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COUNCIL DIRECTIVE

of 29 June 1990

concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users

(90/377/EEC)

(OJ L 185, 17.7.1990, p. 16)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Directive 93/87/EEC of 22 October 1993	L 277	32	10.11.1993
►**M2**	Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003	L 284	1	31.10.2003

Amended by:

►**A1**	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

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COUNCIL DIRECTIVE

of 29 June 1990

concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users

(90/377/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 213 thereof,

Having regard to the Commission's proposal ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Whereas energy price transparency, to the extent that it reinforces the conditions ensuring that competition is not distorted in the common market, is essential to the achievement and smooth functioning of the internal energy market;

Whereas transparency can help to obviate discrimination against users by increasing their freedom to choose between different energy sources and different suppliers;

Whereas, at present, the degree of transparency varies from one energy source and one Community country or region to another, thus calling into question the achievement of an internal energy market;

Whereas, however, the price paid by industry in the Community for the energy which it uses is one of the factors which influence its competitiveness and should therefore remain confidential;

Whereas the system of standard consumers used by the Statistical Office of the European Communities (SOEC) in its price publications and the system of market prices due to be introduced for major industrial electricity users will ensure that transparency is not an obstacle to confidentiality;

Whereas it is necessary to extend the consumer categories used by the SOEC up to the limits at which the consumers remain representative;

Whereas in this way end-users price transparency would be achieved without endangering the necessary confidentiality of contracts; whereas in order to respect confidentiality there must be at least three consumers in a given consumption category for a price to be published;

Whereas this information which concerns gas and electricity consumed by industry for energy end-users, will also enable comparisons to be drawn with other energy sources (oil, coal, fossil and renewable energy sources) and other consumers;

Whereas undertakings which supply gas and electricity as well as industrial gas and electricity consumers remain, independently of the application of this Directive, subject to the Treaty's competition rules and whereas consequently the Commission can require communication of prices and conditions of sale;

Whereas knowledge of the price systems in force forms part of price transparency;

Whereas knowledge of the breakdown of consumers by category and their respective market shares also forms part of price transparency;

Whereas the communication to the SOEC of prices and conditions of sale to consumers and price systems in operation as well as the break-

([1]) OJ No C 257, 10. 10. 1989, p. 7.
([2]) OJ No C 149, 18. 6. 1990.
([3]) OJ No C 75, 26. 3. 1990, p. 18.

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down of consumers by consumption category should inform the Commission sufficiently for it to decide, as necessary, on apropriate action or proposals in the light of the situation of the internal energy market;

Whereas the data supplied to the SOEC will be more reliable if the undertakings themselves compile these data;

Whereas familiarity with the taxation and parafiscal charges existing in each Member State is important to ensure price transparency;

Whereas it must be possible to check the reliability of the data supplied to the SOEC;

Whereas the achievement of transparency presupposes the publication and circulation of prices and price systems as widely as possible among consumers;

Whereas to implement energy price transparency the system should be based on the proven expertise and methods developed and applied by the SOEC regarding the processing, checking and publication of data;

Whereas, with the prospect of the achievement of the internal market in energy, the system of price transparency should be rendered operational as soon as possible;

Whereas the uniform implementation of this Directive can only take place in all the Member States when the natural gas market, in particular with regard to infrastructure, has reached a sufficient level of development,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take the steps necessary to ensure that undertakings which supply gas or electricity to industrial end-users, as defined in Annexes I and II, communicate to the SOEC in the form provided for in Article 3:

1. the prices and terms of sale of gas and electricity to industrial end-users;
2. the price systems in use;
3. the breakdown of consumers and the corresponding volumes by category of consumption to ensure the representativeness of these categories at national level.

Article 2

1. The undertakings referred to in Article 1 shall assemble the data provided for in Article 1 (1) and (2), on 1 January and 1 July of each year. These data, drawn up in conformity with the provisions referred to in Article 3, shall be sent to the SOEC and the competent authorities of the Member States within two months.

2. On the basis of the data referred to in paragraph 1, the SOEC shall publish each May and each November, in an appropriate form, the prices of gas and electricity for industrial users in the Member States and the pricing systems used to that end.

3. The information provided for in Article 1 (3) shall be sent every two years to the SOEC and to the Member States' competent authorities. The first communication shall concern the situation as at 1 January 1991. This information shall not be published.

Article 3

The implementing provisions concerning the form, content and all other features of the information provided for in Article 1 are set out in Annexes I and II.

