of the 1990s, neither country possessed the institutional elements that were necessary for effective governance and effective policy-making, such as rational-legal autonomous civil service, effective legal institutions that constrain actions of executive authority as well as a system of institutions that keep political authority accountable vertically and horizontally (in the first line free elections, strong civil society and media as well as effective law-enforcement), all of which they would only slowly develop following the fall of the Soviet Union. Second, both countries decided on the same model of electricity market liberalisation in the first half of the 1990s, and the impact of external forces, such as the incentive of accession to the EU, were equally minimal on them.

In both countries, the president and the government initiated the liberalisation of electricity industry. However, they were not able to hierarchically direct the implementation of the electricity reform, the outcome of which was shaped in political bargains. In the case of Ukraine, the government had to bargain with electricity industry and business interests. In Russia, the government tried to find a bargain with regional, political and business elites.

Because of the fact that, at the end of the 1990s, the electricity industries in Ukraine and Russia remained not liberalised and monopolies continued to dominate the market, it is concluded that the modes of actors' interaction on electricity liberalisation in both countries in the 1990s were ineffective. This was due to the fact that too many vested interests preferred a status quo in the electricity sector and the preservation of the monopolist organization of the electricity industry. Among those vested interests belonged the political and business elites that stood behind the monopolistic electricity structures, large energy-intensive consumer industries and ordinary people. On one hand, business interests could make larger profits in the monopolist structures because of the absence of competition and the long-term contracts between electricity producers and consumers. On the other hand, the industry monopoly was allowed to dictate prices and to sell cheap electricity to people and consumer industries that would become

immediate losers in the event that the government decided to effectively implement the liberal pool model of electricity market organization.

In Ukraine, the electricity liberalisation reforms of the 1990s were hierarchically directed by Kuchma's government, with elements of bargaining with interest groups. President Kuchma was able to centralize executive power in the state and to broaden presidential authority over the government so that he obtained the right to staff the entire executive hierarchy at all levels. However, although Kuchma was able to obtain power over the distribution of rents in the country, he had to exchange special privileges, public sector employment and distribution of rents for political loyalty in order to maintain control over the bureaucratic hierarchy. As a consequence of a complex bargaining game between Kuchma and his government, on one side, and Kuchma and the power industry, in addition to rent-seeking elites, on the other side, the specific choice of organization of the electricity industry emerged in Ukraine in the 1990s. The outcome of this bargaining was the Members Agreement that was signed by state-owned power generation companies, the state-owned grid company and private and public electricity suppliers in 1996. The agreement led to a number of concessions from the government to power generation companies that received subsidies from the state and the guarantees that the state would buy all of their produced electricity as well as supplier companies, which often did not pay for electricity that they received from the grid company.

In Russia, one dominant mode of actors' interaction that impacted the outcome of the electricity liberalisation reform was the hierarchical direction by the Russian government with elements of bargaining between the liberals and the reformers in the government and the electricity industry itself. Among the ruling elite of the electricity sector belonged regional governors and republican presidents who obtained control over the electricity distribution assets in their regions, regional business elites and energy-intensive consumer industries. Apart from the necessity of bargaining with regional, political and business elites, there were controversial positions towards the main direction of the electricity reform between the Russian government and the Russian parliament. The negotiations between the parliament and the government as well as the outcome of the majority vote in the State Duma impacted, to a large degree, the outcome of policy-making on electricity liberalisation in the second half of the 1990s.

The implementation of the pool model on the organization of the electricity industry contained a number of important bargaining deals between the government and regional, political and business elites in the 1990s. First, because of protests from regions, only an accounting separation of electricity generation and distribution assets was introduced, rather than the legal separation necessary for the proper functioning of the pool model. Second, the new

rules required that regional administrations had to transfer 50% of their shares in regional distribution companies to the state company RAO EES Rossii. Although the government saw this requirement as a good deal with regional elites, some of them refused to transfer their shares and continued to control power generation and distribution assets in their respective territories. Finally, the third main deal emerged during the economic crisis of 1997 – 1998. At that time, regional governors in Russia strengthened their power consolidation through acquisition of partial regional ownership in various enterprises. In the midst of crisis and growing debts, Yeltsin made the 1997 decision to transfer 33% of the national electric power grid monopoly to regional governments.

The formation of the State Duma was a major shift in the Russian institutional structure in the second half of the 1990s. According to the 1993 Russian Constitution the Duma was not an autonomous public policy player in the Russian Federation because it was not able to enforce any policy measures without presidential approval but it introduced important internal constraint to presidential power because all federal laws in order to pass have to get a majority of votes in the Duma in three consecutive readings. In its second term the communist-based Duma has been an independent veto player in the reforming of the electricity industry and undermined any reform project of the government that would eliminate the electricity monopoly or live the state with less than 51% of the shares of this monopoly (for detail see Chapter 5.1.3.1).

Therefore, in the 1990s, a large number of vested interests in Ukraine and Russia, which preferred to preserve the status quo of the economy's electricity sector, placed serious constraints on the electricity liberalisation politics of both governments. Under such circumstances, the governments made the decision to bargain with business interests and regional leaders and together originated a plan that could be passed into law by the parliament. However, the bargaining and the negotiations with the parliament were unsuccessful and the government's plan to introduce the liberalised pool model to the operation of the electricity market failed in both countries.

6.2.3 Ukraine and Russia in the 2000s

In the 2000s, the outcomes of electricity liberalisation reforms in Ukraine and Russia were different. Russia was able to implement the liberalised wholesale model and retail electricity market, abandoning the state electricity monopoly. In Ukraine, on the contrary, the concept of the competitive wholesale electricity market was not implemented and the national electricity market continued to function in the old form that was established in Ukraine in the

1990s. The analysis of actors' constellations on electricity liberalisation policy-making, in the 2000s, in both countries, suggests that these were the institutional changes that shaped the role of actors in exercising decision-making functions by constituting their equality or inequality and creating settings more favourable to one party than to another and, in this way, impacted the outcomes of electricity liberalisation policies.

In both Ukraine and Russia, the reforms were driven hierarchically by the president and the government. However, the 2004 constitutional reform in Ukraine diffused political powers among many actors and rendered necessary horizontal bargaining between the executive on one side and political and business elites on the other. The revision of the Ukrainian Constitution in December 2004 moved Ukraine from the presidential-parliamentary to the prime-ministerial-presidential republic and introduced the distribution of political powers among many policy-making actors. The president lost many of his rights in the national distribution of resources and the government and the parliament gained more control over it. Thus, the president was left the powers of exercising influence over monetary policy and making appointments within the Presidential Secretariat, the National Bank of Ukraine, the Security Service of Ukraine, Foreign Intelligence Service, regional governorships and first-time judges. The government, on the contrary, maintained control over distribution of rents in the spheres of regulatory politics, property management and use of state budgetary funds and exercised the right to appoint government ministers by parliamentary vote (for detail see Chapter 4.3.3.1).

Apart from power-sharing, various interests between the president, the government and the parliament in Ukraine led to reform failure in the electricity industry. On one side, these were the rent-seeking preferences of the new elite actors in the government and the parliament and their close ties with big businesses that negatively impacted the proper privatisation and liberalisation processes. Apart from the rent-seeking in the electricity sector of economy, the government and the parliament blocked the increase of electricity tariffs for household and non-household consumers, as suggested by the president, and the president blocked the sales of the state-owned power generating companies to private firms, as was suggested by the second Tymoshenko government.

The political reforms, in the first half of the 2000s, conducted by the government in Russia replaced Yeltsin's system of horizontal bargaining with a centralized power hierarchy. This "power vertical" without any influence of social and international organizations accounted for the outcome of the electricity liberalisation reform in the country. This new institutional context encompassed power consolidation by the government in three spheres: the centre-regional relationship, organization and regulation of the electricity industry as well as the state-business relationship. First, the new government strengthened the central state power at the

expense of the powers of regional elites. The new administrative reform allowed the president to exercise direct control of power organs in all Russian regions and the new regional law, which was initiated by the government, allowed for the legal removal of governors and regional parliaments once it was proven in court that they had consciously passed legislation contradicting the Russian Constitution. In December 2004, the president was given the power to appoint regional governors and republican presidents (for detail see Chapter 5.2.3.2).

Second, the reform of the electricity industry introduced the centralized system of the wholesale electricity market organization in which the federal grid company managed the high-voltage transmission grid and the single system operator unified the central dispatch unit and the regional dispatch units within a hierarchical structure. Regional generation and distribution companies were horizontally integrated and became inter-regionally organized. The government strengthened the powers in the regulation of the electricity sector by obtaining a strong control over the settlement of the electricity tariffs.

Finally, the third consolidation concerned the state-business relationship. The president cautioned the oligarchs to stay out of politics and promised to maintain equilibrium and not to favour any of them. The core of this new vertical bargaining between the state and business was that the state allowed business settlement for those undertakings that were loyal to the government. In return for economic favours from the state, businessmen were expected to contribute to the socio-economic development of the country. This merger between corporate capital and political power is also known as “state-corporate capitalism”.

The consolidation of power put the government at the top of policy-making and allowed the emergence of the vertical bargaining between the government and the president on one side and political and business elites on the other. While bargaining on the electricity liberalisation reform, the government made a number of concessions to those actors who opposed the reform. Thus, it left the powers of regional authorities to manage the low-voltage distribution grid, set the regional electricity retail prices and exercised control over some power generation stations that were not transferred to the property of the wholesale generating companies. The Duma’s requirements not to allow the state’s share in the electricity industry assets to fall below 52%, to maintain the state’s control over the transmission and distribution grids, to introduce a clear distinction of capacities between federal and regional regulatory authorities and to set electricity tariffs in conjunction with the federal budget, while considering regional and social conditions were incorporated into the new electricity law. Concerning the minority stakeholders in RAO EES Rossii, shares in the inter-regional power generating companies were offered to these stakeholders in proportion to their existing stake.

6.3 Sub-Conclusion

The three empirical cases vary in two independent variables provided by the framework of actor-centred institutionalism that were accountable for different outcomes in electricity liberalisation policy-making in each case. These two independent variables are *country-dependent* and *time-dependent* national institutional contexts and the preferences of the decision-making actors impacted by the spectrum of possibilities for policy actors to act provided by specific institutional settings. In order to provide the sufficient conditions for comparison of the policy outcomes as well as modes of actors' interaction on the electricity liberalisation policy-making across three case studies the same focused questions are asked of each case and the time-dependent variable is added. This allows for the formation of comparisons between the case studies, by comparing the outcomes of policy-making as well as the prevailing modes' of actors' interaction in different countries in similar periods of times in which the impact of external forces is seen to be similar on these countries.

In the case of EU countries, the electricity liberalisation policy-making occurred on the EU level, and the analysis of the actors' constellations during the electricity liberalisation policy-making reveals that, in the 1990s and the 2000s, the preferred mode of actors' interaction was negotiated agreement. The institutional settings in which actors proceeded with their preferences and actions varied, in the 1990s and in the 2000s, on the EU level. These institutional contexts shaped the role of actors in exercising functions of decision-making by constituting their equality or inequality and creating settings more favourable to one party than to another. Thus, through the adoption of the Single European Act and the new Maastricht Treaty, which strengthened the supranational authority of EU institutions in a number of policy areas, and through the rulings of the European Court of Justice on the energy issues in the first half of the 1990s, the European Commission was able to justify its policy-setting competence in the sphere of electricity liberalisation. However, the powerful opposition of big national utilities as well as national governments on electricity liberalisation on the EU level, in the 1990s, prevented the Commission from proceeding with the liberalisation at the national electricity markets through its direct competition law powers and to choose instead the negotiated decision route of Council legislation.

As, at the end of the 1990s, the high political salience of electricity liberalisation in Europe remained, the Commission did not make use of "coercive" instruments to force liberalisation on the national electricity markets, based on Community law provisions regarding monopolies and abuses of market power and continued with the negotiated path. At that time, the

institutional setting on the EU level witnessed some changes. The Commission strengthened its powers in the electricity policy-making because of the access of the DG Competition that strongly pushed for a more radical energy liberalisation package in Europe to policy-making in the common energy policy and the stronger collaboration between DG TREN and DG Competition. Furthermore, the Commission began to build coalitions with interest groups and sectoral governance actors in order to delegate some policymaking responsibilities to them and, on this way, to gain additional capacity and legitimacy outside the legislative as well as judicial arena. At the same time, difficulty negotiating the electricity liberalisation legislation in the legislative and judicial arenas led to concessions from the Commission in order to find a consensus, in addition to elements of bargaining between Member States on the lowest common denominator in sensitive policy issues.

All factors considered, it has to be concluded that the policy-learning of the Member States during the negotiations at the EU level, as well as the Commission's preparedness to make concessions necessary for consensus-finding made the negotiations on electricity liberalisation in the EU a success story in the 1990s, as well as in the 2000s, and did not lead them to policy deadlock.

On the other hand, a number of equally structured and focused questions asked of the Ukrainian and Russian cases in the 1990s reveal that the national institutional contexts in the 1990s were very similar, because of similar starting conditions for the institutional development in both countries. Consequently, the outcome of electricity liberalisation politics was equal for both, in the 1990s. In both countries, reforms in the electricity industry were hierarchically driven by the president and the government. However, this preferred mode of actors' interaction was ineffective because of too many vested interests, which preferred a status quo in the electricity sector and the preservation of the monopolist organization of the electricity industry. As a consequence, political bargains between governments and these actors were ineffective in both countries and the electricity industries continued to be dominated by monopolies.

In the 2000s, the analysis reveals changes in the institutional contexts of both countries that differently shaped the role of actors in exercising functions of decision-making and, in this way, accounted for differences in policy outcomes. The 2004 constitutional reform in Ukraine diffused political powers among many actors and rendered necessary horizontal bargaining between the executive on one side and political and business elites on the other. The different interests between the president, the government, the parliament and powerful business elites led to reform failure in the electricity industry in Ukraine at that period of time. Quite the contrary, the political reforms in Russia in the first half of the 2000s, which introduced power

consolidation by the government in the spheres of the centre-regional relationship, organization and regulation of the electricity industry and the state-business relationship replaced Yeltsin's system of horizontal bargaining with the "power vertical" that placed the government at the top of policy-making and allowed the emergence of vertical bargaining between the government and the president on one side and political and business elites on the other.

To conclude, the focused comparison used in this chapter revealed evidence for the hypothesis of actor-centred institutionalism that was presented in the introduction. However, it should be underlined that by using this method it is impossible to exclude further potential causes regarding the outcome of the reforms, which are not discussed by the theoretical framework used.

7. Conclusion

This study has looked at the actors' constellations and actors' modes of interactions during the policy-making process in the electricity sectors in the European Union, Ukraine and Russia, between 1990 and 2010. The hypothesis of actor-centred intuitionalism, which states that different outcomes in the liberalisation of the electricity industries in the EU, Ukraine and Russia between 1990 and 2010 were the products of different aims and interests pursued by main decision-making actors and interest groups *that acted in country-specific and time-dependent formal and informal institutional settings*, has found the evidence in three empirical case studies.

The purpose of the study was to *empirically investigate*, as case studies, the reforms of the electricity industries in the EU, Ukraine and Russia and to find which specific institutional structures in each country impacted and shaped policy preferences and policy choices of decision-making actors.

7.1 Conclusions of the Empirical Case Studies

The outcomes of the electricity liberalisation reforms in the EU countries, Ukraine and Russia in the 1990s and the 2000s varied strongly.

