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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2008/90

of 29 June 1990

concerning the promotion of energy technology in Europe (Thermie programme)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

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

Whereas in its resolution of 16 September 1986 concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States ⁽⁴⁾ the Council stated that, possible short-term fluctuations on the energy market apart, efforts made must be maintained and, if necessary, reinforced between now and 1995 and beyond that date in order to reduce to a minimum the risk of tension at a later date on the market;

Whereas that same resolution states that one of the horizontal objectives of Community energy policy is to encourage continuous and reasonably diversified promotion of technological innovations and appropriate dissemination of the results throughout the Community; whereas in spite of the present energy situation there should be no relaxation of efforts to diversify the Community's energy supply and improve energy efficiency; whereas the promotion of new technologies will help to achieve these objectives and to ensure better protection of the environment from the impact of energy technologies;

Whereas it is important to dovetail these efforts with the Community strategy for science and technology and with the specific programmes defined in the framework programme for Community activities in the field of research and technological development, both in terms of programme

execution and in terms of the financial status of the programme in the financial perspective;

Whereas the resolution of 16 September 1986 also states that the Community should search for balanced solutions as regards energy and the environment by making use of the best available economically justified technologies; whereas under Article 130r of the Treaty environmental protection requirements are to be a component of the Community's other policies and action by the Community relating to the environment must be designed to ensure a prudent and rational utilization of natural resources; whereas energy technology has a key role to play in meeting the ecological challenge by increasing energy efficiency, developing new and renewable sources and ensuring the clean use of solid fuels; whereas major efforts in all these areas will be needed to face up to the threat of climatic change;

Whereas the promotion of projects for exploiting the indigenous energy potential of the regions, particularly less-developed regions, will help to strengthen the economic and social cohesion of the Community, an objective which, according to Article 130b of the Treaty, should be taken into account when implementing common policies and the internal market;

Whereas support for the promotion of energy technologies will benefit economic and social cohesion;

Whereas action to promote innovative technologies taken at Community level will avoid the dissipation of resources and increase effectiveness;

Whereas this action should be coordinated with action being taken by the Community within the framework of other specific programmes concerned, in particular, with research and development in the field of energy, innovation and technology transfer and the dissemination and utilization of the results of scientific and technical research;

Whereas financial support should be granted in appropriate cases to projects for the promotion of advanced technology in the field of energy;

Whereas, when selecting projects, preference should be given to projects involving the association of independent

⁽¹⁾ OJ No C 101, 22. 4. 1989, p. 3 and OJ No C 111, 5. 5. 1990, p. 13.

⁽²⁾ OJ No C 38, 19. 2. 1990, p. 107.

⁽³⁾ OJ No C 221, 28. 8. 1989, p. 6.

⁽⁴⁾ OJ No C 241, 25. 9. 1986, p. 1.

undertakings established in different Member States in projects proposed by small and medium-sized undertakings and in dissemination projects;

Whereas for reasons of effectiveness it is necessary to make provision for a programme of five years duration with appropriate overall funding;

Whereas it is necessary to estimate the Community finance needed to implement this programme; whereas that amount must be covered by the financial perspectives defined by interinstitutional agreements; whereas the appropriations actually available will be determined under the budgetary procedure in compliance with the said agreements;

Whereas, notwithstanding the new impetus that the promotion of innovative energy technologies requires, the continuity of measures undertaken under demonstration projects and industrial pilot projects in the energy field referred to by Regulation (EEC) No 3640/85 ⁽¹⁾ and the programme of support for technological development in the hydrocarbons sector referred to in Regulation (EEC) No 3639/85 ⁽²⁾ must be ensured in accordance with this Regulation; whereas such continuity must be achieved on the one hand through the pursuit of measures to promote and disseminate technologies that have received Community support under such Regulations; whereas it may also be achieved through support for the later stages of projects that have already received partial support under the same Regulations; whereas it must be possible in certain cases to support projects of the same sort as those covered by these Regulations provided they also fulfil the requirements of this Regulation;