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Article 4

The SOEC shall not disclose data supplied to it pursuant to Article 1 which might, by their nature, be subject to commercial confidentiality. Such confidential statistical data transmitted to the SOEC shall be accessible only to officials of the SOEC and may be used only for statistical purposes.

This provision shall not, however, prevent the publication of such data in an aggregated form which does not enable individual commercial transactions to be identified.

Article 5

Where the SOEC notes statistically significant anomalies or inconsistencies in data transmitted under this Directive, it may ask the national bodies to allow it to inspect the appropriate disaggregated data as well as the methods of calculation or evaluation upon which the aggregated data are based, in order to assess, or even amend, any information deemed irregular.

Article 6

Where appropriate, the Commission shall make the necessary changes to the Annexes to this Directive in the light of specific problems identified. Such changes may, however, cover only the technical features of the Annexes and may not be of a nature such as to alter the general structure of the system.

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Article 7

1. For the adoption of the amendments referred to in Article 6, the Commission shall be assisted by a committee.

2. Where reference is made to this Article, Articles 3 and 7 of Decision 1999/468/EC [1] shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

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Article 8

Once a year the Commission shall present a summary report on the operation of this Directive to the European Parliament, the Council and the Economic and Social Committee.

Article 9

Member States shall adopt the laws, regulations and administrative provisions needed to comply with this Directive no later than 1 July 1991. They shall forthwith inform the Commission thereof.

In the case of natural gas, the Directive will not be implemented in a Member State until five years after the introduction of that form of energy on the market in question. The date of introduction of that energy source on a national market is to be explicitly reported to the Commission by the Member State concerned without delay.

Article 10

This Directive is addressed to the Member States.

[1] Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

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ANNEX I

SPECIFIC PROVISIONS ON GAS

1. Two types of gas are concerned:

   (a) natural gas;

   (b) manufactured gas ([1]).

2. Where both types of gas are distributed in the same urban area or region, data on both must be reported except where consumption is less than 10 % of the total consumption of natural gas and manufactured gas in the places or regions referred to in point 11 below.

3. Only piped distribution is considered.

4. Prices to be reported are prices paid by the end-consumer.

5. Uses considered are all industrial uses.

6. Excluded from the system are consumers who use gas:

   (a) for electricity generation in public power plants;

   (b) in non-energy uses (e. g. in the chemical industry);

   (c) above 4 186 000 GJ/year (= 1 163 GWh/year).

7. Prices recorded are to be based on a system of standard consumers defined basically by the level and modulation (or load factor) ([2]) of gas consumption.

8. Other characteristics which could play a part in price setting (e. g. interruptibility) will be determined in each case, always adopting the solution which is most frequent in practice.

9. Prices must include meter rental, the standing charge and the commodity rate. They should not include the initial installation charge to the consumer.

10. The following industrial standard consumers, coded I_1 to I_5, have been chosen:

Annual consumption	Modulation
I_1 418,60 GJ or 116 300 KWh	No load factor laid down (*)
I_2 4 186 GJ or 1 163 000 KWh	200 days
I_{3-1} 41 860 GJ or 11,63 GWh)	200 days 1 600 hours
I_{3-2} 41 860 GJ or 11,63 GWh	250 days 4 000 hours
I_{4-1} 418 600 GJ or 116,3 GWh	250 days 4 000 hours
I_{4-2} 418 600 GJ or 116,3 GWh	330 days 8 000 hours
I_{5-4} 4 186 000 GJ or 1 163 GWh	330 days 8 000 hours

(*) If necessary 115-200 days.

([1]) 'Manufactured gas' means a derived energy, manufactured from coal, petroleum products or cracked, reformed or blended natural gas.
The scope of this Directive does not extend to liquefied petroleum gas (butane, propane), coke-oven gas or blast-furnace gas.

([2]) The daily load factor is the number of days which would be required to take the entire annual consumption at the maximum daily offtake rate:

$$nd = \frac{Qa}{Qd_{max}}$$

The hourly load factor is the number of hours which would be required to take the entire annual consumption at the maximum hourly offtake rate:

$$nh = \frac{Qa}{Qh_{max}}$$

In the above formulae:
Qa = annual volume consumed.
Qd_{max} = maximum daily offtake.
Qh_{max} = maximum hourly offtake.