In the 1990s, EU countries were able to establish the internal electricity market and to introduce a partial liberalisation of national electricity markets. Thus, following the first EU electricity directive that was fully implemented in Member States, in the year 1999, the accounting unbundling of the electricity generation, transmission and distribution assets was introduced, private parties obtained the right to access the power generation business via the authorisation or tendering procedure, and Member States could choose between the options of the negotiated third-party access, the regulated third-party access or the single buyer model of the organization of their electricity markets. In the 2000s, EU countries reached the agreement to introduce a fully competitive wholesale and retail electricity market to the EU and adopted the second and the third electricity directives. According to the new rules, private parties obtained the right to create private firms in the power generation sector via the authorisation procedure; the power generation, transmission and distribution assets must be effectively unbundled in all countries by implementing the option of ownership unbundling, independent system operator or independent transmission operator; all consumers received the right to freely choose their

supplier, and, finally, the regulated access to national electricity markets was granted to third parties. At present, the EU countries are in the implementation stage with these requirements.

In Ukraine, in the 1990s, legislation was adopted with the purpose of introducing the liberal pool model of the functioning of the national electricity market. However, the implementation of this legislation failed and the electricity market in Ukraine, in the 1990s, functioned in the form of a state-owned vertically integrated undertaking with nearly all power generation assets in the state property and only minority private stakes in the CHPPs and power distribution companies. During the 2000s, the concept of implementation of the competitive wholesale electricity market was adopted in Ukraine but the implementation of the necessary reforms was blocked by a number of policy-making actors. As of 2010, the Ukrainian electricity market still functioned as a single buyer and the majority of electricity generation and distribution assets were owned by the state.

In Russia, the pool model of electricity market organization was introduced in the year 1992. However, key requirements of this model were not implemented and, during the 1990s, the Russian electricity market functioned as a hybrid form of the pool model, in which the majority of power generation and distribution assets belonged to the state-owned vertically integrated joint-stock company and no legal separation of power generation, transmission and distribution assets occurred. In the 2000s, the Russian electricity market witnessed a radical reform. In 2003, the law on the introduction of the competitive wholesale and retail electricity market was adopted. Between 2004 and 2008, power generation and distribution assets were sold to private firms and the 2008 electricity monopoly was abandoned. The gradual transition to a fully liberalised electricity market with free electricity prices and the right of all consumers to freely choose their supplier is envisaged by the end of 2014.

The research has found strong evidence that two independent variables provided by the framework of actor-centred institutionalism were accountable for different outcomes in electricity liberalisation policy-making in each case. These two independent variables are *country-dependent* and *time-dependent* national intuitional contexts and the preferences of decision-making actors impacted by the spectrum of possibilities for policy actors to act provided by these institutional settings.

In case of the EU countries, the electricity liberalisation policy-making occurred at the EU level and the preferred mode of actors' interaction on electricity liberalisation in the 1990s as well as the 2000s was a negotiated agreement. There were differences in the institutional settings in the EU countries in the 1990s and the 2000s that shaped the role of actors in exercising functions of decision-making by constituting their equality or inequality and creating settings

more favourable to one party than to another. Thus, through the adoption of the Single European Act and the new Maastricht Treaty, which strengthened the supranational authority of EU institutions in a number of policy areas, and through the rulings of the European Court of Justice on the energy issues in the first half of the 1990s, the European Commission was able to justify its policy-setting competence in the sphere of electricity liberalisation. At the same time, the powerful opposition of large national utilities and national governments to the electricity liberalisation on the EU level in the 1990s forced the Commission to use the negotiated decision route of Council legislation on electricity liberalisation. In the 2000s, the European Commission was able to strengthen its powers in the electricity policy-making, because of the access of DG Competition, which strongly pushed policy-makers to adapt a more radical energy liberalisation package in Europe. As the difficulties in pursuing the reform of national electricity markets remained in the legislative and judicial arenas, the Commission began to build coalitions with interest groups and sectoral governance actors in order to delegate some policymaking responsibilities to them and, in this way, to gain additional capacity and legitimacy outside the legislative and judicial arena. The difficulties in negotiating the electricity liberalisation legislation at the legislative and judicial arenas of the EU level of policy-making led to concessions from the Commission in order to reach a consensus and to the bargaining elements between Member States on the lowest common denominator in sensitive policy issues.

A number of equally structured and focused questions asked of the Ukrainian and Russian cases in the 1990s reveal that the national institutional contexts in the 1990s were very similar, because of similar starting conditions for the institutional development in both countries. Consequently, the outcome of electricity liberalisation politics was equal for both, in the 1990s. In both countries, reforms in the electricity industry were hierarchically driven by the president and the government. However, this preferred mode of actors' interaction was ineffective because of too many vested interests, which preferred a status quo in the electricity sector and the preservation of the monopolist organization of the electricity industry. As a consequence, political bargains between governments and these actors were ineffective in both countries and the electricity industries continued to be dominated by monopolies.

In the 2000s, changes in institutional contexts in both countries occurred and differently shaped the role of actors in exercising functions of decision-making in the sphere of electricity. The 2004 constitutional reform in Ukraine diffused political powers among many actors and rendered necessary horizontal bargaining between the executive on one side and political and business elites on the other. The different interests between the president, the government, the parliament and powerful business elites led to reform failure in the electricity industry in Ukraine at that period of time. Quite the contrary, the political reforms in Russia in the first half of the

2000s, which introduced power consolidation by the government in the spheres of the centre-regional relationship, organization and regulation of the electricity industry and the state-business relationship replaced Yeltsin's system of horizontal bargaining with the "power vertical" that placed the government at the top of policy-making and allowed the emergence of vertical bargaining between the government and the president on one side and political and business elites on the other.

7.2 Theoretical Conclusions

Three theoretical conclusions can be derived from the case studies conducted: 1) Institutional contexts shape the role of actors in exercising functions of decision-making by constituting their equality or inequality and creating settings more favourable to one party than to another; 2) Different institutional settings could have enough capacity to deal effectively with similar regulatory problems; 3) The hierarchical mode of actors' interaction seems to react faster on finding the solutions for policy problems than the mode of the negotiated agreement.

With respect to the first theoretical conclusion, the analysis of the chosen case studies revealed that changes in the institutional context caused changes in the actors' degree of access to policy-making as well as in the modes of actors' interaction on the electricity liberalisation reform. Thus, the Single European Act and the new Maastricht Treaty strengthened supranational authority of EU institutions in a number of policy areas and caused the political spillover by allowing the European institutional actors to exploit and define their new competences within the new institutional framework created by the treaties. Additionally, the ruling of the ECJ in the first half of the 1990s resulted in the application of EU rules regarding free movement of goods to the electricity market. This new institutional context allowed the European Commission to get access to policy-making in the energy sector. In the 2000s, the access of the DG Competition to the electricity liberalisation policy-making, as well as inclusion of non-state actors into policy-making provided new possibilities to the European Commission for further electricity liberalisation reforms. On the other hand, the pragmatic positions of other two European institutions, the ECI, with its unwillingness to deny competences to Member States in the area of the delivery of public service obligations, as long as appropriate legislation was adopted at the EU level, and the European Parliament with its division along national lines, made it impossible for the Commission to make use of "coercive" instruments to force liberalisation on the national electricity markets, based on the Community law provisions

regarding monopolies and abuses of market power and preferred the negotiations with the Council and the European Parliament on the electricity liberalisation legislation.

In the case of Ukraine, the government and the president possessed strong decision-making powers in the 1990s and pushed the electricity liberalisation reform in the top-down manner. However, this hierarchical mode of actors' interaction on electricity liberalisation proved to be ineffective because of opposition from the large amount of powerful vested interests. The 2004 constitutional reform in Ukraine diffused political powers among many actors and rendered necessary horizontal bargaining between the executive on one side and political and business elites on the other. This horizontal bargaining among political and business actors on electricity liberalisation was ineffective in Ukraine, in the 2000s, because of different policy preferences, in addition to the rent-seeking of the new elite actors in the government and parliament and their close ties with big businesses.

The institutional context in Russia, in the 1990s, provided for strong decision-making powers for the government and the president and, therefore, the possibility for them to hierarchically drive the electricity liberalisation reform. However, this mode of actors' interaction was not effective due to the fact that too many vested interests preferred a status quo in the electricity sector and the preservation of the monopolist organization of the electricity industry. In the 2000s, Russia witnessed a change in the national institutional context that allowed for power consolidation by the government. This new institutional context put the government at the top of policy-making and allowed the emergence of vertical bargaining between the government and the president on one side and political and business elites on the other. This mode of actors' interaction was effective, because the electricity liberalisation reform was implemented.

With respect to the second theoretical conclusion, the hypothesis that different institutional settings could have enough capacity to deal effectively with similar regulatory problems has found its empirical evidence in the outcomes of the electricity liberalisation in EU countries and Russia. In both the EU countries and Russia, the electricity industries were considerably reformed in the 2000s. First, the electricity monopolies were abandoned and an effective separation of power generation, transmission and distribution assets was legally introduced. Second, competition was introduced into the wholesale and retail segments of the electricity markets. However, the actors' constellations on the electricity liberalisation policy-making and their preferred modes of actors' interaction differed considerably in both cases. In the case of the EU, the negotiated agreement with the bargaining elements between Member States on particular highly sensible policy issues was a prevailing mode of actors' interaction on

the issue of electricity liberalisation. It was agreed that all issued electricity directives must be defined in relation to the internal market and handled, therefore, through majority, rather than unanimous, rule according to Article 100a, introduced with the Single Act and further developed in the Maastricht and Amsterdam Treaties. The negotiations of the first, second and third electricity directives aimed at consensus-seeking among the European institutions, the policy actors from the Member States and the non-state sectoral actors and a number of concessions from the side of those actors who actively pushed for the full liberalisation of the internal European electricity market. In the Russian case, the reforms were driven hierarchically by the president and the government, in the context of the centralized power hierarchy.

The electricity liberalisation policy-making in EU countries and in Russia in the 1990s and 2000s allows one to conclude, further, that the hierarchical mode of actors' interaction seems to react faster on finding the solutions for policy problems than the mode of the negotiated agreement. Thus, EU countries started to negotiate on the electricity liberalisation at the beginning of the 1990s and reached consensus on the full liberalisation of the national electricity markets, in 2009. On the contrary, in Russia, the government and the president's attempt to bargain with the regional and business actors on the electricity liberalisation reform failed in the 1990s, and the Russian electricity market continued to function as a monopoly. The new institutional context that was formed in Russia in the first half of the 2000s consolidated government power and allowed for the pursuit of electricity market restructuring reform in the hierarchical manner. Thus, the decision to establish the fully competitive liberal electricity market in Russia was reached in 2003 – 2006 and the electricity monopoly abandoned in 2008.

7.3 Future Prospects of Research

This research is just one possible discussion of the policy processes in different countries from the prospect of actor-centred institutionalism. By analysing actor constellations and modes of interaction, this study was able to explain the outcomes of policy interactions in the electricity industries in the EU, Ukraine and Russia. However, the framework of actor-centred institutionalism has at its disposal a number of other analytical tools, among which the most important are game theory method and network analysis. Using these tools, it is possible to construct and structure actors' constellations in certain policy processes and to model their interactions in light of strategic interdependency.

The analytical framework provided in the research has its limitations, which must be closed by testing other theoretical hypotheses. First, the hypothesis-driven, process tracing

method and the method of focused comparison used are able to find empirical evidence in order to support the hypothesis driven by the framework of actor-centred institutionalism. However, they provide tools, which are insufficient to exclude further potential causes for the outcome of the reforms. For this purpose, other qualitative methods of case study research, such as hypothesis-generating, process tracing or the method of controlled comparison can be applied to the same empirical studies.

Furthermore, the framework of actor-centred institutionalism cannot say anything about the efficiency of policy-making. As discovered, the hierarchical decision-making in the Russian political system allowed for the conduction of the electricity liberalisation reform much faster than the network agreement among EU countries. However, actor-centred institutionalism does not introduce questions regarding the impact of various political systems on the efficiency of regulatory politics. This question could be covered either by conducting in-depth empirical case studies to generate hypotheses or by employing theoretical frameworks that contribute to the study of policy efficiency.

8. Documents

Commission of the European Communities (1988). The Internal Energy Market, *Commission Working Document COM (88) 238 final*, Brussels.

Commission of the European Communities (1989). Transparency of Consumer Energy Prices, *Communication from the Commission, COM (89)123 final/2*, Brussels.

Commission of the European Communities (1992). Proposal for a Council Directive Concerning Common Rules for the Internal Market in Electricity, *COM(91) 548 final*, Brussels.

Commission of the European Communities (1993). Amended Proposal for a European Parliament and Council Directive Concerning Common Rules for the Internal Market in Electricity, *COM (93) 643 final*, Brussels.

Commission of the European Communities (1995). Working Paper of the Commission on the Organization of the Internal Electricity Market, *SEC (95) 464 final*, Brussels.

Commission of the European Communities (1998a). Report to the Council and the European Parliament on Harmonisation Requirements of Directive 96/92/EC Concerning Common Rules for the Internal Market in Electricity, *COM(1998) 167 final*, Brussels.

Commission of the European Communities (1998b). Report from the Commission to the Council and the European Parliament on State of Liberalisation of the Energy Markets, *COM(l998) 212 final*, Brussels.

Commission of the European Communities (1999). Second Report to the Council and the European Parliament on Harmonisation Requirements of Directive 96/92/EC Concerning Common Rules for the Internal Market in Electricity, *COM(1999) 164 final*, Brussels.

Commission of the European Communities (2000). Communication from the Commission to the Council and the European Parliament: Recent Progress with Building the Internal Electricity Market, *COM(2000) 297 final*, Brussels.

Commission of the European Communities (2001a). Communication from the Commission to the Council and the European Parliament: Completing the Internal Energy Market. Proposal for a Directive of the European Parliament and of the Council Amending Directives 96/92/EC and 98/30/EC Concerning Common Rules for the Internal Market in Electricity and Natural Gas and a Proposal for a Regulation of the European Parliament and of the Council on Conditions for Access to the Network for Cross-border Exchanges in Electricity, *COM(2001) 125 final*, Brussels.

Commission of the European Communities (2001b). First Benchmarking Report on the Implementation of the Internal Electricity and Gas Market, Commission Stuff Working Paper, *SEC (2001)1957*, Brussels.

Commission of the European Communities (2002). Amended Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC Concerning Rules for the Internal Markets in Electricity and Natural Gas and Amended proposal for a Regulation of the European Parliament and of the Council on Conditions for Access to the Network for Cross-border Exchanges in Electricity, *COM(2002) 304 final*, Brussels.

Commission of the European Communities (2003). Second Benchmarking Report on the Implementation of the Internal Electricity and Gas Market, Commission Stuff Working Paper, *SEC(2003) 448*, Brussels.

Commission of the European Communities (2004). Third Benchmarking Report on the Implementation of the Internal Electricity and Gas Market, *DG Tren Draft Working Paper*, Brussels.

Commission of the European Communities (2005a). Annual Report on the Implementation of the Gas and Electricity Internal Market, *COM(2004) 863 final*, Brussels.

Commission of the European Communities (2005b). Report on Progress in Creating the Internal Gas and Electricity Market: Communication from the Commission to the Council and the European Parliament, *COM(2005) 568 final*, Brussels.

Commission of the European Communities (2006a). A European Strategy for Sustainable, Competitive and Secure Energy (Green Paper), *COM(2006) 105 final*, Brussels.

Commission of the European Communities (2006b). Inquiry Pursuant to Article 17 of Regulation (EC) No 1/2003 into the European Gas and Electricity Sectors (Final Report), *COM(2006) 851 final*, Brussels.