Whereas cooperation between undertakings in various Member States in the field of energy technology must be maintained and encouraged;

Whereas technology transfer in the energy sector could contribute significantly to more efficient energy production and the reduction of pollutant emissions in the less favoured areas of the Community and in third countries;

Whereas such technology transfers should therefore be encouraged both within the framework of existing Community programmes and by any other appropriate means;

Whereas the grant of Community support must not affect conditions of competition in such a way as to be incompatible with the competition provisions of the Treaty;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

⁽¹⁾ OJ No L 350, 27. 12. 1985, p. 29.

⁽²⁾ OJ No L 350, 27. 12. 1985, p. 25.

HAS ADOPTED THIS REGULATION:

Article 1

The Community may, under the conditions laid down in this Regulation, grant financial support for projects for the promotion of energy technology in Europe (Thermie) in the fields of application referred to in Article 3 and undertake the associated measures referred to in Article 5.

The amount of Community expenditure deemed necessary to implement the programme covered by this Regulation for the period 1990 to 1992 is ECU 350 million.

The budgetary authority shall determine the appropriations available for each financial year.

Article 2

1. For the purposes of this Regulation, 'projects for the promotion of energy technology', hereinafter referred to as 'projects', means projects designed to advance, implement and/or promote innovative technologies in the field of energy, implementation of which entails a large element of technical and economic risk, such that those projects would in all likelihood not be executed without Community financial support.

2. Community financial support may be granted for:

- (a) innovatory projects; these are projects designed to advance or implement innovatory techniques, processes or products for which the research and development stage has for the most part been completed, or new applications of established techniques, processes or products. This type of project is designed to prove the technical and economic viability of new technologies by applying them on a sufficiently large scale for the first time. These criteria shall apply as necessary according to the requirements of continuity of the fields of application referred to in Article 3;
- (b) dissemination projects; these are projects designed to promote with a view to their broader utilization within the Community, either under different economic or geographical conditions or with technical modifications, innovatory techniques, processes or products which have already been applied once but, owing to residual risk, have not yet penetrated the market.

Article 3

The fields of application of this Regulation are as follows:

- rational use of energy,
- renewable energy sources,

- solid fuels,
- hydrocarbons.

Annexes I to IV list the sectors of application covered by each of these fields. The contents of these Annexes may be amended by the Commission to keep pace with technological developments in accordance with the procedures defined in Articles 9 (2) and 10 (1), the European Parliament and the Council being kept informed.

Article 4

Whenever it appears to be necessary, and in particular where a need is not being met or where significant technological advance could be achieved through cooperation between persons or undertakings in at least two Member States, the initiative may be taken to encourage or coordinate the setting-up of specific projects, called 'targeted projects'.

Article 5

The Commission shall undertake associated measures, such as those defined in Annex V, designed to encourage the application and market penetration of energy technologies. To that end the Community may provide technical and financial support for bodies that promote innovative technologies in the Member States. A list of these measures appears in Annex V, the contents of which may be amended by the Commission in accordance with the procedures defined in Articles 9 (2) and 10 (1).

These associated measures may be carried out in third countries in so far as such extension is in keeping with the objectives of this Regulation.

Article 6

1. Any project within the meaning of Articles 2 and 4 must meet the following conditions:

- (a) it must use, with a view to their implementation and propagation, innovatory techniques, processes or products, or new applications of established techniques, processes or products;
- (b) it must offer technically and economically viable prospects of subsequent commercial exploitation of the relevant technology;
- (c) it must offer appropriate solutions compatible with safety and environmental protection requirements;
- (d) it must be difficult to finance because of major technical and economic risks;
- (e) it must be proposed by natural or legal persons capable, in the case of the techniques, processes or products

referred to in (a), of implementing and applying them, and of contributing to or assisting in the dissemination thereof;

- (f) in the case of any project of a total cost of ECU 6 million or more, it must be submitted by at least two independent promoters established in different Member States.