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11. Prices are to be recorded in the following places or regions:

— Belgium:	Brussels,
— Denmark:	Copenhagen,
— Federal Republic of Germany:	Hamburg, Hanover, Weser-Ems, Dortmund, Düsseldorf, Frankfurt am Main, Stuttgart, Munich, ►M1 Dresden and Berlin, ◄
— Spain:	Madrid, Barcelona, Valencia, the Nord and East,
— France:	Lille, Paris, Strasbourg, Marseilles, Lyons, Toulouse,
— Ireland:	Dublin,
— Italy:	Milan, Turin, Genoa, Rome, Naples,
— Luxembourg:	City of Luxembourg,
— Netherlands:	Rotterdam,

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— Austria:	Vienna,

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— Portugal:	Lisbon,

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— Finland:	the country as a whole,
— Sweden:	the country as a whole,

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— United Kingdom:	London, Leeds, Birmingham.

12. Prices recorded are to be based on the tariffs, contracts, conditions and rules in force at the beginning of each six-month period (January and July), including any rebates.

13. If there are several possible tariffs, it is the tariff which is most advantageous to the consumer that is taken into account, after eliminating tariffs which are not used in practice or which apply only to a negligible number of users.

14. When there are only quasi-tariffs, special contracts or freely negotiated prices, the most commonly found price (most representative of the given supply conditions) must be recorded.

15. Prices must be expressed in national currency by physical unit of gas ([1]). The unit of energy used is measured on the basis of the gross calorific value (GCV), as is the practice in the gas industry.

16. Two price levels are to be shown ([2]):
    - with all taxes excluded,
    - with all taxes included (except recoverable VAT).

17. The rates and method of calculating taxes, which should include any tax whether national, regional or local, levied on gas sales to the consumer, should also be reported.

18. An explanation as detailed as is necessary to reflect the price system accurately must be annexed. Special heed must be given to any changes introduced since the previous survey.

19. In Member States where one gas company covers all the industrial sales for that country, the information should be communicated by that company. In other Member States where one or more regions are served by more than one gas company, the information should be communicated by an independent statistical body.

20. In the interests of confidentiality, data relating to prices will be communicated only where there are, in the Member State of region concerned, at least three consumers in each of the categories referred to in paragraph 10.

([1]) Where the cubic metre is used, its energy content should be defined in GJ, kWh or, up to 1999, in therms.

([2]) The price excluding tax is obtained directly from tariffs or contracts. The price excluding recoverable VAT includes, where payable, other specific taxes.

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ANNEX II

SPECIFC PROVISIONS ON ELECTRICITY

Data on electricity communicated pursuant to this Directive must contain the following information:

I. **The 'typical reference consumer' survey (for consumers with up to 10 MW maximum demand (net)).**

1. The existing survey of electricity prices for typical reference consumers in the Community carried out by the Commission will be extended to include two categories of reference industrial consumer with a maximum demand (net) of 10 MW, and will be incorporated in this Directive.

2. Electricity prices in Member States with a single national tariff will be surveyed in one location only; for Member States with tariffs which vary across the country, prices will be surveyed in a representative sample of locations, as follows:

— Belgium	the country as a whole,
— Federal Republic of Germany	Hamburg, Hanover, Düsseldorf, Frankfurt am Main, Stuttgart, Munich, Western Zone, Southern Zone, ►M1 Erfurt, Leipzig and Rostock, ◄
— Denmark	the country as a whole,
— Spain	Madrid,
— France	Lille, Paris, Marseilles, Lyons, Toulouse, Strasbourg,
— Greece	Athens,
— Ireland	Dublin,
— Italy	Northern and Central Italy, Southern Italy and the islands,
— Luxembourg	the country as a whole,
— Netherlands	Rotterdam (GEB), North Holland (PEN), North Brabant (PNEM),

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— Austria	Upper Austria, Tyrol, Vienna,

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— Portugal	Lisbon, Ponta Delgada (autonomous region of the Azores),

▼A1

— Finland	the country as a whole,
— Sweden	the country as a whole,

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— United Kingdom	London, Glasgow, Leeds, Birmingham.

3. Electricity prices will be surveyed for the following nine categories of typical reference industrial consumer:

Reference consumer	Annual consumption kWh	Maximum demand kW	Annual utilization in hours
I_a	30 000	30	1 000
I_b	50 000	50	1 000
I_c	160 000	100	1 600
I_d	1 250 000	500	2 500
I_e	2 000 000	500	4 000
I_f	10 000 000	2 500	4 000
I_g	24 000 000	4 000	6 000
I_h	50 000 000	10 000	5 000
I_i	70 000 000	10 000	7 000

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The maximum demand (net) is the maximum offtake in any quarter of an hour recorded in one year, expressed in kW. The price of supply is calculated for cos φ = 0,90. In the case of tariffs based on half-hourly demand, the maximum demand of the reference consumer is multiplied by a coefficient of 0,98. In the case of tariffs based on demand expressed in kVA an adjustment is made by dividing the reference consumer's maximum demand (net) in kW by the coefficient cos φ = 0,90.