Commission of the European Communities (2006c). Prospects for the Internal Gas and Electricity Market, Communication from the Commission to the Council and the European Parliament, *COM(2006) 841 final*, Brussels.

Commission of the European Communities (2007a). Communication from the Commission to the European Council and the European Parliament, "An Energy Policy for Europe", *COM(2007)1 final*, Brussels.

Commission of the European Communities (2007b). Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/54/EC Concerning Common Rules for the Internal Market in Electricity, *COM(2007) 528 final*, Brussels.

Commission of the European Communities (2007c). Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1228/2003 on

Conditions for Access to the Network for Cross-border Exchanges in Electricity, *COM(2007) 531 final*, Brussels.

Commission of the European Communities (2008). Progress in Creating the Internal Gas and Electricity Market: Report from the Commission to the Council and the European Parliament, *COM(2008) 192 final*, Brussels.

Commission of the European Communities (2009). Report on Progress in Creating the Internal Gas and Electricity Market: Communication from the Commission to the Council and the European Parliament, *COM(2009) 115 final*, Brussels.

Council of the European Union (2008a). Note on Internal Energy Market, *13043/07 ENER 221*, Brussels.

Council of the European Union (2008b). Common Position with a View to the Adoption of a Directive of the European Parliament and of the Council Concerning Common Rules for the Internal Market in Electricity and Repealing Directive 2003/54/EC, *2007/0195 (COD)*, Brussels.

European Commission (2010). Report on Progress in Creating the Internal Gas and Electricity Market: Communication from the Commission to the Council and the European Parliament, *COM(2010)84 final*, Brussels.

European Commission (2011). 2009-2010 Report on Progress in Creating the Internal Gas and Electricity Market, *Commission Staff Working Document*, Brussels.

European Council (2007a). Presidency Conclusions, *7224/1/07, REV 1*, 8 – 9 March, Brussels.

European Council (2007b). Presidency Conclusions, *11177/1/07, REV 1*, 21 – 22 June, Brussels.

European Parliament (2002). Internal Market in Electricity and Natural Gas (First Reading): European Parliament Legislative Resolution on the Proposal for a European Parliament and Council Directive amending Directives 96/92/EC and 98/30/EC Concerning Common Rules for the Internal Market in Electricity and Natural Gas, *P5_TA(2002)0106*.

European Parliament (2003). Internal Market in Electricity (Second Reading), European Parliament Legislative Resolution on the Council Common Position for Adopting a European Parliament and Council Directive on Common Rules for the Internal Market in Electricity and Repealing Directive 96/92/EC, *P5_TA(2003)0242*.

European Parliament (2007). Resolution on Prospects for the Internal Gas and Electricity Market, *P6_TA(2007)0326*.

European Parliament (2008). Legislative Resolution on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/54/EC Concerning Common

Rules for the Internal Market in Electricity, Co-decision procedure: First reading, *P6_TA(2008)0294*.

European Parliament (2009). Legislative Resolution on the Council Common Position for Adopting a Directive of the European Parliament and of the Council Concerning Common Rules for the Internal Market in Electricity and Repealing Directive 2003/54/EC, Co-decision procedure: Second reading, *P6_TA(2009)0241*.

European Parliament and the Council (1996). Directive 96/92/EC Concerning Common Rules for the Internal Market in Electricity, *Official Journal*, L 027, published in 1997.

European Parliament and the Council (2003a). Directive 2003/54/EC Concerning Common Rules for the Internal Market in Electricity and Repealing Directive 96/92/EC, *Official Journal*, L 176.

European Parliament and the Council (2003b). Directive 2003/55/EC Concerning Common Rules for the Internal Market in Natural Gas, *Official Journal*, L 176/57.

European Parliament and the Council (2003c). Regulation No. 1228/2003 on Conditions for Access to the Network for Cross-Border Exchanges in Electricity, *Official Journal*, L 176/1.

European Parliament and the Council (2005). Regulation No. 1775/2005 on Conditions for Access to the Natural Gas Transmission Networks, *Official Journal*, L 289.

European Parliament and the Council (2006). Regulation No. 1638/ 2006 laying down General Provisions Establishing a European Neighbourhood and Partnership Instrument, *Official Journal*, L 310/1.

European Parliament and the Council (2009a). Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity and Repealing Directive 2003/54.EC, *Official Journal*, L 211/55.

European Parliament and the Council (2009b). Directive 2009/73/EC Concerning Common Rules for the Internal Market in Natural Gas and Repealing Directive 2003/55/EC, *Official Journal*, L. 211/94.

European Parliament and the Council (2009c). Regulation No. 714/ 2009 on Conditions for Access to the Network for Cross-Border Exchanges in Electricity, *Official Journal*, L 211/15.

European Parliament and the Council (2009d). Regulation 715/2009 on Conditions for Access to the Natural Gas Transmission Networks, *Official Journal*, L 211/36.

Federal Law of the Russian Federation (1995). *On Natural Monopolies* (in Russian), No. 35, Moscow.

Federal Law of the Russian Federation (1995). *On the State Regulation of Tariffs on Electricity and Heating Energy in the Russian Federation* (in Russian), No. 41, Moscow.

Federal Law of the Russian Federation (2003). *On Electric Power Industry* (in Russian), No. 35, Moscow.

Federal Law of the Russian Federation (2003). *On the Particularities of Electricity Sector Functioning during the Transition Period* (in Russian), No. 36, Moscow.

Federal Law of the Russian Federation (2004). *On the Introduction of Amendments to the Article 6 of the Federal Law "On the Features of the Functioning of Electrical Energy in the Transition Period" and on the Introduction of Amendments to some Legal Acts of the Russian Federation due to the Adoption of the Federal Law "On the Electricity Industry"* (in Russian), No. 148, Moscow.

Federal Law of the Russian Federation (2007). *On the Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Accomplishment of Measures for the Reform of the Unified Energy System of Russia* (in Russian), No. 150, Moscow.

Government of the Russian Federation (2001). *Decree on Restructuring the Electric Power Industry in the Russian Federation* (in Russian), No. 526, Moscow.

Government of the Russian Federation (2003a). *Energy Strategy of Russia for the Period up to 2020* (in Russian), No. 1234-p, Moscow.

Government of the Russian Federation (2003b). *Government Resolution On Establishing the Rules of Wholesale Markets for Electricity (Power) During the Transition Period (in Russian)*, No. 643, Moscow.

Government of the Russian Federation (2006). *Government Resolution On Establishing the Rules of Retail Markets of Electricity during the Transition Period Electricity Sector Reform (in Russian)*, No. 530, Moscow.

President of the Russian Federation (1992). *Decree On the Organization of Management of the Electric-Energy Complex of Russian Federation under Privatisation* (in Russian), No. 923, Moscow.

President of Ukraine (1998a). *About the Reforming of the Oil and Gas complex of Ukraine* (in Ukrainian), No. 151/98, Kiev.

President of Ukraine (1998b). A*bout the National Electricity Regulation Commission* (in Ukrainian), No. 335/98 (void since 23.11.2011), Kiev.

President of Ukraine (2011). *On the National Action Plan for 2011 to Implement the Economic Reform Program for 2010 – 2014 – 'Prosperous People, Competitive Commerce, Good Government'* (in Russian), No. 504/2011, Kiev.

RAO EES Rossii (2003). "5 + 5 Strategy" for Restructuring the Electricity Sector in the Years 2003 – 2008 (in Russian). Available at: http://www.rao-ees.ru/ru/investor/reporting/reports/report2007/2007.pdf. Last accessed 10 July 2013.

RAO EES Rossii (2007). Annual Report. Available at: http://www.rao-ees.ru/ru/investor/reporting/reports/report2007/2007.pdf. Last accessed 10 July 2013.

Verhovna Rada Ukraïni (2012). *The Draft Law about the Functioning of the Electricity Market of Ukraine* (in Ukrainian), No. 10571, Kiev.

Verhovna Rada Ukraïni (2012). The Draft Law about State Regulation of the Electricity Sector (in Ukrainian), No. 11056, Kiev.

9. List of Print Media and Online News Portals Used

(The cited articles are included in the bibliography)

1. Interfax-Ukraine
2. Reuters
3. RIA Novosti
4. BBC News
5. Ukrayinska Pravda
6. ITAR-TASS
7. The Ukrainian Week
8. Den
9. The Economist
10. Kievpost
11. Ukrinform
12. Expert
13. Financial Times
14. EurActiv
15. Zerkalo Nedeli
16. Gas in Neft. Energeticheskii biulleten
17. Energetychna Polityka
18. Nezavisimaia Gazeta
19. UA-energetika

10. Bibliography

Aalto, P. (ed.) (2012). *Russia's Energy Policies. National, Interregional and Global Levels*, UK: Edward Elgar Publishing Limited.

Abdurafikov, R. (2009). Russian Electricity Market. Currant State and Perspectives, *VTT Working Paper 121,* VTT Technical Research Centre of Finland.

Albi, A. (2009). The EU's "External Governance" and Legislative Approximation by Neigbours: Challenges for the Classic Constitutional Templates, *European Foreign Affairs Review*, 14, pp. 209 – 230.

Alden, C. and Aran, A. (2012). *Foreign Policy Analysis. New Approaches*, New York: Routledge.

Al-Sunaidy, A. and Green R. (2006). Electricity Deregulation in OECD Countries, *Energy,* 31, pp. 769 – 787.

Anderson, J. A. (2009). Electricity Restructuring: A Review of Efforts around the World and the Consumer Response, *The Electricity Journal*, 2/17, pp. 70 – 86.

Andersen, S. S. (2000). EU Energy Policy: Interest Interaction and Supranational Authority, *ARENA Working Papers WP 00/5*. Available at: http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers2000/wp00_5.htm. Last accessed 10 May 2013.

Aron, L. (2003). Privatising Russia's Electricity, *AEI Online. Available at:* http://www.aei.org/article/foreign-and-defense-policy/regional/europe/privatising-russias-electricity. Last accessed 20 May 2013.

Aslund, A. (2002). *Building Capitalism. The Transformation of the Former Soviet Bloc*, Cambridge: Cambridge University Press.

Aslund, A. (2005). The Economic Policy of Ukraine after the Orange Revolution, *Euroasian Geography and Economics*, 46, No. 5, pp. 327 – 353.

Aslund, A. (2006). Russia´s Energy Policy: A Framing Comment, *Eurasian Geography and Economics,* 47, No. 3, pp. 321 – 328.

Aslund, A. (2009). *How Ukraine became a market economy,* Washington: Peterson Institute for International Economics.

Aspinwall, M. and Schneider, G. (2001). Institutional Research on the European Union, in G. Schneider and M. Adpinwall (eds.) *The Rules of Integration. Institutionalist Approaches to the Study of Europe,* Manchester: Manchester University Press, pp. 1 – 18.

Bahgat, G. (2006). Europe's energy security: challenges and opportunities, *International Affairs*, 82:5, pp. 961 – 975.

Balmaceda, M. M. (2008). *Energy Dependency, Politics and Corruption in the Former Soviet Union. Russia's power, oligarchs' profits and Ukrainian energy policy, 1995 – 2006*, New York: Routledge.

Balmaceda, M. M. (2012). Russia's Central and Eastern European Energy Transit Corridor: Ukraine and Belarus, in P. Aalto (ed.) *Russia's Energy Policies. National, Interregional and Global Levels*, UK: Edward Elgar Publishing Limited.

Barbe, E., Costa, O., Herranz, A, and Natorski, M. (2010). Which rules shape EU external governance? Patterns of rule selection in foreign and security policies, in S. Lavenex, F. Schimmelfenning (eds.) *EU External Governance. Projecting EU rules beyond Membership*, New Yourk: Routledge, pp. 44 – 62.

Barnes, A. (2003). Russia's New Business Groups and State Power, *Post-Soviet Affairs*, 19, 2, pp. 154 – 186.

Barnes, P. M. (2008). Security of Energy Supply in the New Europe: A Role for the European Atomic Energy Community in the European Union's Neighbourhood Policy?, *Journal of Contemporary European Research*, Vol. 4, No. 2, pp. 107 – 129.

Bartle, I. (1999). Transnational Interests in the European Union: Globalization and Changing Organization in Telecommunications and Electricity, *Journal of Common Market Studies*, Vol. 37, No. 3, pp. 363 – 383.

Barte, I. (2005). *Globalisation and EU policy-making. The Neo-Liberal Transformation of Telecommunications and Electricity*, Manchester: Manchester University Press.

Bechev, D. and Nicolaidis, K. (2010). From Policy to Polity: Can the EU's Special Relations with its "Neighbourhood" be Decentred?, *Journal of Common Market Studies*, Vol. 48, No. 3, pp. 475 – 500.

Beichelt, T. (2012). Forms of Rule in the Post-Soviet Space: Hybrid Regimes, in S. Stewart, M. Klein, A. Schmitz, and H.-H. Schröder (eds.) *Presidents, Oligarchs and Bureaucrats. Forms of Rule in the Post-Soviet Space*, Great Britain: Ashgate, pp. 15 – 28.

Béland, D. (2005). Ideas, Interests, and Institutions: Historical Institutionalism Revisited, in A. Lecours (ed.) *New Institutionalism. Theory and Analysis*, Toronto: University of Toronto Press, pp. 29 – 50.

Belyaev, L. S. (2011). *Electricity Market Reforms. Economics and Policy Challenges*, Springer.

Belyi, A. V. (2008). EU External Energy Policies: A Paradox of Integration, in J. Orbie (ed.) *Europe's Global Role. External Policies of the European Union*, pp. 203 – 215.

Bergman, L., Brunekreeft, G., Doyle, C., von der Fehr, N.-H. M., Newbery, D. M., Pollitt, M. und Regibeau, P. (1999). *A European Electricity market? Monitoring European Deregulation 2,* United Kingdom: Centre for Economic Policy Research.

Birch, S., (2000). Interpreting the Regional Effect in Ukrainian Politics, *Europe-Asia Studies,* Vol. 52, No. 6, pp. 1017 – 1041.

Bouwen, P. (2002). Corporate Lobbying in the European Union: the Logic of Access, *Journal of European Public Policy,* 9:3, pp. 365 – 390.

Börzel, T. A. and Böttger, K. (2012). *Policy Chance in the EU's Immediate Neighbourhood: A Sectoral Approach.* Baden-Baden: Nomos, 174 p.

Buchan, D. (2010). Energy Policy: Harp Challenges and Rising Ambitions, in H. Wallance, M. A. Pollack, A. R. Young (eds) *Policy-Making in the European Union,* 6th ed, United States: Oxford University Press, pp. 357 – 380.

Bulmer, S. (2009). Politics in Time Meets the Politics of Time: Historical Institutionalism and the EU Timescape, *Journal of European Public Policy,* 16:2, pp. 307 – 324.

Bunin, I. (2001). Vlast I Biznes: Etapy Bol'shogo Puti (Power and Business: Stages of a Great Yourney), *Politcom.ru,* 5 October. Available at: http://www.politcom.ru/archive2001.php?vzg. Last accessed 10 April 2012.

Burchill, S. (1996). Liberal Internationalism, in S.Burchill, A. Linklater, R. Devatak, M. Paterson and J. True *Theories of International Relations,* Deakin University, pp. 28 – 66.

Burniaux, J.-M. (1995). Establishing Financial Discipline: Experience with Bankruptcy Legislation in Central and Eastern European Countries, *OECD Economic Studies* No. 25, pp. 110 -149.