However, the Commission may agree to exceptions for projects submitted by a single promoter if their implementation would be of particular interest to the Community;

- (g) it must be carried out within the Community unless it is essential to the interests of the Community to have all or part of it carried out in an area outside the Community, in particular because of the special characteristics of the project.

2. Additional conditions specific to the sectors of application are given in Annexes I to IV.

3. When selecting projects, the Commission shall, as an adjunct to the criteria laid down in paragraphs 1 and 2, take account of a preference to be given to projects with the following characteristics:

- (a) projects, other than those referred to in paragraph 1 (f), involving an association of at least two independent undertakings established in different Member States, provided that it is established that each undertaking can make an effective and significant contribution to carrying out the project;
- (b) projects proposed by small and medium-sized undertakings or by an association of such undertakings;
- (c) projects referred to in Article 2 (2) (b) which are to be implemented in regions whose development is lagging behind as defined by Article 8 of Regulation (EEC) No 2052/88⁽¹⁾.

Article 7

1. Support for a project shall take the form of a financial contribution by the Community granted in accordance with the conditions set out in the paragraphs below and in Articles 8, 12 and 15.

2. Financial support may be granted for an entire project or for different stages of a project. In the latter case, without prejudice to the responsibilities conferred upon the budgetary authority of the European Communities, financial support shall continue to be granted for later stages of the same project provided that the eligibility criteria continue to be met and that the Commission is satisfied with the progress of the project.

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 9.

3. Financial support may not exceed 40 % of the eligible cost of the project in the case of the innovatory projects referred to in Article 2 (2) (a) and of the targeted projects referred to in Article 4; it may not exceed 35 % of the eligible cost in the case of the dissemination projects referred to in Article 2 (2) (b).

4. The amount of financial support shall be determined separately for each project. When determining the amount, the Commission shall take account of the element or proportion of the risk which will have to be borne directly by those responsible for the project and of other support received or expected, in such a way that the total amount of public support does not exceed 49 % of the total cost of the project. To this end, the person responsible for the project shall be obliged to inform the Commission of any public aid expected or received.

5. The Commission shall retain the possibility of introducing, if necessary and in accordance with the procedures defined in Articles 9 (2) and 10 (1), other appropriate financial mechanisms.

Article 8

1. Projects shall be submitted by natural or legal persons established within the Community, whether individually or in the form of associations, following the publication of an invitation to submit projects in one or more of the fields of application referred to in Article 3 in the *Official Journal of the European Communities*, in accordance with this Regulation.

2. In the invitations to submit projects, the Commission shall specify those sectors to be given priority when projects are selected; this list of priorities shall be drawn up in accordance with the procedures defined in Articles 9 (2) and 10 (1). The Commission shall also specify the information applicants will be required to supply for the purposes of the selection of projects.

Article 9

1. The Commission shall be responsible for applying this Regulation.

2. In carrying out the tasks listed below, the Commission shall apply the procedure referred to in Article 10 (1):

- (a) amendment of the contents of Annexes I to VI;
- (b) the establishment of priorities for invitations to submit projects;
- (c) the selection of projects, including the fixing of the rate of financial support, for every project with a total cost exceeding ECU 500 000;
- (d) any adaptation of financing techniques.

3. As regards the selection of projects, including the fixing of the rate of financial support for every project with a total cost exceeding ECU 100 000 but not exceeding ECU 500 000, the Commission shall apply the procedure referred to in Article 10 (2).

Article 10

1. In carrying out the tasks referred to in Article 9 (2), the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In the event, the Commission shall defer application of the measures which it has decided for a period of one month from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

2. As regards the projects referred to in Article 9 (3), the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the

committee of the manner in which its opinion has been taken into account.