4. In the case of tariffs based on maximum demand readings more frequent than once a year, the capacity charge is multiplied by the following coefficients:

TABLE OF POWER CORRECTION COEFFICIENTS

Utilization (hours)	Monthly maximum demand	Two-monthly maximum demand	Quarterly maximum demand	Average of three highest monthly maximum demands	Average of two highest monthly maximum demands	Annual maximum demand
1 000	0,81	0,83	0,86	0,94	0,96	1,0
1 600	0,83	0,85	0,88	0,95	0,97	1,0
2 500	0,85	0,87	0,90	0,96	0,98	1,0
4 000	0,90	0,91	0,95	0,98	0,99	1,0
5 000	0,90	0,91	0,95	0,98	0,99	1,0
6 000	0,96	0,97	0,98	0,99	0,995	1,0
7 000	0,96	0,97	0,98	0,99	0,995	1,0

5. For tariffs with reductions for ‘off-peak’ periods, the following ‘off-peak’ consumptions should be assumed in calculating the average price per kWh:

Standard consumer	Annual utilization	Annual consumption	Annual consumption (in 1 000 kWh) charged at off-peak rates according to the average daily duration of off-peak periods in each 24 hours					
	hours	1 000 kWh	7 h	8 h	9 h	10 h	11 h	12 h
I_a	1 000	30	0	0	0	0	0	0
I_b	1 000	50	0	0	0	0	0	0
I_c	1 600	160	11	13	16	19	22	25
I_d	2 500	1 250	197	225	262	300	338	375
I_e	4 000	2 000	438	500	580	660	740	820
I_f	4 000	10 000	2 190	2 500	2 900	3 300	3 700	4 100
I_g	6 000	24 000	7 140	8 160	9 120	10 080	11 040	12 000
I_h	5 000	50 000	13 100	15 000	17 000	19 000	21 000	23 000
I_i	7 000	70 000	23 300	26 600	29 400	32 200	35 000	37 800

For off-peak periods of durations between those shown above, the annual consumption of off-peak kWhs should be estimated by extrapolation.

For any further off-peak periods, for example all day Sunday, only half of the extra hours should be taken into account and these hours averaged across all days of the year, and the result added to the normal off-peak period, before using the table above.

6. Wherever possible, the price reported should be based on a publisher tariff applicable to the reference consumer category in question. If there are several possible tariffs, the tariff which is the most advantageous to the consumer, after the elimination of any tariffs which are not used in practice or which apply only to a marginal of negligible number of users, should be applied. Where there are only quasi-tariffs, special contracts, or freely negotiated prices, the most commonly found price (most respresentative) for the given supply conditions should be reported.

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7. Where electricity for a given reference consumer category may be supplied at a variety of voltages, that voltage should be assumed which is the most representative for the reference consumer category in question. This principle should be applied to other parameters not specified in this Directive.

8. The price per kWh should be calculated so as to include all fixed charges payable (e.g. meter rental, fixed charges or capacity charges, etc.), as well as the charges for the kWh consumed. It is therefore the total amount payable after any premiums or rebates, for the consumption pattern in question, divided by the total consumption. Initial connection charges, however, should not be included. Although information is to be provided twice yearly, the calculation should be based on annual consumption figures, to avoid seasonal variations.

9. Prices should be given in national currency per kWh ([1]):

   — with all taxes excluded,

   — with all taxes included (except recoverable VAT).

   The rates and method of calculating taxes, which should include any tax whether national, regional or local, levied on electricity sales to the consumer, should also be reported.

10. An explanation, as detailed as is necessary to describe the price system accurately and how it is applied, should be given. Special emphasis must be given to any changes introduced since the previous survey.

11. In Member States where one company covers all the industrial sales for that country, the information should be communicated by that company. In other Member States where one or more regions are served by more than one company, the information should be communicated by an independent statistical body.

II. **The 'marker price' survey (for consumers above 10 MW maximum demand)**

12. To survey industrial consumers with maximum demands above 10 MW, a new system based on 'marker prices', as defined below shall be introduced.