BusinessEurope (2008). Position on Long-Term Contracts (LTCs) Between Energy Users and Suppliers. Available at: http://www.fil.pt/irj/go/km/docs/aip/documentos/estudos%20publicacoes/centro%20documentacao/Energia%20e%20Altera%C3%A7%C3%B5es%20Clim%C3%A1ticas/2008/2008.04.29-Businesseurope%20Position%20on%20Long-Term%20Contracts%20%28LTCs%29%20between%20energy%20users%20and%20suppliers.pdf. Last accessed 20 Juni 2013.

Buzan, B. and Wæver, O. (2003). *Regions and Powers. The Structure of International Security*, Cambridge: Cambridge University Press, 564 p.

Campain, M. M. (2008). An Impossible European Neighbourhood Policy? Analyzing the EU External Governance' Paradoxes and Dilemmas at the new Eastern Border, *Third Annual Meeting of the GARNET network – "Mapping Integration and Regionalism in a Global World:*

The EU and regional governance outside the EU", Sciences Po Bordeaux, 17 – 19 September 2008, 19 p.

CEDEC (European Federation of Local Public Utilities) (2000). *CEDEC's Position at the Public Hearing on the Completion of the Internal Energy Market*. Available at: http://ec.europa.eu/energy/electricity/legislation/doc/hearing/cedec.pdf. Last accessed 20 Juni 2013.

Central Election Commission of Ukraine (various years). Results of Presidential Election Rerun of December 26, 2004, Results of the Parliamentary Elections in 2006 and 2007 and Constellation of Parties in the Verkhovna Rada. Available at: http://www.cvk.gov.au /elect/wp301ept001f01=502rej=1. Last accessed 30 January 2013.

Chow, E. and Elkind, J. (2009). Where East East meets West: European Gas and Ukrainian Reality, *The Washington Quartely*, 32:1, pp. 77 – 92.

Chubyk, A. (2011). Ukraine and the European Energy Community, Eastern Partnership Community, *Eastern Partnership*, 12 April. Available at: http://www.easternpartnership.org/publication/politics/2011-04-12/ukraine-and-european-energy-community. Accessed 30 December 2011.

Clem, R.S. and Craumer, P. R. (2005). Shades of Orange: The Electoral Geography of Ukraine's 2004 Presidential Election, *Eurasian Geography and Economics*, 46, No. 5, pp. 364 – 385.

Competition DG of the European Commission (2007). *Report on Energy Sector Inquiry*, 10 January, Brussels, SEC(2006) 1724.

Coopersmith, J. (1993). Soviet Electrification: The Roads Not Taken, *IEEE Technology and Society Magazine*, Summer Edition, pp. 13 – 20.

Dannreuther, R. (2004). *European Union Foreign and Security Policy. Towards a Neighbourhood Strategy*, London: Routledge.

Delcour, L. (2011). *Shaping the Post-Soviet Space? EU Policies and Approaches to Region-Building*, Great Britain.

Delcour, L. (2011). The Institutional Functioning of the Eastern Partnership: An Early Assessment, *Eastern Partnership Review*, Nr. 1, Estonian Centre of Eastern Partnership, pp. 1 – 22.

Deryabina, M. (2001). Restruktizatsiya Rossiyskoy Ekonomiki Cherez Peredel Sobstvennosti i Kontrolya (Restructuring the Russian Economy through a Redistribution of Ownership and Control), *Voprosy Ekonomiki*, 10:55-69, 2001.

Dimitrova, A. and Dragneva, R. (2010). Constraining External Governance: Interdependence with Russia and the CIS as Limits to the EU's Rule Transfer in the Ukraine, in

S. Lavenex and F. Schimmelfenning *EU External Governance. Projecting EU rules beyond Membership*, London: Routledge, pp. 63 – 82.

Doyle, M. W. (1995). Liberalism and World Politics Revisited, in Jr. Kegley and W. Charles *Controversies in International Relations Theory. Realism and the Neoliberal Challenge*, pp. 83 – 106.

Duch, R. M. (1993). Tolarating Economic Reform: Popular Support for Transition to a Free Market in the Former Soviet Union, *The American Political Science Review*, Vol. 87, No. 3, pp. 590 – 608.

Eberlein, B. (2008). The Making of the European Energy Market: The Interplay of Governance and Government, *Journal of Public Policy*, 28, pp. 73 – 92.

ECJ (1991). Case C-179/90 *Merci Convenzionali Porto di Genova SpA v Siderurgica Gabriella SpA*, ECR I-1979.

ECJ (1993). Case C-320/91 *Corbeau*, ECRI-2533.

ECJ (2005). Case C-17/03 *Vereniging voor Energie, Milieu en Water and Others v Directeur van de Dienst uitvoering en toezicht energie.*

Eikeland, P. O. (2004). The Long and Winding Road to the Internal Energy Market – Consistencies and Inconsistencies in EU policy, *FNI Report* No.8. Available at: www.fni.no/doc&pdf/FNI-Robor.pdf. Last accessed 1 June 2013.

Eikeland, P. O. (2008). EU Internal Energy Market Policy: New Dynamics in the Brussels Policy Game?, *FNI Report 14/2008*, Fridtjof Nansen Institute.

Eising, R. (2001). *Liberalisierung und Europäisierung. Die Regulative Reform der Elektrizitätsversorgung in Großbritanien, der Europäischen Gemeinschaft und der Bundesrepublik Deutschland*, Opladen: Leske + Budrich.

Eising, R. (2002). Policy Learning in Embedded Negotiations: Explaining EU Electricity Liberalisation, *International Organization*, 56, 1, pp. 85 – 120.

Eising, R. and Jabko, N. (2001). Moving Targets: National Interests and Electricity Liberalisation in the European Union, *Comparative Political Studies*, 34, pp. 742 – 767.

Emerson, M., Noutcheva, G. and Popescu, N. (2007). European Neighbourhood Policy Two Years on: Time indeed for an "ENP plus", *CEPS Policy Brief No. 126*. Available at: http://www.ceps.eu. Last accessed 3 March 2011.

Emerson, M. (2010). Rendez-vous with Eastern Europe, *Centre for European Policy Studies*, 2 November. Available at: http://www.ceps.eu. Last accessed 1 March 2011.

Emerson, M. and Yahorau, A. (2010). Civil Society in the Eastern Partnership. *CEPS European Neighbourhood Watch*, Issue 65.

Energy Community Secretariat (2011). *Annual Report on the Implementation of the Acquis under the Treaty Establishing the European Community*, Austria.

Energy Community Secretariat (2012). *Annual Report on the Implementation of the Acquis under the Treaty Establishing the European Community*, Austria.

Energy Information Administration of USA (Various Years). International Energy Statistics on Electricity, U.S. Department of Energy. Available at: www.eia.gov. Last accessed 2 July 2013.

Engoian, A. (2006). Industrial and Institutional Restructuring of the Russian Electricity Sector: Status and Issues, *Energy Policy,* 34, pp. 3233 – 3244.

EPSU (1999). Internal Electricity market in Europe – "A New Era or a Dark Age?". Available at: http://www.epsu.org/IMG/pdf/EPSU_-_A_New_Era_or_a_Dark_Age_EN_1999.pdf. Last accessed 26 August 2013.

Erdmann, G. (2012). Neopatrimonialism: Problems of a Catch-all Concept?, in S. Stewart, M. Klein, A. Schmitzand H.-H. Schröder (eds.) *Presidents, Oligarchs and Bureaucrats. Forms of Rule in the Post-Soviet Space,* Great Britain: Ashgate, pp. 43 – 59.

EurActiv (2007). EU States Reject Breaking up Energy Firms, 8 June. Available at: http://www.euractiv.com/energy/eu-states-reject-breaking-energy-firms/article-164398. Last accessed 21 August 2013.

EurActiv (2008). Eight EU States Oppose Unbundling, Table 'Third Way', 1 February. Available at: http://www.euractiv.com/energy/eu-states-oppose-unbundling-tabl-news-219274. Last accessed 20 June 2013.

Eurostat (Various Years). *Total Gross Electricity Generation and Consumption in the EU Countries,* Luxembourg: Publication Office of the European Union. Available at: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=ten00087. Last accessed 29 August 2013.

Eurelectric, EMCEF and EPSU (2000). *Joint Declaration on the ECOTEC Study for the European Commission on the Social Implications of the Internal Electricity Market*. Available at: http://www.epsu.org/a/356. Last accessed 26 August 2013.

Eurelectric (2005). Consistency and Coherence of EU Directives and Regulations, *Working Group Prospective.* Available at: http://www.eurelectric.org/PublicDoc.asp?ID=34489. Last accessed 26 August 2013.

Eurelectric (2007). *Position Paper on the European Commission's Approach to Market Developments.* Available at: http://www.eurelectric.org/media/42953/epopenergypackagefinal-2007-300-0004-2-.pdf. Last accessed 26 August 2013.

Faklenhain, M. and Solonenko, I. (2012). The EU and Civil Society in Eastern Europe: Partners in the Pursuit of Policy Change?, in T. A. Börzel and K. Böttger (eds.) *Policy Chance in the EU's Immediate Neighbourhood: A Sectoral Approach,* Baden-Baden: Nomos, pp. 56 – 76.

Filippov, M. and Shvetsova, O. (1999). Asymmetric Bilateral Bargaining in the New Russian Federation. A Path-Dependence Explanation, *Communist and Post-Communist Studies,* 32, pp. 61 – 76.

Finon, D. and Glachant, J.-M. (2003). The Making of Competitive Electricity Markets in Europe: No Single Way and No "Single Market", in J.-M. Glachant and D. Finon (eds.) *Competition in European Electricity Markets. A Cross-Country Comparison,* Great Britain: Edward Elgar, pp. 7 – 38.

Flikke, G. (2008). Pacts, Parties and Elite Struggle: Ukraine's Troubled Post-Orange Transition, *Europe-Asia Studies*, 60:3, pp. 375-396.

Freyburg, T., Lavenex, S., Schimmelfenning, F., Skripka, T. and Wetzel, A. (2010). EU Promotion of Democratic Governance in the Neighbourhood, in S. Lavenex and F. Schimmelfenning (eds.) *EU External Governance. Projecting EU rules beyond Membership*, London: Routledge, pp. 126 – 144.

Friis, L. and Murphy, A. (1997). EU Governance and Central and Eastern Europe – Where are the Boundaries?, *Paper Presented to the ECSA Fifth Bienneal International Conference*, 29 May – 1 June, Seattle, Washington, 37 p.

Friis, L., and Murphy, A. (1999). The European Union and Central and Eastern Europe: Governance and Boundaries, *Journal of Common Market Studies*, Vol. 37, No. 2, pp. 211 – 232.

Frey, T. (2002). Capture or Exchange? Business Lobbying in Russia, *Europe-Asia Studies*, 54:7, pp. 1017 – 1036.

Frye, T. and Shleifer, A. (1997). The Invisible Hand and the Grabbing Hand, *The Transition from Socialism,* Vol. 87, No. 2, pp. 354 – 358.

Gaziullin I. (2013). *Yak Srobiti Reform Energetichnih Rinkiv Sociallno Prijnyatnoju? (How to Make the Electricity Reform in Ukraine Social?),* 29 July. Available at: www.icps.com.ua. Last Accessed 20 February 2013.

Geletukha, G. and Geneznaya, T. (2010). *Analysis of Main Provisions of "Energy Strategy of Ukraine for the Period till 2030",* National Academy of Science of Ukraine.

George, A. L. and Bennett, A. (2005). *Case Studies and Theory Development in the Social Sciences,* BCSIA Studies in International Security, Cambridge and London: MIT Press.

Gill, G. (2007). Introduction: Power and the Russian Regions, in G. Gill (ed.) *Politics in the Russian Regions*, New York: Palgrave Macmillan, pp. 1 – 15.

Glachant, J.-M. and Finon, D. (eds.) 2003. *Competition in European Electricity Markets. A Cross-Country Comparison,* Great Britain: Edward Elgar.

Gnedina, E., Emerson, M. (2009). The Case for a Gas Transit Consortium in Ukraine: A Cost-Benefit Analysis, *CEPS Policy Brief No. 18,* Brussels: Centre for European Policy Studies.

Gonchar, M., Duleba, A. and Malynovskyi, O. (2011). *Ukraine and Slovakia in a Post-Crisis Architecture of European Energy Security. Prospects for Transport of Hydrocarbons and Bilateral Cooperation,* Bratislava-Kiyv: Research Centre of the Slovak Foreign Policy Association.

Gore, O., Viljainen, S., Makkonen, M. and Kuleshov, D. (2012). Russian Electricity Market Reform: Deregulation or Re-regulation?, *Energy Policy* 41, pp. 676 – 685.

Gotelind, A., Fritsche, U. and Kohler, S. (1991). *Energie Report Europa. Daten zur Lage. Ein Binnenmarkt für Energie? Strategien für eine europäische Energiewende*, ÖKO-Institut Freiburg/Br., Frankfurt am Main: S. Fischer Verlag.

Grande, E. (1995). Regieren in Verflochtenen Verhandlungssystemen, in R. Mayntz and F. W. Scharpf (Hg.) *Gesellschaftliche Selbstregulierung und Politische Steuerung*, Frankfurt/ New York: Campus Verlag (Schriften des Max-Planck-Instituts für Gesellschaftsforschung Köln, Band 23), pp. 327 – 361.

Greenwood, J. (2002). Electricity Liberalisation, in R. Pedler (ed.) *European Union Lobbying. Changes in the Arena,* Palgrave in Association with the European Centre for Public Affairs, pp. 269 – 294.

Grigoriadis, T. N. and Torgler, B. (2006). Energy Regulation and Legislative Development in the State Duma of Russia: A Spatial Analysis of Roll Call Votes with the Optimal Classification Model, Russia 1994 – 2003, *Woring Paper No. 2006 – 07,* Basel: Centre for Research in Economics, Management and the Arts CREMA.

Groen, L. and Niemann, A. (2012). EU Actorness and Effectiveness under Political Pressure at the Copenhagen Climate Change Negotiations. *Mainz Papers on International and European Politics (MPIEP),* Paper No. 1, Mainz: Chair of International Relations of the University of Mainz.

Gromadzki, G. (2011). Where is the Eastern Partnership in 2011, and to What Extent has it Achieved its Aims/Made Progress towards Achieving its Aims?, in Civil Society Forum *A Strategic Roadmap for Civil Society in the Eastern Partnership*. Available at: http://www.eap-csf.eu/. Accessed 15 April 2012, pp. 2 – 3.

Gschwend, T. and Schimmelfenning, F. (2007). *Research Disign in Political Science. How to Practice What They Preach*, New York: Palgrave Macmillan.

Hall, P. A. and Taylor, R. C. R. (1996). Political Science and the Three New Institutionalisms, *Political Studies,* XLIV, pp. 936 – 957.

Hancher, L. (1998). Delimitation of Energy Law Jurisdiction: The EU and its Member States: From Organizational to Regulatory Conflicts, *Journal of Energy and Natural Resources Law,* Vol. 16, No 1, pp. 42 – 67.

Haran, O. and Sushko, O. (2005). More than Neighbours. A Search for New Paradigm of Relations Between the EU and Ukraine, in N. Hayoz, L. Jesien, W. Van Meurs (eds.) *Enlarged EU – Enlarged Neighbourhood. Perspectives of the European Neighbourhood Policy*, Bern: Peter Lang AG, pp. 171 – 191.

Haukkala, H. (2011). The European Union as a Regional Normative Hegemon: The Case of European Neighbourhood Policy in R. G. Whitman (ed.) *Normative Power Europe. Empirical and Theoretical Perspectives*, Palgrave Macmillan: Palgrave Studies in European Union Politics, pp. 45 – 64.