Article 11

In implementing this Regulation, the Commission shall ensure coordination with projects carried out under other Community programmes relating to research and development, innovation and the transfer of technology, and the dissemination and utilization of research results, as well as under the Structural Funds.

It shall also ensure closer coordination with national schemes in order to avoid duplication of similar projects.

In addition it shall ensure the dovetailing of the programme referred to in this Regulation with the framework programme for research and technological development.

Article 12

1. The contractor responsible for carrying out a project receiving financial support from the Community shall undertake to use the successful technique, process or product or to facilitate its use, and to allow dissemination of the results obtained.

2. The Commission shall, in cooperation with the bodies responsible in the Member States, endeavour to ensure the dissemination and application of projects supported in accordance with this Regulation and Regulations (EEC) No 3056/73 ⁽¹⁾, (EEC) No 1302/78 ⁽²⁾, (EEC) No 1303/78 ⁽³⁾, (EEC) No 1971/83 ⁽⁴⁾, (EEC) No 1972/83 ⁽⁵⁾, (EEC) No 3639/85 ⁽⁶⁾ and (EEC) No 3640/85 ⁽⁷⁾, and to promote their exploitation. It shall take appropriate steps to achieve this objective in connection with the measures referred to in Article 5, and if necessary shall also give suitable assistance to the contractor.

Article 13

Contracts shall be signed between the Community and the persons referred to in Article 15 for the implementation of the projects adopted under this Regulation; they shall govern the rights and obligations of each party, including the methods of dissemination, protection and exploitation of the results of the projects and the possibility of repayment of the financial support in the event of non-compliance with contractual obligations.

⁽¹⁾ OJ No L 312, 13. 11. 1973, p. 1.

⁽²⁾ OJ No L 158, 16. 6. 1978, p. 3.

⁽³⁾ OJ No L 158, 16. 6. 1978, p. 6.

⁽⁴⁾ OJ No L 195, 19. 7. 1983, p. 1.

⁽⁵⁾ OJ No L 195, 19. 7. 1983, p. 6.

⁽⁶⁾ OJ No L 350, 27. 12. 1985, p. 25.

⁽⁷⁾ OJ No L 350, 27. 12. 1985, p. 29.

Article 14

Subject to Article 12, the information obtained by the Commission under this Regulation shall remain confidential.

Article 15

Responsibility for any project shall lie with a physical or legal person constituted in accordance with the law applicable in the Member States, or with an association of such persons, within which they are jointly and severally liable.

Article 16

Financial support granted by the Community must not affect conditions of competition in such a way as to be incompatible with the relevant provisions of the Treaty.

Article 17

Three years after the entry into force of this Regulation and also upon expiry thereof, the Commission shall submit a report on the implementation of this Regulation and on the compatibility between national and Community action to the European Parliament and to the Council for the purposes of assessing the results obtained.

Article 18

1. The amounts to be granted under this Regulation shall be entered each year in the general budget of the European Communities.

The appropriations shall cover the financial support to be granted to projects referred to in Articles 2 (2) and 4, as well as measures referred to in Articles 5 and 7 (5) and expenditure relating to the implementation of this Regulation.

2. Annex VI contains an indicative breakdown of the total amount fixed in paragraph 1 between the various fields, measures and mechanisms defined in Articles 3, 5 and 7 (5) respectively; this breakdown may be modified by decision of the Community in accordance with the procedures defined in Articles 9 (2) and 10 (1).

Article 19

Regulations (EEC) No 3639/85 and (EEC) No 3640/85 shall continue to apply to projects to which support has been granted pursuant to those Regulations.

Article 20

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply until 31 December 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 29 June 1990.

For the Council
The President
M. SMITH

ANNEX I

RATIONAL USE OF ENERGY

LIST OF SECTORS OF APPLICATION REFERRED TO IN ARTICLE 3 AND ADDITIONAL CONDITIONS REFERRED TO IN ARTICLE 6 (2)

As a general rule, in order to qualify for support, 'rational use of energy' projects must lead to substantial energy savings.

