

## EUROPEANIZATION AND THE REFORM IN THE ROMANIAN ELECTRICITY SECTOR

**Constantin Dragoş Vasile**

*The Academy of Economic Studies, Faculty of Commerce Piata Romana, nr. 1-3, sector 1, Bucuresti dragoscv@gmail.com, 0722251367*

*The paper discusses whether the reform of the electricity industry in Romania includes forms of Europeanization. The last is a complex concept with multiple facets. Some definitions describes a two-way process (e.g. Landrech, 1994), although the most authors focus on the changes generated by the European Union on the Member States policies. Concerning the European electricity industry, this is undergoing a substantial restructuring process, especially by the means of directives designed to ensure the liberalization and creation of a European internal market. As a candidate country to accession and then as a Member State, Romania is also in a process of transformation of its electricity industry. Our study put into light reasons why this reform involves a Europeanization process.*

*Keyword: Europeanization, the European Union, electricity industry, liberalization, competition*

*Cod Jel: L4, L5, O1, O2, H7, P1*

The development of the European Union (EU) generates significant change processes at both European and the Member States levels and the term of Europeanization is designed to describe them. However, the concept incorporates various meanings and has different uses. Our interest in this paper is focused on the impact of the European Union on generating policy and institutional change at the Member States level. In other terms, we examine the effect of Europeanization. A pioneering work of Verdier and Breen (2001) has examined these effects on the labor and capital markets. In this paper we examine a particular economic sector in Romania – the electricity industry – and our claim is that the reform in this field is an example of Europeanization process.

### **1. The Europeanization concept**

An early definition of Europeanization has been provided by Landrech (1994) who describes a two-way process. He states that „europeanization is an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making” (p.70). It results that, on one hand, it is the influence exerted by the EU on the Member States through a process of European integration and harmonisation. On the other hand, it is also a change between domestic policies and the EU policy. In other terms, there are both a 'downward causation' from the EU and an 'upward causation' from domestic structures.

However, other definition put a stress on the 'downward perspective'. Cowles, Caporaso, and Risse (2001) consider it as a central concept in the vast project of transformation of Europe and, at operational level, it refers to the emergence and development of distinct structures of governance. Radaelli (2003) refers to processes of construction, diffusion, and institutionalisation of formal and informal rules, procedures, shared beliefs and norms that are defined in EU policies and then incorporated in domestic policies of the Member States. Olsen (2002) suggests five ways of using the Europeanization concept:

- changes in external territorial boundaries;
- the development of institutions of governance at the European level;
- central penetration of national and sub national systems of governance;
- exporting forms of political organization and governance that are typical and distinct for Europe;
- a political project aiming at a unified and politically stronger Europe.

Europeanization is a concept with multiple facets. An important form is represented by the impact of the European integration. The EU produces policy changes in specific policy sectors in the Member States, such as industrial policy, public services, environmental policy, health and safety, competition policy etc. This regulator policy may be interpreted differently at national level. For example, the competition policy is viewed in France as contradictory with the industrial policy, while in the United Kingdom it is thought as a means of preventing state interventionism. It is also possible that the EU policy should conflict with the policy norms in the member States (e.g. emission directive of 2007 faces the opposition of car producers).

Sometimes the impetus of European integration is not the EU regulatory policy. The change is not initiated at the EU level (usually by the Commission) and it results from the influence exerted by strong national models. Best practices and successful models are imported by other Member States; thus, the Bologna process in high education reform has been initiated by Member States. The European integration also includes changes in the cognitive assumptions and policy learning processes in which national elites are engaging.

Other forms of Europeanization are the presence of the EU in different aspects of the policy discussion and action at the national level. The EU can be used as an argument for change (or for resisting change), making easier the task of implementing difficult domestic reforms (e.g. an excellent argument is the necessity of observation of the European 'constraints'). For example, conforming to the Maastricht convergence criteria provides an opportunity to cut public expenditures. A significant case is represented by certain national policies that require solutions at the EU level (e.g. agriculture). Boerzel (1999) underlines that Europeanization is a process by which domestic policy areas become increasingly subject to European policy-making.

A difficulty associated with the concept of Europeanization is how it can be separated the impact of European integration from other causes of policy and institutional changes, such as globalization. The last is also a complex concept. Ladi (2006) describes three waves of theories on globalization:

- the first wave of authors (e.g. Ohmae, 1990) describes the weakening of the state;
- the second wave claims that the sovereignty of the state remains the same and the changes are produced by regional integration (e.g. the EU) rather than by globalization;
- the third wave of writers (e.g. Cerny, 1996) take a middle position and argue that the sovereignty of the state is not decreasing but that its functions and structures are changing.