Hay, C., Wincott, D. (1998). Structure, Agency and Historical Institutionalism, *Political Studies,* XLVI, pp. 951 – 957.

Hayoz, N., Jesien, L. and W. Van Meurs (eds.) (2005). *Enlarged EU – Enlarged Neighbourhood. Perspectives of the European Neighbourhood Policy*, Bern: Peter Lang AG.

Hayoz, N., Kehl, F., Kuster, S. (2005). The Potential Flexibility of Deliberate Ambiguity. The EU´s Relations with the Regimes in its "Eastern Neighbourhood", in N. Hayoz, L. Jesien, W. Van Meurs (eds.) *Enlarged EU – Enlarged Neighbourhood. Perspectives of the European Neighbourhood Policy*, Bern: Peter Lang AG, pp. 49 – 80.

Hegemann, H., Heller, R. and Kahl, M. (2013). *Studying „Effectivenss" in Internaltional Relations. A Guide for Students and Scholars*, Leverkusen Opladen: Barbara Budrich Publishers.

Hellmann, J. S., Jones, G. and Kaufmann, D. (2000). „Seize the State, Seize the Day" – State Capture, Corruption, and Influence in Transition, *Policy Research Working Paper of the World Bank No. 2444*.

Hellmann, J. S. (1998). Winners Take All: The Politics of Partial Reform in Postcommunist Transitions, *World Politics*, 50/2, pp. 203 – 234.

Helm, D. (1993). Energy Policy and Market Doctrine, *The Political Quarterly Publishing,* Oxford, pp. 410 – 419.

Helm, D. (2001). The Assessment: European Networks – Competition, Interconnection, and Regulation, *Oxford Review of Economic Policy,* Vol. 17, No. 3, pp. 297 – 312.

Hendley, K. (1997). Legal Development in Post-Soviet Russia, *Post-Soviet Affairs,* 13, 3, pp. 228 – 251.

Herasimovich, V. and Tsarenko, A. (2008). Overview of Electricity Market in Ukraine, *CASE Paper,* Kiyv: Centre for Social and Economic Research. Available at: www.case-ukraine.com.ua. Accessed 11 March of 2013.

Hill, C. and Smith, M. (2005). *International Relations and the European Union*, Oxford: Oxford University Press.

Hirschhausen, von, C. (1999). Gas Sector Restructuring in Ukraine: Analysis of Import Dependence, Price Formation and Socio-Economic Effects, in A. Siedenberg, L. Hoffmann (eds) *Ukraine at the Crossroads. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag, pp. 391 – 407.

Hirschhausen, von, C. and Engerer, H. (1999). Post-Soviet Gas Sector Restructuring in the CIS: A Political Economy Approach, *Energy Policy,* Vol. 26, No. 15, pp. 1113 – 1123.

Hirschhausen, von, C. and Opitz, P. (2001). Power Utility Re-Regulation in East European and CIS Transformation Countries (1990 - 1999). An Institutional Interpretation, *DIW Discussion Paper,* Berlin: Deutsches Institut für Wirtschaftsforschung.

Hirschhausen, von, C. and Vincent, V. (2000). Energy Policy and Structural Reform, *Eastern European Economics*, vol. 38, no. 1, pp. 51 – 70.

Hirsh, R. F. (1999). *Power Loss: the Origins of Deregulation and Restructuring in the American Electric Utility System*, Cambridge, Massachusetts: MIT Press.

Hollingsworth, J. R. and Streeck, W. (1994). Countries and Sectors. Concluding Remarks on Performance, Convergence and Competitiveness, in J. R. Hollongsworth, P. C. Schmitter and W. Streeck *Governing Capitalist Economies. Performamce and Control of Economic Sectors*, Oxford: Oxford University Press.

Hubert, F., Matthey, A. and Andrianov, A. (2003). Reform of the Russian Power Industry, *Transform Program of the German Government,* Berlin.

Humphreys, P. and Padgett, S. (2006). Globalization, the European Union, and Domestic Governance in Telecoms and Electricity, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 19, No. 3, pp. 383–406.

Hyde-Price, A. (2007). *European Security in the Twenty-First Century. The Challenge of Multipolarity*, London: Routlegde Chapman & Hall.

Hyde-Price, A. (2007). Liberalism and the End of the Cold War, in A. Hyde-Price (ed.) *European Security in the Twenty-First Century. The Challenge of Multipolarity*, London: Routlegde Chapman & Hall, pp. 16 – 28.

Hyde-Price, A. (2006). "Normative" Power Europe: a Realist Critique, *Journal of European Public Policy,* Vol. 13, Issue 2, pp. 217 – 234.

Hyde-Price, A. (2007). Western Europe: the Limits of Integration, in A. Hyde-Price *European Security in the Twenty-First Century. The Challenge of Multipolarity*, London: Routlegde Chapman & Hall pp. 94 – 116.

IMF (1997). Ukraine – Recent Economic Developments. *Stuff Country Report No. 97/109*.

Interfax (2012). Ukraine Should Give Strong Response to Support for South Stream by Energy Community. Available at: http://en.interfax.com.ua/news/economic/130790.html#.UQ-Ej3K90j8. Accessed 4 February 2013.

International Centre for Policy Studies (2011). Reducing Emissions from Thermoelectric Stations in Ukraine by Meeting the European Energy Community Requirements, *Policy Analysis Document Prepared for the Project "Ukraine's Integration Strategy in the European Energy Community",* Kiev: International Centre for Policy Studies.

International Centre for Policy Studies (2011). Reducing Emissions from Thermoelectric Stations in Ukraine by Meeting the European Energy Community Requirements, *Policy Analysis Document Prepared for the Project "Ukraine's Integration Strategy in the European Energy Community"*, Kiev: International Centre for Policy Studies.

International Energy Agency (Various Years). Electricity Statistics for Russia.

International Energy Agency (Various Years). Electricity Statistics for Ukraine.

International Energy Agency (2005). *Russian Electricity Reform. Emerging Challenges and Opportunities*, Paris: International Energy Agency.

International Energy Agency (2006). *Ukraine Energy Policy Review*, Paris: International Energy Agency.

International Energy Agency (2012). *Ukraine 2012 – Executive Summary, Key Recommendations*, Paris: International Energy Agency.

IFIEC (International Federation of Industrial Energy Consumers) (1999). *Commentary on the Second Harmonisation Report as Issued by the Commission.* Available at: http://www.ifieceurope.org/docs.php. Last accessed on 26 August 2013.

IFIEC (International Federation of Industrial Energy Consumers) (2000). Achieving a Fully-Competitive Electricity Market, *The View of the Industrial Energy Consumers, Public Hearing on the Completion of the Internal Energy Market.* Available at: http://www.ifieceurope.org/docs.php. Last accessed on 26 August 2013.

IFIEC (International Federation of Industrial Energy Consumers) (2003). *Completing the Internal Electricity Market.* Available at: http://www.ifieceurope.org/docs.php. Last accessed on 26 August 2013.

IFIEC (International Federation of Industrial Energy Consumers) (2008). *IFIEC Europe's Position on the Commission's "Third Package" Proposal for Legislative Measures to Improve the Internal Electricity Market*. Available at: http://www.ifieceurope.org/docs.php. Last accessed on 26 August 2013.

Jaccard, M. (1995). Oscillating Currents. The Changing Rationale for Government Intervention in the Electricity Industry, *Energy Policy*, Vol. 23, No. 7, pp. 579 – 592.

Jack, A. (2003). Chubais Pushes for UES Transformation, *Financial Times*, 5 February.

Jamasb, T., Pollitt, M. (2005). *Electricity Market Reform in the European Union: Review of Progress toward Liberalisation and Integration*, Massachusetts: Joint Centre of the Department of Economics, Laboratory for Energy and the Environment and Sloan School of Management.

Jansen, D. and Schubert, K. (Hrsg.) (1995). *Netzwerke und Politikproduktion: Konzepte, Methoden, Perspektiven*, Marburg: Schüren.

Jesien, L. (2005). Looking Eastwards. EU´s Relations with its Neighbours after Enlargement, in N. Hayoz, L. Jesien and W. Van Meurs (eds.) *Enlarged EU – Enlarged Neighbourhood. Perspectives of the European Neighbourhood Policy*, Bern: Peter Lang AG, pp. 225 – 242.

Johnson, A. (1999). Maintaining the Balance of Power: Liberalisation, Reciprocity and Electricity in the European Community, *Journal of Energy and natural Resources*, 17, pp. 121 – 150.

Johnson, J. B. and Reynolds, H. T. (2012). *Political Science Research Methods*, 7th ed., Washington: CQ Press in assoc. with SAGE.

Hall, P. A. (1986). *Governing the Economy. The Politics of State Intervention in Britain and France*, Cambridge: Polity Press.

Kay, A. (2005). A Critique of the Use of Path Dependency in Policy Studies, *Public Administration*, Vol. 83, No. 3, pp. 553 – 571.

Kegley Jr. and Charles W. (1995). *Controversies in International Relations Theory: Realism and the Neoliberal Challenge*, Cincinnati, Ohio: South Western Educational Publishing.

Kelley, J. (2006). New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy, *Journal of Common Market Studies*, Vol. 44, No. 1, pp. 29 – 55.

King, G., Keohane, R.O., Verba, S. (1994). *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton: Princeton University Press.

Klom, A. M. (1996). Liberalisation of Regulated Markets and its Consequences for Trade: the Internal Electricity market as a Case Study, *Journal of Energy and Natural Resources Law*, Vol. 14, No. 1, pp. 1 – 13.

Knill, Ch. (2005). Introduction: Cross-national Policy Convergence: Concepts, Approaches and Explanatory Factors, *Journal of European Public Policy*, 12: 5, pp. 764 – 774.

Knill, Ch. and Tosun, J. (2005). Hierarchy, Networks or Markets: How Does the EU Shape Environmental Policy Adoptions within and beyond its Borders?, in S. Lavenex and F. Schimmelfenning (eds.) *EU External Governance. Projecting EU Rules beyond Membership*, New York: Routledge, pp. 83 – 104.

Konitzer-Smirnov, A. (2005). Serving Different Masters: Regional Executives and Accountability in Ukraine and Russia, *Europe-Asia Studies*, 57:1, pp. 3 – 33.

Kononczyk, W. and Matuszak, S. (2012). Ukraine and Moldova and the Energy Community, *EastWeek Publication*, Warsaw: Centre for Eastern Studies. Available at: http://www.osw.waw.pl. Last accessed 23 January 2013.

Konoplyanik, A. and T. Wälde (2006). Energy Charter Treaty and its Role in International Energy, *Journal of Energy and Natural Resources Law*, Vol. 24, No. 4, pp. 523 – 558.

Kratochvíl, P. (2009). Discursive Constructions of the EU's Identity in the Neighbourhood: An Equal Among Equals or the Power Centre?, *European Political Economy Review*, No. 9, pp. 5 – 23.

Krishnaswamy, V. and Stuggins, G. (2003). Private Privatisation in the Power Sector in Europe and Central Asia. Lessons from the Last Decade, *World Bank Working Paper No. 8*, Washington: The International Bank for Reconstruction and Development/ The World Bank.

Kryshtanovskaya, O. and White, S. (2005). The Rise of the Russian Business Elite, *Communist and Post-Communist Studies*, 38, pp. 293 – 307.

Kubicek, P. (2009). Problems of Post-Post-Communism: Ukraine after the Orange Revolution, *Democratization*, 16:2, pp. 323 – 343.

Kubrushko, Y. (2004). *European Electricity Review*, Kiev: IMEPOWER Investment Group, pp. 54 – 55.

Kubrushko, Y. (2005). Orange Revolution to Speed up Sector Reform, *Energy in East Europe Issue 55*, Kiev: IMEPOWER Investment Group, pp. 8 – 9.

Kubrushko, Y. (2006). Ukraine's Own Way, *Energy in East Europe Issue 81*, Kiev: IMEPOWER Investment Group, pp. 8 – 9.

Kubrushko, Y. (2008). Ukraine's Thermal Power Producers for Sale, *Energy in East Europe Issue 136*, Kiev: IMEPOWER Investment Group, pp. 4 – 5.

Kubrushko, Y. (2009). Economic Crisis: Salvation or More Suffering?, *Energy in East Europe Issue 156*, Kiev: IMEPOWER Investment Group, p. 10.

Kudelia, S. (2012). The Sources of Continuity and Change of Ukraine's Incomplete State, *Communist and Post-Communist Studies*, 45, pp. 417 – 428.

Kundera, M. (1994). The Tragedy of Central Europe (Translated From French by Edmund White), *New York Review of Books*, Vol. 31, No. 7, pp. 1 – 14.

Kuzio, T. (2005). Regime Type and Politics in Ukraine under Kuchma, *Communist and Post-Communist Studies*, 38, pp. 167 – 190.

Kuzio, T. (2011). Soviet Conspiracy Theories and Political Culture in Ukraine: Understanding Viktor Yanukovych and the Party of Regions, *Communist and Post-Communist Studies*, 44, pp. 221 – 232.

Laidi, Z. (ed.) (2008). *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences*, New York: Routledge.

Laidi, Z. (2008). European Preferences and their Reception, in Z. Laidi (ed.) *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences*, New York: Routledge, pp. 1 – 20.

Langbein, J. and Wolczuk, K. (2012). Convergence without Membership? The Impact of the European Union in the Neighbourhood: Evidence from Ukraine, *Journal of European Public Policy*, 19:6, pp. 863 – 881.

Lannon, E. (ed.) 2012. *The European Neighbourhood Policy's Challenges,* Belgium: College of Europe Studies.

Lavenex, S. (2004). EU External Governance in "Wider Europe", *Journal of European Public Policy*, 11:4, pp. 680 – 700.

Lavenex, S., Lehmkuhl, D. and Wichmann, N. (2010). Modes of External Governance: a Cross-national and Cross-sectoral Comparison, in S. Lavenex and F. Schimmelfenning (eds.) *EU External Governance: Projecting EU Rules beyond Membership*, New York: Routledge, pp. 23 – 43.

Lavenex, S. and Schimmelfenning, F. (2010). *EU External Governance: Projecting EU Rules beyond Membership*, New York: Routledge.

Lavenex, S. and Schimmelfenning, F. (2009). EU Rules beyond EU Borders: Theorizing External Governance in European Politics, *Journal of European Public Policy*, 16: 6, pp. 791 – 812.

Lecours, A. (ed.) 2005. *New Institutionalism. Theory and Analysis*, Toronto: University of Toronto Press.

Lecours. A. (ed.) 2005. New Institutionalism: Issues and Questions, in A. Lecours. *New Institutionalism: Theory and Analysis*, Toronto: University of Toronto Press, pp. 3 – 26.

Levada Centre (2004). To What Degree do the Following Institutions Deserve Trust?, *Opinion Poll*, published 28 September 2004. Available at: http://www.levada.ru. Last accessed 29 July 2013.

Levine, M. E. (1981). Revisionism revised? Airline Deregulation and the Public Interest, *Law and Contemporary Problems*, Vol. 44, No. 1, pp. 179 – 195.

Levine, M. E. and Forrence, J. L. (1990). Regulatory Capture, Public Interest, and the Public Agenda: Towards a Synthesis, *Journal of Law, Economics, and Organization*, vol. 6, pp. 167 – 197.

Levitsky, S. and Way L. A. (2012). Democracy and a Level Playing Field, in S. Stewart, M. Klein, A. Schmitz and H.-H. Schröder (eds.) (2012). *Presidents, Oligarchs and Bureaucrats. Forms of Rule in the Post-Soviet Space*, Great Britain: Ashgate, pp. 29 – 42.

