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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
►**M3**	Council Directive 2006/108/EC of 20 November 2006	L 363	414	20.12.2006
►**M4**	Commission Decision 2007/394/EC of 7 June 2007	L 148	11	9.6.2007

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
►**A2**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

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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;

([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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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 breakdown 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.

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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.

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.

▼M2

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.

([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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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.

▼M4

ANNEX I

GAS PRICES

Gas prices for industrial end-users ([1]) to be collected and compiled according to the following methodology:

(a) Prices to be reported are prices paid by industrial end-users buying natural gas distributed through mains for their own use.

(b) All industrial uses of gas are considered. However, the system excludes consumers who use gas:

— for electricity generation in power plants or in CHP plants,

— in non-energy uses (e.g. in the chemical industry),

— above 4 000 000 gigajoule (GJ) per year.

(c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual gas consumption.

(d) Prices will be collected twice per year, at the beginning of each six-month period, (January and July) and will refer to the average prices paid by industrial end-users for gas over the previous six months. The first communication of price data to the Statistical Office of the European Communities will refer to the situation on 1 January 2008.

(e) Prices must be expressed in national currency per gigajoule. The unit of energy used is measured on the basis of the gross calorific value (GCV).

(f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (meter rental, standing charges, etc.). Initial connection charges are not to be included.

(g) Prices are to be recorded as national average prices.

(h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:

— Prices will represent weighted average prices, using the market shares of the gas supply undertakings surveyed as weighting factors. Arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered by the survey.

— Market shares should be based on the quantity of gas invoiced by the gas supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules.

— In the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).

(i) Three levels of prices are to be provided:

— Prices excluding taxes and levies.

— Prices excluding VAT and other recoverable taxes.

— Prices including all taxes, levies and VAT.

(j) Gas prices will be surveyed for the following categories of industrial end-user:

Industrial End-User	Annual gas consumption (GJ)	
	Lowest	Highest
Band-I1		< 1 000
Band-I2	1 000	< 10 000
Band-I3	10 000	< 100 000
Band-I4	100 000	< 1 000 000
Band-I5	1 000 000	<= 4 000 000

([1]) Industrial end-user may include other non-residential users

▼M4

(k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to the Statistical Office of the European Communities and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system shall concern the situation on 1 January 2008.

(l) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to the Statistical Office of the European Communities.

The information will include:

— Average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand.

— A description on discounts given for interruptible supplies.

— A description of standing charges, meter rentals or any other charges relevant at national level.

(m) Once per year, together with the January reporting, the rates and method of calculation as well as a description of the taxes levied on gas sales to industrial end-users should also be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description of taxes to be provided will include three clearly separated sections:

— Taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: ‘Prices excluding taxes and levies’.

— Taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will therefore be included under the reported figures for the price level: ‘Prices excluding VAT and other recoverable taxes’.

— Value Added Tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: ‘Prices including all taxes, levies and VAT’.

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges applicable are:

— Value Added Tax.

— Concession fees. This usually refers to licences and fees for the occupation of land and public or private property by networks or other gas devices.

— Environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP or as a burden for CO_2, SO_2 or another agent emissions related to climate change.

— Other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.

— Other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on gas distribution, etc.

Taxes on income, property related taxes, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc. will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators costs and apply also to other industries or activities.

(n) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.

▼M4

ANNEX II

ELECTRICITY PRICES

Electricity prices for industrial end-users [1] to be collected and compiled according to the following methodology:

(a) Prices to be reported are prices paid by industrial end-users buying electricity for their own use.

(b) All industrial uses of electricity are considered.

(c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual electricity consumption.

(d) Prices will be collected twice per year, at the beginning of each six-month period, (January and July) and will refer to the average prices paid by the industrial end-user for electricity over the previous six months. The first communication of price data to the Statistical Office of the European Communities will refer to the situation on 1 January 2008.

(e) Prices must be expressed in national currency per kWh.

(f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (capacity charges, commercialisation, meter rental, etc.). Initial connection charges are not to be included.

(g) Prices are to be recorded as national average prices.

(h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:

— Prices will represent weighted average prices, using the market share of the electricity supply undertakings surveyed as weighting factors. Arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered in the survey.

— Market shares should be based on the quantity of electricity invoiced by electricity supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules.

— In the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).

(i) Three levels of prices are to be provided:

— Prices excluding taxes and levies.

— Prices excluding VAT and other recoverable taxes.

— Prices including all taxes, levies and VAT.

(j) Electricity prices will be surveyed for the following categories of industrial end-user:

Industrial End-User	Annual electricity consumption (MWh)	
	Lowest	Highest
Band-IA		< 20
Band-IB	20	< 500
Band-IC	500	< 2 000
Band-ID	2 000	< 20 000
Band-IE	20 000	< 70 000
Band-IF	70 000	<= 150 000

[1] Industrial end-user may include other non-residential user

▼M4

(k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to the Statistical Office of the European Communities and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate the weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system shall concern the situation on 1 January 2008.

(l) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to the Statistical Office of the European Communities.

The information to be provided will include:

— Average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand.

— A table indicating the voltage limits per country.

— A description of standing charges, meter rentals or any other charges relevant at national level.

(m) Once per year, together with the January price reporting, the rates and method of calculation as well as a description of the taxes levied on electricity sales to industrial end-users should be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description on taxes to be provided will include three clearly separated sections:

— Taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figure for the price level: ‘Prices excluding taxes and levies’.

— Taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will be included under the reported figures for the price level: ‘Prices excluding VAT and other recoverable taxes’.

— Value Added Tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: ‘Prices including all taxes, levies and VAT’.

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges that can be applicable are:

— Value Added Tax.

— Concession fees. This usually refers to licences and fees for the occupation of land and public or private property by networks or other electricity devices.

— Environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP, or as a burden for CO_2, SO_2 or another agents emissions related with the climate change.

— Nuclear and other Inspection taxes: nuclear decommissioning charges, inspection and fees for nuclear installations, etc.

— Other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.

— Other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on electricity distribution, etc.

Taxes on income, property related taxes, excise duties on oil products and fuels other than for electricity generation, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc. will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators costs and apply to other industries or activities.

▼M4

(n) Once per year, together with the January price reporting, a breakdown of electricity prices into their main components will be communicated to the Statistical Office of the European Communities. This breakdown of electricity prices into their main components will be based on the following methodology:

The complete price for electricity per consumption band can be considered as the global sum of 'Network' prices, 'Energy and Supply' prices (i.e. from generation to commercialisation, except networks) and all taxes and levies.

— 'Network' price is the ratio between the revenue related to transmission and distribution tariffs and (if possible) the corresponding volume of kWh per consumption band. If separate volumes of kWh per band are not available, estimates should be provided.

— 'Energy and Supply' price, is the total price minus the 'Network' price and minus all taxes and levies.

— Taxes and levies. For this component an additional breakdown will be provided:

  — Taxes and levies on 'Network' prices.

  — Taxes and levies on 'Energy and Supply' prices.

  — VAT and other recoverable taxes.

NOTE: If complementary services are identified separately, then they can be allocated into one of the two main components as follows:

— 'Network' price will include the following costs: transmission and distribution tariffs, transmission and distribution losses, network costs, after-sale services, system service costs and meter rental.

— 'Energy and Supply' price will include the following costs: generation, aggregation, balancing energy, supplied energy costs, customer services, after-sales management, metering, and other supply costs.

— Other specific costs. This item represents costs which are neither network costs nor Energy and Supply costs nor taxes. If this kind of costs exists, they will be reported separately.

(o) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.