13. In all Member States except the Federal Republic of Germany and the United Kingdom, variations in the structure of charges and prices charged for large industrial consumers across the country are relatively small, and marker prices and associated information should be collected and published for the Member State as a whole. However, in the Federal Republic of Germany and the United Kindgom there may be significant geographical variations and so information for these two Member States should be communicated and published for three zones in each case, as follows:

Member State	*Zones*
Federal Republic of Germany ([1]):	— North/Central, — West, — South,
▼M1	— East;
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United Kingdom:	— England and Wales, — Scotland, — Northern Ireland.

([1]) ►M1 The *Länder* will be divided into four zones, namely:
   — North/Central: Schleswig-Holstein, Hamburg, Bremen, Berlin, Lower Saxony, North Hessen,
   — West: North-Rhine-Westphalia, Rineland-Palatinate, South Hessen, Saarland,
   — South: Baden-Wurttemberg, Bavaria,
   — East: all the *Länder* not included in the other regions. ◄

([1]) The price excluding all taxes is the direct result of the application of tariffs or contracts. The price excluding recoverable VAT includes any other specific taxes.

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14. Marker prices and associated information must be reported for each Member State as described in paragraph 13 above for three categories of large industrial consumer, i.e. those industrial consumers with maximum demands in the region of:

    — 25 MW, covering consumers with maximum demands (net) of between 17,5 and 37,5 MW,

    — 50 MW, covering consumers with maximum demands (net) of between 37,5 and 62,5 MW, and

    — 75 MW, covering consumers with maximum demands (net) of between 62,5 and 75 MW.

    These categories include any industrial consumers which also produce a part of their own electricity themselves, although only information relating to their electricity consumption from public utilities is required to be reported.

15. The marker price for a given MW categoriy (e.g. 25 MW) is the average price payable per kWh for a notional or 'marker price' industrial consumer with a normal demand of about 25 MW, but before any reductions for 'special factors', which should be reported separately (see paragraph 16 below). The demand characteristics of this 'marker price' industrial consumer should be as representative as possible (ignoring 'special factors') of all the industrial consumers in the category in question.

    In order to achieve a measure of homogeneity, the Commission will define demand characteristics for 'marker price' consumers for each category, (i.e. 25 MW, 50 MW and 75 MW), which should be used by utilities where appropriate. If such demand characteristics are not appropriate, a utility may define its own 'marker price' consumer demand characteristics, subject to the approval of the Commission. These demand characteristics concern, for example, the load factor, (e.g. '7 000 hours', where 7 000 is the number of hours for which demand would have to remain at maximum to obtain the annual consumption), and the distribution of consumption by the different time-of-day charge bands (e.g. peak, off-peak, etc.).

16. The marker prices given should be calculated so as to include all fixed charges payable (e.g. meter, rental, fixed charges or capacity charges etc.), as well as the charges for the kWh consumed. Initial connection charges, however, should not be included. Although information is to be provided twice yearly, annual consumption figures should be used in order to avoid seasonal variations. The way in which the marker price is calculated, including the inclusion of any fixed charges, should be explained.

17. For each marker price a range of 'special factors' which may be applied to reduce the price of electricity (e.g. interruptibility clauses), should be described and the amount of reduction (e.g. 6, 8, 10 %) indicated. These special factors should be representative of factors which are applicable to the consumers supplied by the reporting utility in the MW category being surveyed.

18. In Member States where there is more than one electricity utility, these utilities shall each provide marker prices and related information (on the demand characteristics of the notional consumer (paragraph 15), and on special factors and price reductions (paragraph 17)), to an independent statistical body. These bodies shall then pass on the highest and the lowest marker price for the Member State (or for each region if applicable) for each MW category, together with the related information on those marker prices, to the national administration and to the SOEC. For the other Member States, where one national utility covers the whole country, the information must be reported directly and simultaneously to the national administration and to the SOEC.

19. In the interests of confidentiality, marker prices and related information will be reported by the national utility or the independent statistical body as appropriate (see paragraph 18 above) only where there are at least three consumers in the appropriate MW category in the Member State or region concerned.

20. Marker prices should be expressed as indicated in paragraph 9.

21. Supply utilities should also provide data, once every two years, on the number of its consumers in each MW range (i.e. 17,5 to 37,5 MW, 37,5 to 62,5 MW and 62,5 to 75,0 MW), and the total annual consumption of these consumers for each range (in GWh). The information required under paragraph 18 should be communicated either via the independent statistical body, which shall collate information for the Member State as a whole, or directly and simultaneously to the national

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administration and to the SOEC. The information required under this paragraph will be provided on a confidential basis and will not be published.