Levy, B. and Spiller, P. T. (eds.) (1996). *Regulations, Institutions and Commitment. Comparative Studies of Telecommunications*, Cambridge: Cambridge University Press.

Levy, B. and Spiller, P. T. (1996). A Framework for Resolving the Regulatory Problem, in B. Levy and P. T. Spiller (eds.) *Regulations, Institutions and Commitment. Comparative Studies of Telecommunications*, Cambridge: Cambridge University Press, pp. 1 – 35.

Levi-Faur, D. (1999). The Governance of Competition: The Interplay of Technology, Economics and Politics in European Union Electricity and Telecom Regimes, *Journal of Public Policy*, Vol. 19, No. 2, pp. 175 – 207.

Levi-Faur, D. (2000). The Rise of the Competition State: The Dynamics of British and American Telecom and Electricity Regimes, *Current Politics and Economics of Europe*, Vol. 9, No. 4, p. 427 – 454.

Lieberman, E. S. (2001). Causal Inference in Historical Institutional Analysis: A Specification of Periodization Strategies, *Comparative Political Studies*, 34, pp. 1011 – 1035.

Lippert, B. and Umbach, G. (2005). *The Pressure of Europeanisation. From Post-Communist State Administrations to Normal Players in the EU system*, Baden-Baden: Nomos.

Lovei, L. (1998). Gas Reform in Ukraine. Monopolies, Markets and Corruption, *World Bank Group, Finance, Private Sector, and Infrastructure Network Note No. 169.*

Lovei, L. and Skorik, K. (1999). Energy Sector Reform in Ukraine: Mid-Term Report, in A. Siedenberg and L. Hoffmann, L. (eds.) *Ukraine at the Crossroads: Economic Reforms in International Perspective*, Heidelberg: Physica-Verlag, pp. 333 – 351.

Lucarelli, S. and Manners, I. (eds.) (2006). *Values and Principles in European Union Foreign Policy*, New York: Routledge.

Lyons, P.K. (1998). *EU Energy Policies Towards the 21st Century*, Elstead (UK): EC Inform. Available at archive website: www.pikle.co.uk. Last accessed 4 June 2013.

Lyubashenko, I. (2012a). Ukrainian-Russian Gas Negotiations: Consequences for the European Union, *Bulletin of the Polish Institute of International Affairs (PISM)*, 23 (356), pp. 676 – 677.

Lyubashenko, I. (2012b). Sources of Misunderstanding. Intervening Variables Influencing the Effectiveness of the European Neighbourhood Policy Towards Eastern European States, in E. Stadtmüller and K. Bachmann (eds.) *The EU's Shifting Borders. Theoretical Approaches and Policy Implications in the New Neighbourhood,* New York: Routledge, pp. 83 – 100.

Lyubashenko, I. (2012c). Ukraine's First Year in the Energy Community: Restart Needed, *Policy Paper No. 28,* The Polish Institute of International Affairs (PISM).

Lynch, D. (2005). The Security Dimension of the European Neighbourhood Policy, *The International Spectator*, 40:1, pp. 33 – 43.

MacKerron, G. (1999). The England and Wales Electricity Experience – Lessons for Ukraine, in A. Siedenberg and L. Hoffmann (eds.) *Ukraine at the Crossroads. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag, pp. 352 – 363.

Manners, I. (2010). As You Like It: European Union Normative Power in the Eeuropean Neighbourhood Policy, in R. G. Whiteman and S. Wolff (eds.) *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact*, Basingstoke: Palgrave Macmillan, pp. 29 – 50.

Manners, I. (2002). Normative Power Europe: A Contradiction in Terms?, *Journal of Common Market Studies*, Vol. 40, No. 2, pp. 235 – 258.

Manners, I. (2006). The Constitutive Nature of Values, Images and Principles in the European Union, in S. Lucarelli and I. Manners (eds.) *Values and Principles in European Union Foreign Policy*, New York: Routledge., pp. 19 – 41.

Manners, I. (2011). The European Union's Normative Power: Critical Perspectives and Perspectives on the Critical, in R. G. Whitman (ed.) *Normative Power Europe. Empirical and Theoretical Perspectives*, Palgrave Macmillan: Palgrave Studies in European Union Politics, pp. 226 – 247.

Manners, I. (2008). The Normative Power of the European Union in a Globalized World, in Z. Laidi (ed.) *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences*, New York: Routledge, pp. 23 – 37.

March, J. G. and Olsen, J. P. (1989). *Rediscovering Institutions: The Organizational Basis of Politics,* New York: The Free Press, Division of Macmillan, Inc.

March, J. G. and Olsen, J. P. (1996). Institutional Perspectives on Political Institutions, *Governance: An International Journal of Policy and Administration*, Vol. 9, No. 3, pp. 247 – 264.

March, J. G. and Olsen, J. P. (1998). The Institutional Dynamics of International Political Orders, *International Organization*, 52, 4, pp. 943–969.

Marsh, C. and Warhola, J. W. (2001). Ethnicity, Ethnoregionalism, and the Political Geography of Putin´s Electoral Support, *Post-Soviet Geography and Economics*, 42, No. 3, pp. 220 – 233.

Mason, D. S. and Sidorenko-Stephenson, S. (1997). Public Opinion and the 1996 Elections in Russia: Nostalgic and Statist, Yet Pro-Market and Pro-Yeltsin, *Slavic Review*, Vol. 56, No. 4, pp. 696 – 717.

Matsuzato, K. (2001). All Kuchma's Men: The Reshuffling of Ukrainian Governors and the Presidential Election of 1999, *Post-Soviet Geography and Economics*, 42, No. 6, pp. 416 – 439.

Mayntz, R. and Scharpf, F. W. (Hg.) (1995a). *Gesellschaftliche Selbstregulierung und Politische Steuerung*, Frankfurt/ New York: Campus Verlag (Schriften des Max-Planck-Instituts für Gesellschaftsforschung Köln, Band 23).

Mayntz, R. and Scharpf, F. W. (1995b). Der Ansatz des Akteurzentrierten Institutionalismus, in R. Mayntz and F. W. Scharpf (Hg.) *Gesellschaftliche Selbstregulierung und Politische Steuerung*, Frankfurt/ New York: Campus Verlag (Schriften des Max-Planck-Instituts für Gesellschaftsforschung Köln, Band 23), pp. 39 – 72.

Mayntz, R. and Schneider, V. (1995). Die Entwicklung technischer Infrastruktursysteme zwischen Steuerung und Selbstorganisation, in R. Mayntz and F. W. Scharpf (Hg.) *Gesellschaftliche Selbstregulierung und Politische Steuerung*, Frankfurt/ New York: Campus Verlag (Schriften des Max-Planck-Instituts für Gesellschaftsforschung Köln, Band 23), pp. 73 – 100.

McGowan, F. (1990). Towards a European Electricity Market, *World Today*, 46:1, pp. 15 – 19.

Meeus, L., Purchala, K. and Belmans, R. (2005). Development of the Internal Electricity Market in Europe, *The Electricity Journal*, Vol. 18, Issue 6, pp. 25 – 35.

Merlingen, M. (2007). Everything is Dangerous: A Critique of "Normative Power Europe", *Security Dialogue*, Vol. 38, No. 4, pp. 435 – 453.

Melnykovska, I. (2011). Ukraine's Energy Policy – Caught between Soviet Legacies, Russian Leverage and European Integration, in A. Gawrich, A. Franke and J. Windwehr (eds.)

Are Resources a Curse? Rentierism and Energy Policy in Post-Soviet States, Leverkusen Opladen: Barbara Budrich Publishers, Opladen and Farmington Hills, MI, pp. 165 – 200.

Milov, V., Coburn, L. L. and Danchenko, I. (2006). Russia´s Energy Policy, 1992 – 2005, *Euroasian Geography and Economics*, Vol. 47, No. 3, pp. 285 – 313.

Minska, M. (2011). Take and Divide: the Government Wants to Sell Almost All of its Assets by 2014, *The Ukrainian Week*, 23 December. Available at: http://ukrainianweek.com/Politics/38102. Last accessed 15 March 2012.

Missiroli, A. (2004). The EU and its Changing Neighbourhood: Stabilization, Integration and Partnership, in R. Dannreuther (ed.) *European Union Foreign and Security Policy. Towards a Neighbourhood Strategy*, London: Routledge, pp. 12 – 26.

Mittra, B., Lukas, N. and Fells, I. (1995). European Energy: Balancing Markets and Policy, *Energy Policy,* Vol. 23, No. 8, pp. 689 – 701.

Moravcsik, A. (1993). Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, *Journal of Common market Studies*, Vol. 31, No. 4, pp. 473 – 524.

Moravcsik, A. (1997). Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization,* Vol. 51, No. 4, pp. 513 – 553.

Mukhin, A. A. (2001). *Biznes-elita I Gosudarstvennaya Vlast': Kto Vladeyet Rossiyei na Rubezhe Vekov? (The Business Elite and State Power: Who Controls Russia at the Turn of the Century?)*, Moscow: Tsentr Politicheskoy Informacii, GNOM i D.

Muntean, I. (2012). Vulnerability of Energy Security in Eastern Europe and Testing of Commitments Regarding the 3rd Energy Package (The Case of the Republic of Moldova and Ukraine), *Moldova's Foreign Policy Statewatch Issue 44*, Institute for Development and Social Initiatives "Viitorul".

Natorski, M. (2007). Europeanization Beyound the EU? The Case of Ukrainian Energy Security Policy, *Paper Presented for the 6th Convention of the Central and East European International Studies Association (CEEISA) – "Global and Regional Governance – European Perspectives and Beyond"*, 24-26 May, Wroclaw: University of Wroclaw.

Natorski, M. and A. H. Surrallésb (2008). Securitizing Moves to Nowhere? The Framing of the European Union's Energy Policy, *Journal of Contemporary European Research*, Vol. 4, No. 2, pp. 71 – 89.

Neporozhnii, P. S. (1980). 60th Anniversary of Lenin's GOERLO Plan and Problems of Hydropower Construction, *Power Technology and Engineering*, No. 14, pp. 1224 – 1227.

NERC (National Electricity Regulatory Commission of Ukraine), various years. Annual Reports, Kiev: Department for Public Relations and Mass-Media of NERC. Available at: http://www.erranet.org/AboutUs/Members/Profiles/Ukraine. Last accessed 23 September 2013.

Newbery, D. M. (2002). Regulatory Challenges to European Electricity Liberalisation, *Swedish Economic Policy Review* 9, pp. 9 – 43.

Neumann, I. B (2001). European Identity, EU Expansion, and the Integration/ Exclusion Nexus, in L.-E. Cederman (ed.) *Constructing Europe's Identity: The External Dimension*, Boulder, Colorado: Lynne Rienner, pp. 141 – 164.

Norgaard, O. (1993). The Post-Soviet Newly Independent States and the European Community: Prospects for Trade, Investment and Aid, in O. Norgaard, T. Pedersen and N. Petersen (eds.) *The European Community in World Politics*, London: Pinter, pp. 98 – 117.

Nuttall, S. (2005). Coherence and Consistency, in Ch. Hill and M. Smith (eds.) *International Relations and the European Union*, Oxford: Oxford University Press, pp. 91 – 112.

Olding-Smee, J. and van Rooden, R. (1999). Growth in Ukraine – Lessons from Other Transit Countries, in A. Siedenberg and L. Hoffmann (eds.) *Ukraine at the Crossroads. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag, pp. 9 – 21.

Opitz, P. (1999). Power Sector Reform in Russia – Failed Intentions: An Analysis of measures Undertaken, in A. Siedenberg and L. Hoffmann (eds.) *Ukraine at the Crossroads. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag, pp. 364 – 376.

Opitz, P. (2000). The (Pseudo-) Liberalisation of Russia's Power Sector: The Hidden Rationality of Transformation, *Energy Policy,* No. 28, pp. 147 – 155.

Orttung, R.W. (2003). *Business and Politics in the Russian Regions*, Washington: The National Council for Eurasian and East European Research.

Palamarchuk, S. I., Podkovalnikov, S. V. and Voropai, N. I. (2001). Getting the Electricity Sector on Track in Russia, *The Electricity Journal,* October, pp. 52 – 58.

Palamarchuk, S. I. and Voropai, N. I. (2005). Power Industry in Russia: Current State and Restructuring, *Paper Prepared for the IEEE/PES Transmission and Distribution Conference and Exhibition*, China, Asia and Pacific Dalian.

Pappe, Y. (2000). *Oligarkhi: Ekonomicheskaya khronika, 1992 – 2000 (The Oligarchs: An Economic Chronicle, 1992 – 2000),* Moscow: Gosudarstvennyy Oniversitet – Vysshaya Shkola Ekonomiki.

Pedler, R. (ed.) (2002). *European Union Lobbying: Changes in the Arena,* Basingstoke: Palgrave Macmillan in Association with the European Centre for Public Affairs.

Peters, B. G., Pierre, J. and King, D. S. (2005). The Politics of Path Dependency: Political Conflict in Historical Institutionalism, *The Journal of Politics*, Vol. 67, No. 4, pp. 1275 – 1300.

Peters, B. G. (2012). *Institutional Theory in Political Science. The New Institutionalism*, 3rd Edition, New York: Continuum International Publishing Group.

Petkov, R. K., Shklyar, N. M. (1999). Russian Regions after the Crisis: Coping with Economic Troubles Governors Reap Political Rewards, *Demokratizatsiya*, 7, pp. 527 – 543.

Petrenko, I. (2012). Ukraine Has not Fulfilled any Obligations to the Energy Community, *International Renaissance Foundation.* Available at: http://www.irf.ua/index.php?option=com_content&view=article&id=35896:ukraine-has-not-fulfilled-any-obligations-to-the-energy-community&catid=82:news-euro-en&Itemid=57. Last accessed 12 April 2012.

Pierson, P. (1996). The Path to European Integration: A Historical Institutionalist Analysis, *Comparative Political Studies,* 29, pp. 123 – 163.

Pierson, P. (2004). *Politics in Time. History, Institutions and Social Analysis,* Princeton: Princeton University Press.

Pierson, P., Skocpol, T. (2002). Historical Institutionalism in Contemporary Political Science, in I. Katznelson and H. V. Milner (eds.) *Political Science: The State of the Discipline,* New York: W. W. Norton & Company, Americal Political Science Association, pp. 693 – 721.

Pirani, S. (ed.) (2009). *Russian and CIS Gas Markets and their Impact on Europe*, Oxford: Oxford University Press.

Pirani, S. (2009). Ukraine: a Gas Dependent State, in S. Pirani (ed.) *Russian and CIS Gas Markets and their Impact on Europe*, Oxford: Oxford University Press, pp. 93 – 132.

Pirani, S., Stern, J. and Yafimava, K. (2010). *The April 2010 Russo-Ukrainian Gas Agreement and its Implications for Europe,* NG 42, Oxford Institute for Energy Studies.

Pleines, H. (2008). Manipulating Politics: Domestic Investors in Ukrainian Privatisation Auctions 2000 – 2004, *Europe-Asia Studies,* Vol. 60, No. 7, pp. 1177 – 1197.

Pleines, H. (2012). From Competitive Authoritarianism to Defective Democracy: Political Regimes in Ukraine before and after the Orange Revolution, in S. Stewart, M. Klein, A. Schmitz and H.-H, Schröder (eds.) *Presidents, Oligarchs and Bureaucrats. Forms of Rule in the Post-Soviet Space,* Great Britain: Ashgate, pp. 125 – 138.