Also, there are different and often contradictory points of view concerning the connection between the phenomena of Europeanization and globalization. Thus, Europeanization is seen as a response to globalization or an independent process; it is an obstacle to further liberalization of the world, or facilitates globalization through the promotion of democracy values (Lodi, 2006). These aspects complicate indeed the analysis that can reveal different results in various area of activity. For example, competition rules included in the Rome Treaty are in line with the earlier anti-trust regulations adopted in the United States and, also, countries from all the continents make attempts in present to harmonize their legislation and to agree common rules in this area. On the other side, the employment policy has specific characteristics.

## **2. The EU policy of liberalization of the electricity sector**

The European electricity sector is undergoing a substantial restructuring process, especially by the means of directives designed to ensure the liberalization and the integration of the national electricity markets. In this respect, the EU regulation and policies include some Directives that have envisaged particular processes such as Council Directive 90/377/EEC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end users, or Council Directive 90/547/EEC on transit of electricity through transmission grids. The last have imposed conditions on the transit of electricity between transmission grids based on the principles of non-discrimination between parties, not including

unfair contract clauses or unjustified restrictions, not jeopardizing security of supply or quality of service, taking full account of the most efficient operation of the systems. But the creation of a European internal electricity market has required a more comprehensive approach. New directives have been issued in 1996 (Council Directive 96/92/EC) and after other 7 years, the Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC. Also, a more recent document („Green Paper. A European Strategy for Sustainable, Competitive and Secure Energy”, 2006) is partly relevant for the liberalization process.

An essential role in the reform of the European electricity sector was played by the Electricity Directive 96/92/EC, which set up minimum requirements for market liberalisation. It gave Member States choice on the extent of market opening and the arrangements of competitive markets. But, at the same time it provided certain bounding obligations such as:

- *Public service obligation* - Member States may impose public service obligation on electricity undertakings in their market, but the obligations must be clearly defined, transparent, non-discriminatory, verifiable and published.

- *New generation capacity* - Procedures for the construction of new generating capacity that must be conducted in accordance with objective, transparent and non-discriminatory criteria.

- *Transmission and distribution system operator* - A structural requirement by which the Member States shall designate a transmission system operator (TSO) in a given area that shall be independent at least in management terms from other activities not relating to the transmission system.

- *Unbundling* - Another structural measure to be taken by the Member States by which integrated electricity undertakings must, in their internal accounting, keep separate accounts for their generation, transmission, distribution and non-electricity activities.

- *Access to the network* – Procedures chosen by Member States for organizing the access to the transmission and distribution networks, based on objective, transparent and non-discriminatory criteria.

- *Market opening* – The timescale for market opening to competition.

- *Regulation and competition enforcement* - The abuse by electricity incumbent of dominant position can be prevented through sectoral regulation and competition mechanisms, in particular Article 82 of the EC Treaty<sup>319</sup>.

The Directive 54/2003 has enhanced the reform, especially with respect to access regime to transmission and distribution networks, unbundling, market opening to competition, cross border trade.

Concerning the access to the networks the Member States should establish a regulated party access regime to transmission and distribution networks. Some countries had another procedure accepted under the former Electricity Directive. It is the case of Germany that enacted the negotiated third party access (NTPA) instead of installing a regulation authority to establish the access regime. Because the European Commission abolished the option of NTPA, the German government has to replace the current regulatory regime with regulated third party access.

As per the unbundling process, Member States should implement the legal separation of supply from transmission and distribution. This requirement is stronger than in the former directive where vertically integrated incumbents had a minimum obligation of keeping separate accounts for generation, transmission, distribution and non-electricity activities.

---

319 Article 82 of the EC Treaty (ex art. 86 of Treaty of Rome) prohibits any abuse by one or more undertakings of a dominant position (e.g. imposing unfair prices or other unfair trading conditions, limiting production, markets or technical development to the prejudice of consumers, discriminating among trading parties). The same provisions are included in Article 6 of the Romanian Competition Law 21/1996.

A significant progress has been obtained in opening market to competition. This process is accomplished through allowing customers (so-called 'eligible' customers) to negotiate and conclude contracts directly with energy suppliers. Bilateral negotiated contracts between suppliers and eligible customers have advantages for both parties: eligible customers may benefit from better prices and contractual terms and conditions that are better suited with their specific needs, and generators/suppliers in turn may require for advantageous clause such as pre-payment of electricity. Member States should open the market for all categories of consumers by July 2007.