1. BUILDINGS

- 1.1. Projects designed to improve the energy efficiency of existing buildings by demonstrating more efficient ways of:
 - heating or air-conditioning premises,
 - producing domestic hot water,
 - regulating, controlling and metering heat,
 - improving the thermal characteristics of the building as such (insulation, draught-proofing),
 - recovering heat from air extracted,
 - using heat from combined heat and power plants,
 - improving the performance of lighting.
- 1.2. Projects relating to new processes or products for heating and air-conditioning new buildings, taking into account problems of condensation, ventilation, thermal inertia and fire and safety regulations.
- 1.3. Projects relating to new urban or district heating systems and the application of small-scale combined heat and power generation.

2. INDUSTRY

- 2.1. Projects designed to make major changes to manufacturing processes by using advanced technologies to bring about substantial reductions in energy consumption per unit of product.
- 2.2. Projects implementing innovatory technologies or using new equipment to:
 - reduce energy consumption by rationalizing or replacing an existing manufacturing process,
 - recycle residual heat, particularly low-temperature heat, in particular by using innovatory heat exchangers and new methods of storing heat.
- 2.3. Projects which, apart from energy efficiency, have other objectives such as improving the quality of products or increasing automation, provided that energy efficiency is still the overriding objective.
- 2.4. Projects intended to restrict or prevent an increase in energy consumption as a result of the implementation of environmental protection measures by:
 - reducing emissions of pollutants into the atmosphere and water,
 - disposing of waste,and generally replacing pollutant technologies by those with a controllable environmental impact.
- 2.5. Projects designed to improve management of energy consumption using innovatory, replicable microelectronic units.
- 2.6. Projects designed to enhance energy efficiency in the production or processing of agricultural products. Such projects must also comply with any common agricultural policy guidelines.

3. ENERGY INDUSTRY, ELECTRICITY AND HEAT

- 3.1. More effective methods of producing heat, power and/or electricity; methods for making full use of residual heat in the energy industry, in particular heating networks; demonstrating new systems for raising the output of low-enthalpy heat systems for use in district heating networks.
- 3.2. More energy-efficient methods of managing the networks for the transport, distribution and storage of energy, provided that these projects are likely to achieve substantial energy savings.
- 3.3. More effective methods of reducing heat-loss from motors and transformers.
- 3.4. Projects designed to improve management of heating networks (innovatory ways of storing heat on a daily or seasonal basis, new ways of managing networks, etc.).

4. TRANSPORT AND URBAN INFRASTRUCTURE

- 4.1. Projects which will significantly improve components as a means of improving, at low cost, the efficiency of vehicles and/or transport systems.
- 4.2. Projects designed to optimize the use of urban infrastructure and to manage traffic more efficiently, particularly in towns and particularly in ways which benefit the environment. Such projects must provide benefits in terms of energy and the environment and afford promising technical and economic prospects.
- 4.3. Projects designed to promote the more efficient use of fuel by road vehicles. Such projects must provide benefits in terms of energy and the environment and afford promising technical and economic prospects.

ANNEX II

RENEWABLE ENERGY SOURCES

LIST OF SECTORS OF APPLICATION (AS REFERRED TO IN ARTICLE 3) AND ADDITIONAL CONDITIONS REFERRED TO IN ARTICLE 6 (2)

1. SOLAR ENERGY

1.1. Thermal applications

Sector of application

Conversion of solar energy into thermal energy using active and/or passive processes in:

- buildings (not swimming pools),
- industry,
- agriculture and horticulture.

Additional conditions

- groups of dwellings must include at least five one-family homes,
- special attention should be given to the architectural aspects of buildings and solar installations.

1.2. Photovoltaic applications

Sectors of application

Conversion of solar energy using photovoltaic processes to supply electricity, subject to acceptable prospective costs, preferably in isolated locations, for:

- houses, groups of houses, small villages, means of telecommunication, signalling devices and alarms,
- water pumping, purification or desalination plants,
- other suitable applications, except road lighting.