Pollitt, M. (1999). Issues in Electricity Market Integration and Liberalisation, in L. Bergman, G. Brunekreeft, C. Doyle, N.-H. M. von der Fehr, D. M. Newbery, M. Politt and P. Regibeau, *A European Electricity market? Monitoring European Deregulation 2,* United Kingdom: Centre for Economic Policy Research, pp. 27 – 80.

Popova, M. (2006). Watchdogs or Attack Dogs? The Role of Russian Courts and the Central Election Commission in the Resolution of Electoral Disputes, *Europe-Asia Studies*, 58:3, pp. 391 – 414.

Porta, della, D., Keating, M. (2008). *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*, Cambridge: Cambridge University Press.

Prange, H. (2007). "A Ring of Friends..."? EU External Energy Policy and Regulatory Boundary Shifting Towards its Eastern Neighbourhood, *Paper Prepared for the 6th CEEISA Convention "Global and Regional Governance – European Perspectives and Beyond", Panel "Energy Security and EU's Eastern Neighbourhood"*, 24 – 26 May, Wroclaw, Brussels.

Prange-Gstöhl, H. (2009). Enlarging the EU's Internal Energy Market: Why Would Third Countries Accept EU Rule Export? *Energy Policy* 37, pp. 5296 – 5303.

Primatarova, A. (2005). In Search of Two Distinctive Tracks for Non-EU Europe and the European Neighbourhood, in N. Hayoz, L. Jesien and W. van Meurs (eds.) *Enlarged EU – Enlarged Neighbourhood: Perspectives of the European Neighbourhood Policy*, Bern: Peter Lang AG, pp. 19 – 47.

Proedrou, F. (2012). *EU Energy Security in the Gas Sector: Evolving Dynamics, Policy Dilemmas and Prospects.* Farnham: Ashgate.

Puglisi, R. (2003). The Rise of the Ukrainian Oligarchs, *Democratization*, 10:3, pp. 99 – 103.

Pursiainen, Ch. (2006). *The Ambiguity of the Common European Space: a Strength or a Weakness*, Moscow: Russian-European Centre for Economic Policy. Available at: http://recep.ru/files/documents/04_07_26_Economic_Space_En.pdf. Last accessed 23 February 2011.

Radchenko, V. (2012). Recent Developments in Ukrainian Oil and Gas Legislation, *Paper Presented at the Third Annual International Ukrainian Energy Forum*, CMS Cameron McKenna. Available at: http://ua-energy.org/upload/files/CMS%20Ukraine%20oil%20and%20gas%20legal%20presentation%202012.pdf. Last accessed 12 April 2012.

Ratka, E. and Spaiser O. A. (2012). *Understanding European Neighbourhood Policies: Concepts, Actors, Perceptions*, Baden-Baden: Nomos.

Razumkov Centre (2008). Gas Markets of the EU and Ukraine: Problems of Development and Integration, in *National Security and Defence Journal*, Kiev, No. 8 (102).

Razumkov Centre (2012). EU Leaders: The Key to Moving Forward in our Relationship with Ukraine is in Kyiv, not Brussels, *Written Interview by Commission President Barroso and*

HRVP Ashton for the Razumkov Centre. Available at: www.razumkov.org.ua/eng/print.php?Ing=ENG&news. Last accessed 15 April 2013.

Razumkov Centre (2012). Power Engineering in Ukraine: The State and Trends, in *National Security and Defence Journal*, Kiev, No. 6 (135), pp. 2 – 4.

Razumkov Centre (2012). United Energy System of Ukraine: General Description, in *National Security and Defence Journal*, Kiev, No. 6 (135), pp. 4 – 28.

Razumkov Centre (2012). Electricity Market in Ukraine: The State and Problems, in *National Security and Defence Journal*, Kiev, No. 6 (135), pp. 16 – 31.

Razumkov Centre (2012). Prospects of Power Engineering Sector Development: Trends and Problems, in *National Security and Defence Journal*, Kiev, No. 6 (135), pp. 31 – 41.

Rianovosti (2012). Gazprom Wants Vhanges to Europe's 3rd Energy package, published online 20 March. Available at: http://en.rian.ru/world/20111108/168519546.html. Last accessed 20 March 2012.

Rossiyskiy Statisticheskiy Yezhegodnik (Russian Statistical Yearbook) (Various Years). Moscow: Goskomstat Rossii.

Rousselin, M. (2010). But Why Would They Do That? European External Governance and Domestic Preferences of Rule Importers, *Paper Presented at the 3rd Graduate Conference of the European Consortium for Political Research*, Dublin City University, August, 30th to September 1st.

Rutland, P. (2009). Putin and the Oligarchs, in S. Wegren (ed.) *Putin's Russia,* 3rd edition, Lanham, Maryland: Rowman and Littlefield.

Rutland, P. (2011). The Business Sector in Post-Soviet Russia, in G. Grill (ed.) *Handbook of Russian Politics and Society*, London and New York: Routledge.

Ryding, H. (1998). Electricity Restructuring in Ukraine: Illusions of Power in the Power Industry? *CERT Paper*, Edinburgh: Centre for Economic Reform and Transformation.

Sakwa, R. (2008). *Putin. Russia's Choice,* 2nd Edition, London: Routledge.

Samokhvalov, V. (2007). Relations in the Russia-Ukraine-EU Triangle: "Zero-Sum Game" or Not?, *Occasional Paper No. 68*, EU Institute for Security Studies.

Scharpf, F. W. (1997). *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research*, Colorado and Oxford: Westview Press, A Division of HarperCollins Publishers.

Scharpf, F. W. (1999). *Governing in Europe: Effective and Democratic?*, Oxford: Oxford Univercity Press.

Schimmelfenning, F. (2009). Europeanization beyond Europe, *Living Reviews in European Governance*, Vol. 4, No. 3. Available at: http://www.livingreviews.org/lreg - 2009-3. Last accessed 12 March 2012.

Schimmelfenning, F. and Sedelmeister, U. (2004). Governance by Conditionality: EU Rules Transfer to the Candidate Countries of Central and Eastern Europe, *Journal of European Public Policy*, 11(4), pp. 669 – 687.

Schimmelfenning, F. and Sedelmeister, U. (2002). Theorizing EU Enlargement: Research Focus, Hypotheses, and the State of Research, *Journal of European Public Policy*, 9 (4), pp. 500 – 528.

Schmidt, S. K. (1998). *Liberalisierung in Europa. Die Rolle der Europäischen Kommission,* Frankfurt/Main und New York: Campus Verlag (Schriften des Max-Planck-Instituts für Gesellschaftsforschung, Köln, Bd. 33).

Schmidt, W. A. (1996). Loosening the Ties that Bind: The Impact of European Integration on French Governmnent and its Relationship to Business, *Journal of Common Market Studies,* Vol. 34, No.2, pp. 223 – 254.

Schneider, G. and Aspinwall, M. (2001). Moving beyond Outworn Debates: A New Institutionalist Research Agenda, in G. Schneider and M. Adpinwall (eds.) *The Rules of Integration: Institutionalist Approaches to the Study of Europe,* Manchester: Manchester University Press, pp. 177 – 187.

Schneider, G. and Aspinwall, M. (eds.) (2001). *The Rules of Integration: Institutionalist Approaches to the Study of Europe,* Manchester: Manchester University Press.

Schneider, V. (2009). Akteurkonstellationen und Netzwerke in der Politikentwicklung, in K. Schubert and N. C. Bandelow (Hrsg.) *Lehrbuch der Politikfeldanalyse 2.0,* 2 Auflage, München: Oldenbourg Wissenschaftsverlag, pp. 191 – 218.

Schröder, H.-H. (1999). Eltsin and the Oligarchs: The Role of Financial Groups in Russian Politics Between 1993 and July 1998, *Europe-Asia Studies,* 51:6, pp. 957 – 988.

Schubert, K. (1995). Struktur-, Akteur- und Innovationslogik: Netzwerkkonzeptionen und die Analyse von Politikfeldern, in D. Jansen und K. Schubert (Hrsg.) *Netzwerke und Politikproduktion: Konzepte, Methoden, Perspektiven*, Marburg: Schüren, pp. 222 – 240.

Schubert, K. and Bandelow, N. C. (Hrsg.) (2009). *Lehrbuch der Politikfeldanalyse 2.0,* 2 Auflage, München: Oldenbourg Wissenschaftsverlag

Schuppert, G. F. (2006). *The Europeanisation of Governance,* Baden-Baden: Nomos.

Shapovalova, N. (2010). The Battle for Ukraine's Energy Allegiance, *Policy Brief No. 55-5,* FRIDE..

Siedenberg, A. and Hoffmann, L. (eds.) (1999). *Ukraine at the Crossroad:. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag.

Skocpol, T. (1995). Why I Am an Historical Institutionalist, *Polity,* Vol. 28, No. 1, pp. 103 – 106.

Skyner, L. (2010). The Reform of the Russian Power Sector: The Rhetoric and Reality, *Europa-Asia Studies,* 62:8, pp. 1383 – 1402.

Smith, M. E. (1996). The European Union and a Changing World: Establishing the Boundaries of Order, *Journal of Common Market Studies*, Vol. 34, No. 1, pp. 5 – 28.

Smith, M. E. (2000). Negotiating New Europes: the Roles of the European Union, *Journal of European Public Policy*, 7: 5, pp. 806 – 822.

Smith, M. E. (2004). Toward a Theory of EU Foreign Policy Making: Multi-level Governance, Domestic Politics, and National Adaptation to Europe's Common Foreign and Security Policy, *Journal of European Public Policy*, Vol. 11, No. 4, pp. 740 – 758.

Smith, M. E. and Weber, K. (2007). Governance Theories, Regional Integration and EU Foreign Policy, in K. Weber, M. E. Smith and M. Baun (eds.) Governing Europe´s Neighbourhood: Partners or Periphery?, Manchester: Manchester University Press, pp. 3 – 20.

Solonenko, I. (2009). External Democracy Promotion in Ukraine: The Role of the European Union, *Democratization,* 16:4, pp. 709 – 731.

Solonenko, I. and Shapovalova, N. (2011). Is the EU's Eastern Partnership Promoting Europeanisation?, *FRIDE Policy Brief No. 97,* pp. 1 – 6.

Solonenko, I. (2012). European Neighbourhood Policy Implementation in Ukraine: Local Context Matters, in E. Lannon (ed.) *The European Neighbourhood Policy's Challenges,* Belgium: College of Europe Studies, pp. 345 – 380.

Solomon, P. H. (1997). The Persistence of Judicial Reform in Contemporary Russia, *East European Constitutional Review,* 50, pp. 50 – 56.

Solomon, P. H. (2002). Putin's Judicial Reform: Making Judges Accountable as well as Independent, *East European Constitutional Review,* 117, pp. 117 – 128.

Solomon, P. H. (2004). Judicial Power in Russia: Through the Prism of Administrative Justice, *Law and Society Review,* Vol. 38, No. 3, pp. 549 – 581.

Stadtmüller, E. and Bachmann, K. (eds.) (2012). *The EU's Shifting Borders: Theoretical Approaches and Policy Implications in the New Neighbourhood,* London: Routledge.

Steinmo, S. (2008). Historical Institutionalism, in Porta, della, D., Keating, M. (eds.) *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*, Cambridge: Cambridge University Press, pp. 118 – 138.

Steinmo, S., Thelen, K. and Longstreth, F. (eds.) (1992). *Structuring Politics: Historical Institutionalism in Comparative Analysis,* Cambridge: Cambridge University Press.

Stewart, S., Klein, M., Schmitz, A., Schröder, H.-H. (eds.) (2012). *Presidents, Oligarchs and Bureaucrats. Forms of Rule in the Post-Soviet Space*, Great Britain: Ashgate.

Streit, M. E. and Mummert, U. (1998). Grundprobleme der Systemtransformation aus Institutionenökonomischer Perspektive, in U. Drobnig, K. J. Hopt, H. Kötz and E-J. Mestmäcker *Systemtransformation in Mittel- und Osteuropa und ihre Folgen für Banken, Börsen und Kreditsicherheiten,* Jena: Mohr Siebeck Verlag, pp. 3 – 36.

Sushko, O. et. all. (2012). EU-Ukraine Association Agreement: Guideline for Reforms, *KAS Policy Paper No. 20*.

Talus, K. (2006). First Interpretation of Energy Market Directives by the European Court of Justice – Case C-17/03, Vereniging voor Energie, *Journal of Energy and natural Resources Law,* Vol. 24, No. 1, pp. 39 – 52.

Tiede, W. and Rennalls, O. (2012). Recent Developments in the Ukrainian Judicial System and the Impact of International and European Law, *East European Politics and Societies*, 26:93, pp. 93 – 114.

The American Chamber of Commerce in Ukraine (2012). Parliament Passes at First Reading Bill on Reform of Oil and Gas Complex, *Blog of the American Chamber of Commerce in Ukraine.* Available at: ttp://blog.chamber.ua/2012/03/parliament-passes-at-first-reading-bill-on-reform-of-oil-and-gas-complex/. Last accessed 11 April 2012.

Thelen, K. and Steinmo, S. (1992). Historical Institutionalism in Comparative Politics, in S. Steinmo, K. Thelen and F. Longstreth *Structuring Politics: Historical Institutionalism in Comparative Analysis*, Cambridge: Cambridge University Press, pp. 1 – 32.

Thelen, K. (1999). Historical Institutionalism in Comparative Politics, *Annual Review of Political Science*, No. 2, pp. 369 – 404.

Thomas, D. C. (2010). Still Punching Below its Weight? Actorness and Effectiveness in EU Foreign Policy, *Paper Prepared for Presentation at the UACES 40th Annual Conference,* Bruges, 6 – 8 September.

Tömmel, I. (2009). Modes of Governance and the Institutional Structure of the European Union, in I. Tömmel and A. Verdun (eds.) *Innovative Governance in the European Union: The Politics of Multilevel Policymaking,* Boulder, Colorado: Lynne Rienner Publishers, pp. 9 – 23.

Tömmel, I., Verdun, A. (eds.) (2009). *Innovative Governance in the European Union: The Politics of Multilevel Policymaking*, Boulder, Colorado: Lynne Rienner Publishers.

Truscott, P. (2009). European Union Security: Facing a Future of Increasing Dependency?, *Whitehall Paper No. 73*, Royal United Services Institute for Defense and Security Studies.

Tulmets, E. (2007). Policy Adaption From The Enlagement To The Neighbourhood Policy: A Way To Improve The EU's External Capabilities?, *L'Harmattan: Politique europeenne*, 2007/2, No. 22, pp. 55 – 80.

Tulmets, E. (2008). The European Neighbourhood Policy: A Flavour of Coherence in the EU's External Relations, *Hamburg Review of Social Science*, Vol. 3, Issue 1.

Turovsky, R. F. (1999). 'Sravnitel'nyi Analiz Tendentsii Regional'nogo Razvitiya Rossii i Ukrainy' (Contemporary Analysis of Tendencies in Regional Development in Ukraine and Russia), *Polis*, No. 6.

Türk, D. (1993). Recognition of States: A Comment, *European Journal of International Law*, Vol. 4, No. 1, pp. 66 – 72.

Vickers, J., and Yarrow, G. (1991). Regulatory Reform. Reform of the Electricity Supply Industry in Britain: An Assessment of the Development of Public Policy, *European Economic Review*, 35, pp. 485 – 495.

Vincentz, V. and von Hirschhausen, C. (1999). Price Policies and Subsidies in the Energy Sector of Ukraine, in A. Siedenberg, and L. Hoffmann (eds.) *Ukraine at the Crossroads. Economic Reforms in International Perspective,* Heidelberg: Physica-Verlag, pp. 377 – 390.