There are two points to be underlined with reference to the legal framework of the European electricity market reform. The first is the vital role of the Electricity Directives, which reveals a downward approach. The second conclusion is that the more ambitious provisions in the Directive 54/2003 have been made possible by the responses of the Member States in implementing the common rules of the Directive 96/92/EC. The obligation of market opening to competition is a good example, because Member States have gone far beyond the initial timescale. Thus, the Directive 96/92/EC had established a requirement of 35% of national market opened to eligible consumers by February 2003. Instead of that, the European Community average level of declared market opening was 69% in 2001 (Oprescu, Papatucica, Vasile, 2002).

### **3. The reform of the electricity sector in Romania**

In 1996, the year when the first Electricity Directive was adopted, Romania's electricity market was characterized by the existence of a monopoly integrated energy generation, transmission and supply. Liberalization was necessary as a means of modernization of our economy, in particular electricity industry.

The concept of liberalization may include policy measures such as privatization, deregulation, regulation of competition, regulation for competition, and the establishment of separate and independent regulatory authorities (Levi-Faur, 2004). Most of these measures are associated with the Electricity Directives provisions, such as deregulation through the elimination of economic, political, and social restrictions on the behavior of the actors, with the aim to strengthen market processes and competition by the removal of political constraints; regulatory authorities; promoting competition. Other measures, such as privatization, are not required by the EU Directives. Privatisation by itself is not conducive to competition unless the market is already restructured. However, privatisation has indirect effects on competition because the private companies are profit-oriented, while state owned companies have not these features, unless hard budgetary constraints are imposed on them. Generally, the processes of privatisation and liberalisation through opening the market to competition have to be carried out with equal vigour. The reform of the electricity industry in Romania demonstrates that the liberalization was a process of Europeanization. The main reasons for the claim are: (i) the early transposition of the Electricity Directive in the national legislation; (ii) implementing best practices that go beyond the minimum requirements; (iii) corrections of delays or temptations to take wrong measures.

The first reason is that, starting with 1998, the process of liberalization has started in force in the Romanian energy sector. The impetus was Romania's acceptance of the EU *acquis* in the field. The legal and regulatory implementation of the *acquis* in Romania's national law has been achieved during the period 1998-2000, when the provisions of the Directive 96/92/EC were transposed in the Romanian legislation. For example, an *independent authority*, ANRE, was established in 1999, as the regulator of the electricity market. ANRE performs authorisation and control activity in the field of electric energy, issues secondary legislation, regulations and methodologies or approves standard framework contracts. It establishes prices and tariffs for the regulated market and monopoly activities, and it is empowered to settle disputes among the players in the electricity sector. The *public service* is ensured because the licensed energy

providers have the duty to ensure public electricity supply services according to the licensing conditions. *Building new electricity generating capacities* is subject to the authorisation procedure and the functioning of all the operators, including generating capacities is subject to a licensing procedure. The legal framework established *regulated third party access* to networks. Besides these, important *unbundling* measures have been taken with effect on the market structure. The former vertically integrated state-owned monopoly was split up into separate state-owned legal entities: “Termoelectrica” (thermal energy generation), “Hidroelectrica” (hydro generation), “Nuclearelectrica” (nuclear generation), Transelectrica (transmission), and Electrica (distribution).

The second argument in favour of Europeanization is that Romania did not limit national policy to meeting the minimum requirements provided in the Electricity Directive. Best practices and successful models were imported from other Member States. As an example, concerning vertical unbundling, as mentioned earlier, the requirement in the Directive 96/92/EC was management separation of transmission (non-competitive segment) of the potential competitive segments of the market (i.e. generation, supply). Romania adopted legal separation as in other states (e.g. Austria, Denmark, Ireland, Portugal, Belgium, and Netherlands). “Transelectrica” is the owner of the Romanian power grid and has the function of Transport Operator for the national system of energy transport and System Operator for the national energy system. According to the licenses, “Transelectrica” does not have the right to trade electricity, the only allowed transactions being the acquisition of electricity in order to cover the losses in the transport network. “Transelectrica” is completely independent from other utilities in the sector, ensuring non-discriminatory functioning of the system. The Commercial Operator of the electricity market is OPCOM, a legal person, subsidiary of Transelectrica SA.

More than that, it was initiated and implemented a process of horizontal unbundling. Thus, “Termoelectrica” has been unbundled and the most important entities are the energy complexes Turceni, Rovinari and Craiova (created in 2004). Also, the distribution company Electrica has been further divided into eight regional companies. Five of them have been privatized to foreign buyers: Electrica Oltenia to CEZ, Electrica Moldova to E.ON, and Electrica Muntenia Sud, Electrica Banat and Electrica Dobrogea to Enel. Finally, wholesale market developed and an important number of suppliers entered the market. As a result, the structure of the electricity market was in 2006 as follows: 61 electricity producers, 104 suppliers, 8 distribution operators, 8 million residential consumers and 600,000 industrial consumers, eligible to choose their suppliers (Diaconu, Oprescu, Pittman, 2008).

Finally, the Romanian reform in the electricity industry is not an easy task for policy-makers. Being a profound change, it has given birth to resistance (e.g. from the part of technical experts). The idea of introducing competition in an industry that has been considered for a long period of time as a strategic area is susceptible of being put into question. That can explain partly the poor progress in introducing competition in the power generation market. A report elaborated in 2002 advocated for a policy of encouragement of new entries in the generation market, as well as of internationalisation of electricity trade (Oprescu, Papatucica, Vasile, 2002). However, in spite of the fact that the structure of the Romanian electricity market is promising, „the effects of competition have been limited, especially in the generating sector” (Diaconu, Oprescu, Pittman, 2008, p.5).

A more serious impediment for the reform is the hesitation of policy makers. For example, in 2007, Romanian authorities announced plans to create a national champion to dominate the regional electricity market. It would bundle most of the power producers and even state-owned distribution companies. Such measures „represent a big step back for the electricity market reform in Romania and a significant departure from the doctrine of competitive electricity markets to which Romania has subscribed so far” (Diaconu, Oprescu, Pittman, 2007, p.61). Indeed, such policy could represent a cancellation of 10 years of efforts made starting from 1998



with the view of reforming the electricity market in Romania. However, such plans are not likely to be put into action because they are contrary to the spirit of a European energy liberalized internal market. Using the EU as an argument for resisting to a negative change is another form of Europeanization.

#### **4. Conclusions**

The reform of the electricity industry in Romania puts into light forms of Europeanization. Firstly, it is the impact of European integration on the domestic policy; presently, there are transposed in the Romanian legislation the provisions of Electricity Directives. Secondly, when the first Electricity Directive (96/92/EC) gave choice the Member States on the methods of implementation, Romania has chosen one of the best solutions existing in the practice of other Member States. This is proved, for example, that Romania opted for legal unbundling the vertically integrated monopoly, or the regulated third party access to networks – as stipulated in the new Electricity Directive of 2003. Finally, it is a change in the cognitive assumptions, in particular the doctrine of competitive electricity market. Even if some bias has appeared momentarily in the authorities' plans, it is noticeable that the scholars' reaction was quite prompt.

#### **References:**

1. Bache, Ian, „Europeanization: A governance approach”, paper presented at the EUSA 8th International Biennial Conference, Nashville, March 27-29, 2003
2. Commission Staff Working Paper, “First report on the implementation of the electricity and gas market”, SEC (2001) 1957, Brussels, 3.12.2001
3. Diaconu, O., Oprescu, G., Pitman, R., „The restructuring of Romanian power sector at the crossroads: competitive markets or neo-colbertism?”, Romanian Journal of European Affairs, Vol.7, No.4, 2007
4. Diaconu, O., Oprescu, G., Pitman, R. „The role of market structure in the restructuring of Romanian power sector”, Profil: Concurenta, Nr. 1, 2008
5. Ladi, S., „Globalization and europeanization: analysing change”, Institut Barcelona D'Estudis Internationals, IBEI working papers, No. 4, 2006
6. Ladrech, R., “Europeanization of domestic politics and institutions: the case of France”, Journal of Common Market Studies, Vol. 32, No. 1, 1994
7. Levi-Faur, D., „On the "net impact" of Europeanization: the EU's telecoms and electricity regimes between the global and the national”, Comparative Political Studies, Vol.37, No.3, 2004 David
8. Radaelli, C., „The europeanization of public policy”, in Kevin Featherstone and Claudio Radaelli, „The politics of europeanization”, pp. 27-56, Oxford University Press, Oxford, 2003
9. Olsen, P. J., „The many faces of Europeanization”, Arena Working Papers, No. 2, 2002
10. Oprescu, G., Papatulica, M., Vasile, D., „Impactul liberalizarii pietelor de utilitati publice.
11. Concluzii pentru România privind preluarea acquis-ului comunitar”, studiu PAIS I, Institutul European din Romania, 2002