Vin'kov, A. (2002). Okhota za Den'gami Chubaysa (The Hunt for Chubais' Money), *Expert*, 4:26.

Wallance, H., Pollack, M. A. and Young, A. R. (eds) (2010). *Policy-Making in the European Union*, 6th Edition, Oxford: Oxford University Press.

Weber, B. (2012). The Evaluation of the EU's Neighbourhood Policies: How to Measure the Effectiveness of External Europeanisation, in E. Ratka, Edmund and O. Spaiser (eds) *Understanding European Neighbourhood Policies: Concepts, Actors, Perceptions,* Baden-Baden: Nomos, pp. 69 – 86.

Weber, K., Smith, M. E. and Baun, M. (eds.) (2007). *Governing Europe´s Neighbourhood: Partners or Periphery?*, Manchester: Manchesrer University Press.

Wengle, S. A. (2012). *Post-Soviet Developmentalism and the Political Economy of the Russia´s Electricity Sector Liberalisation*, Springler: St Comp Int Dev, 47, pp. 75 – 114.

Westphal, K. (2006). Energy Policy between Multilateral Governance and Geopolitics: Whither Europe?, *IPG 4/2006*, pp. 44 – 62.

Whitman, R. G. (2011). Norms, Power and Europe: A New Agenda for Study of the EU and International Relations, in R. G. Whitman (ed.) *Normative Power Europe. Empirical and Theoretical Perspectives*, Palgrave Macmillan: Palgrave Studies in European Union Politics, pp. 1 – 25.

Whitman, R. G. (ed.) (2011). *Normative Power Europe: Empirical and Theoretical Perspectives*, Palgrave Macmillan: Palgrave Studies in European Union Politics.

Whitman, R. G., Wolff, S. (2010). Much Ado About Nothing? The European Neighbourhood Policy in Context, in R. G. Whiteman and S. Wolff (eds.) *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact*, Basingstoke: Palgrave Macmillan, pp. 3 – 28.

Whiteman, R. G. and Wolff, S. (eds.) (2010). *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact*, Basingstoke: Palgrave Macmillan.

Wintrobe, R. (1998). *The Political Economy of Dictatorship*, Cambridge: Cambridge University Press.

Wintrobe, R. (1998). Redistribution and Rent-Seeking, in R. Wintrobe *The Political Economy of Dictatorship*, Cambridge:Cambridge University Press, pp. 145 – 162.

Woltering, T. (2010). *Die Europaeische Energieaussenpolitik und ihre Rechtsgrundlagen*, Bern: Peter Lang.

Wong, R. (2005). The Europeanisation of Foreign Policy, in Ch. Hill and M. Smith (eds.) *International Relations and the European Union*, Oxford: Oxford University Press, pp. 134 - 153.

World Bank Group (2003). Private Sector Development in the Electric Power Sector, *A Joint OED/OEG/OEU Review of the World Bank Group's Assistance in the 1990s.*

Yevgenyeva, A. and Kovryzhenko, D. (2010). Why "Europe" Matters. Europeanization of the Lawmaking Process and Parliamentary Practices: Lessons for Ukraine, *Analytical Report of the Agency for Legislative Initiatives,* Kyiv.

Youngs, R. (2008). Energy: A Reinforced Obstacle to Democracy?, *FRIDE Working Paper No. 65.*

Youngs, R. (2009). *Energy Security: Europe's New Foreign Policy Challenge*, Abingdon: Routledge.

Youngs, R. (2010a). Democracy Promotion as External Governance?, in S. Lavenex and F. Schimmelfenning (eds.) *EU External Governance: Projecting EU rules beyond Membership*, New York: Routledge, pp. 105 – 125.

Youngs, R. (ed.) (2010b). *The European Union and Democracy Promotion: A Critical Global Assessment*, Johns Hopkins University Press.

Youngs, R. (2010b). Introduction: Idealism at Bay, in Youngs, R. (ed.) *The European Union and Democracy Promotion: A Critical Global Assessment*, Johns Hopkins University Press, pp. 1 – 15.

Youngs, R. (2010c). *The EU's Role in World Politics: A Retreat from Liberal Internationalism*, Abingdon: Routledge,

Youngs, R. (2010c). Energy Security and Climate Change, in R. Youngs *The EU's Role in World Politics: A Retreat from Liberal Internationalism*, Abingdon: Routledge, pp. 110 – 129.

Youngs, R. (2010c). Europe's Global Future: the Pragmatic Cosmopolitan, in R. Youngs *The EU's Role in World Politics: A Retreat from Liberal Internationalism*, Abingdon: Routledge, pp. 130 – 140.

Zacher, M. W. (1995). Liberal International Theory: Common Threads, Divergent Strands, in Jr. Kegley and W. Charles W (eds.) *Controversies in International Relations Theory: Realism and the Neoliberal Challenge*, Cincinnati, Ohio: South Western Educational Publishing, pp. 107 – 150.

Zagorski, A. (2004). Policies Towards Russia, Ukraine, Moldova and Belarus, in R. Dannreuther (ed.) *European Union Foreign and Security Policy. Towards a Neighbourhood Strategy*, London: Routledge, pp. 79 – 97.

Zimmer, K. (2007). Not so Different after All? Centre-Region Relations: A Ukrainian Comparison, in G. Gill (ed.) *Politics in the Russian Regions*, New York: Palgrave Macmillan, pp. 108 – 137.

Zudin, A. (2002). Bisnes i Gosudarstvo pri Putine: Granitsy Vozmozhnogo (Business and the State under Putin: Limits of the Possible). Available at: http://old.russ.ru/politics/grammar/20001218_zudin.html. Last accessed: 1 September 2013.

11. Annex I: Exclusive Summary/ Zusammenfassung

Exclusive Summary

This study conducts a close analysis of institutional underpinnings of electricity markets in EU countries, Ukraine and Russia. By employing the framework of actor-centred institutionalism it hypothesizes that differences in institutions and policy structures on one side and in interests and behaviour of relevant policy-making actors on the other account for differences in policy outcomes across states. The study investigates three empirical case studies of the EU, Ukraine and Russia that cover the time period from the beginning of the 1990s to the end of the 2000s.

In the first step of the theory-guided empirical policy analysis, the study identifies the relevant policy actors in the area of electricity liberalisation, as well as their perceptions, preferences and capabilities. Both individual and composite actors are analyzed. The decision on the relevance of certain actors for the analysis was made on the basis of the identification of decision-making powers of actors in electricity liberalisation policy-making, as well as their actual participation in the decision-making process. In the second step of the analysis, the study looks at constellations of actors that are involved in policy-making and defines their specific modes of interaction, whose variation is provided by the framework of actor-centred institutionalism. In order to provide sufficient conditions for comparison of policy outcomes and modes of actors' interaction on the electricity liberalisation policy-making across three case studies, the same focused questions are asked of each case and the time-dependent variable is added. These allow for the formation of comparisons among the case studies by comparing the outcomes of policy-making and the prevailing modes' of actors interaction in different countries, during similar periods of time in which the impact of external forces is seen to be similar on these countries.

The theoretical conclusions of the study are: 1) Institutional contexts shape the role of actors in exercising functions of decision-making by constituting their equality or inequality and creating settings more favourable to one party than to another; 2) Different institutional settings could have enough capacity to deal effectively with similar regulatory problems; 3) The hierarchical mode of actors' interaction seems to react faster to finding solutions for policy problems than the mode of the negotiated agreement.

Zusammenfassung

Diese Studie befasst sich mit der Analyse der Institutionen, die im jeweiligen Elektrizitätssektor in den Ländern der Europäischen Union, der Ukraine und Russland eingerichtet wurden. Die dafür verwendete theoretische Perspektive ist der akteurzentrierte Institutionalismus, der die Hypothese entwickelt, dass Akteure und Akteurskonstellationen von Institutionen umgeben werden, die ihr Handeln ermöglichen oder einschränken und damit ihre politischen Präferenzen beeinflussen. Gleichzeitig sind die Institutionen Produkte des Handelns der Akteure mit ihren eigenen Präferenzen und Aktionen. Die Ausarbeitung untersucht die drei empirischen Fälle EU, Ukraine und Russland in der Zeit von Beginn der 1990er Jahre bis Ende der 2000er Jahre.

Im ersten Teil identifiziert die theoriegeleitete Politikanalyse die relevanten politischen Akteure, die am Entscheidungsprozess zur Liberalisierung der Elektrizitätsmärkte teilgenommen haben, sowie ihre Präferenzen und Handlungsspielräume. Sowohl individuelle als auch kollektive und korporative Akteure werden ins Zentrum der Betrachtungen gestellt. Für die Analyse sind die Akteure relevant, die Kompetenzen im Entscheidungsprozess zur Liberalisierung der Elektrizitätsmärkte besitzen oder einen tatsächlichen Einfluss auf diesen Entscheidungsprozess haben. Ferner wird herausgearbeitet, welche Konstellationen von Akteuren und ihre durch institutionelle Kontexte strukturierten Interaktionsformen in der Politik der Liberalisierung der Elektrizitätssektoren involviert waren. Um Ergebnisse aus den Fallstudien vergleichen zu können, werden Fragen gestellt, die den gleichen inhaltlichen Fokus, sowie den gleichen zeitlichen Rahmen haben. Nur im Fall gleicher Rahmenbedingungen im Bezug auf die Zeit und die externen Einflüsse, können Fallstudien qualitativ miteinander verglichen werden.

Die theoretischen Schlussfolgerungen der Studie sind folgend aufgelistet: 1) Im Bereich der Regelungspolitik strukturieren die Institutionen die Konstellationen der Akteure, indem sie den Einfluss der Akteure auf den Entscheidungsprozess durch Zuweisung von Aufgaben, Status, Ressourcen und Orientierungen erweitern oder beschränken; 2) Institutionen und Konstellationen individueller und kollektiver Akteure können, trotz unterschiedlicher Gestalt, ähnliche Lösungsansätze zu politischen Problemen entwickeln; 3) Akteure, die die Interaktionsform “Hierarchie” nutzen, sind in der Lage, schneller Lösungsansätze zu politischen Problemen zu entwickeln und durchzusetzen, als Akteure, die sich in Verhandlungen einigen müssen.

12. Annex II: List of Interviews and Questionnaire

List of Interviews

No	Position/Department	Institution	Country	Date
1.	*Volodymyr Omelchenko* Acting Director, Energy Programs	Razumkov Centre, Kiev	Ukraine	19/11/2012 (1.5 hours)
2.	*Dmytro Shulga* European Program	International Renaissance Foundation, Kiev	Ukraine	20/11/2012 (1.5 hours)
3.	*Arthur Denisenko* Energy Program Coordinator	National Ecological Centre of Ukraine, Kiev	Ukraine	20/11/2012 (2 hours)
4.	*Maria Storchylo* Climate Change Campaigner	National Ecological Centre of Ukraine, Kiev	Ukraine	20/11/2012 (1 hour)
5.	*Ildar Gazizullin* Senior Analyst	International Centre for Policy Studies, Kiev	Ukraine	21/11/2012 (1 hour)
6.	*Volodymyr Gorbach* Political Analyst	Institute for Euro-Atlantic Cooperation, Kiev	Ukraine	21/11/2012 (0.5 hour)
7.	*Roman Nitsovych* Expert	Ua-Energy, Kiev	Ukraine	21/11/2012 (2 hours)
8.	*Nataliya Andrusevych* Expert	Society and Environmental RAC, Lviv	Ukraine	22/11/2012 (1.5 hours)
9.	*Petro Zaliznjak* Expert	Centre for Political and Legal Reforms, Kiev	Ukraine	22/11/2012 (1 hour)
10.	*Zoriana Mishchuk* Executive Director of UNENGO “MAMA-86”	ENENGO “MAMA-86”, Kiev	Ukraine	23/11/2012 (1 hour)
11.	*Michael M. Gonchar* Director on Energy Programs	“Nomos”, Sevastopol	Ukraine	23/11/2012 (1.5 hours)
12.	*Iryna Solonenko* Researcher	Free University of Berlin	Berlin	27/11/2012 (via e-mail)
13.	*Andrij Martynjuk* Expert	EcoClub (Rivne), Kiev	Ukraine	02/12/2012 (via Skype)

Questionnaire

1. How would you characterize current policy-making in the electricity industry in Ukraine?

2. Do you agree that electricity restructuring in Ukraine, since 1992, aimed to liberalise the electricity industry? What does electricity liberalisation policy-making mean for you?

3. What allows you to conclude that the restructuring of the electricity sector in Ukraine, since 1992, was aimed at the liberalisation of the electricity industry?

4. What were the main changes in policy-making on electricity liberalisation between the Kuchma and Yushchenko governing periods?

5. What actors (state or non-state actors, individual or corporate actors) drove policy-making in the electricity industry during the Kuchma governing period?

6. What actors (state or non-state actors, individual or corporate actors) drove policy-making in the electricity industry during the Yushchenko governing period?

7. What veto players on the current electricity liberalisation policy-making in Ukraine can you identify?

8. Does Ukraine have enough administrative and legal capacity to implement the requirements on electricity liberalisation from the Energy Community Treaty that it accessed in February 2011? Is the creation of new institutions necessary?

9. Do civil society initiatives such as the Civil Society Forum and experts' think tanks have an impact on policy makers in Ukraine in electricity liberalisation policy-making?

10. How do you appreciate the participation of Ukraine in the Energy Community Treaty (strong/middle/week)? Is the country able to fulfil its obligations under the treaty (implementation of the Second Energy Package)?

11. Do you see the first positive changes in the development of the Ukrainian liberal electricity market?

12. Do you agree that there was a deadlock in electricity liberalisation reforms during the Yushchenko governing period? Why or why not?

13. Annex III: List of Publications

1. The Paper *"Constructing the Neighbourhood Policy in terms of liberal internationalism. Energy security policy of the European Union towards Ukraine"* presented at the Summer School "Changing Europe" (Russian School of High Economics, Moscow, 29 July 2012 – 05 August 2012). The paper is published at
http://www.changing-europe.org/download/CESS2012/illiushchenia.pdf.

2. The Paper *"Liberalising the Electricity Market in Ukraine and Meeting the Requirements of the Energy Community Treaty"* presented at 21. Tagung junger Osteuropa-Experten „Äpfel, Birnen und Osteuropa: Vergleichsdesigns und –befunde zu einer divergenten Region" (Europäische Akademie, Berlin, 31 May 2013 – 02 June 2013).
The paper is published in Beiträgen für die 21. Tagung junger Osteuropa-Experten, herausgegeben von Anna Buschmann, Björn Büß und Nele Quecke, Kompetenznetz „Institutionen und institutioneller Wandel in Postsozialismus", Geschwister-Scholl-Institut für Politikwissenschaft, Ludwig-Maximilians-Universität München.

14. Annex IV: Eidesstattliche Erklärung

Ich erkläre an Eides statt, dass ich die vorliegende Dissertation selbstständig und ohne fremde Hilfe verfasst, andere als die angegebenen Quellen und Hilfsmittel nicht benutzt bzw. die wörtlich oder sinngemäß entnommenen Stellen als solche kenntlich gemacht habe.

Ich versichere außerdem, dass ich die vorliegende Dissertation nur in diesem und keinem anderen Promotionsverfahren eigereicht und auch nicht veröffentlicht habe. Ich habe mich keiner weiteren Doktorprüfung unterzogen.

Bremen, den 16. Januar 2014

_____

Katsiaryna Illiushchenia