Additional conditions

- groups of dwellings must include at least five one-family homes,
- special attention should be given to the environmental and architectural aspects of the installation and the arrangement of photovoltaic modules.

2. ENERGY FROM BIOMASS AND WASTE

Sectors of application

- direct or indirect energy use of biomass and all plant, animal, urban and industrial waste ⁽¹⁾,
- use of technology to produce and use biomass for energy purposes.

Additional condition

Projects must comply with the guidelines of Community environment and agricultural policy.

3. GEOTHERMAL ENERGY

Sectors of application

- heating of dwellings, other premises, greenhouses and installations used for aquaculture and fish-farming,

⁽¹⁾ Except for those types of waste which are covered by technological projects relating to solid fuels (see Annex III).

- use of heat in industrial processes (e.g. for drying, and for desalinating sea water),
- production of electricity, including the use of Rankine organic cycles to exploit medium-enthalpy resources,
- combined use of the above processes, in series or as alternatives.

4. HYDROELECTRIC ENERGY

Sector of application

Production of electricity for a public network or for private use in low-power plants.

Additional conditions

- the project should apply new concepts of the level of design or construction, materials, method of operation or control in order to improve economic viability or other important factors (e.g. reliability),
- project design must take account of existing environmental protection measures.

5. WIND ENERGY

Sector of application

The production of significant quantities of electricity for all purposes by individual units or wind farms.

Additional conditions

- the technical features adopted should make it possible to reduce investment costs and make full use of available wind resources in order to improve the economic viability of projects,
- particular attention should be paid to:
 - environmental aspects,
 - setting up wind energy production units as part of an integrated scheme for the development of local energy sources.

ANNEX III

SOLID FUELS

LIST OF SECTORS OF APPLICATION REFERRED TO IN ARTICLE 3 AND ADDITIONAL CONDITIONS REFERRED TO IN ARTICLE 6 (2)

For the purposes of this Regulation, 'solid fuels' means anthracite, coal, lignite/brown coal, peat or any other derived fuel.

1. COMBUSTION

Sectors of application

New or improved clean combustion methods and the clean combustion of waste arising from the processing of solid fuels:

- recirculating fluidized beds, particularly for the use of poor and difficult fuels,
- pressurized fluidized beds,
- low-NO_x burners,
- production and combustion of ultra-clean coals, including in the form of a coal water mixture,
- high temperature flue-gas scrubbing,
- flue-gas desulphurization (FGD) systems, with verification of output, cost of reagents, production of sludges and solids which can either be eliminated or recycled,
- controlling CO₂ produced during combustion.

Additional conditions

Combustion projects relating to the following fields shall be excluded:

- stationary fluidized beds at atmospheric pressure, except projects designed to dispose of waste arising from the use of coal,
- coal-liquid mixtures using non-purified coal,
- pulverized coal, except the types mentioned above, unless novel technological advances are proposed.

Applications aimed at (a) private generation and (b) the production of electricity from pressurized fluidized beds are considered to be of particular importance.

2. CONVERSION

Sectors of application

Conversion of solid fuels into gaseous or liquid energy products which will, from the economic and technical points of view, improve the Community's energy supply by reducing importation of hydrocarbons.

Additional conditions

- projects to produce synthesis gases and pyrolysis projects are considered to be of secondary priority,
- projects designed to produce substitute natural gas (SNG) are excluded,
- liquefaction projects are excluded, except for those already in progress under Regulations (EEC) No 1302/78, (EEC) No 1971/83, (EEC) No 2125/84 ⁽¹⁾ and (EEC) No 3640/85 or those to be carried out outside the Community based on technologies which were financed by the Commission on the basis of the same Regulations.

3. WASTE

Sectors of application

Use, treatment or enhancement of gaseous, liquid and solid wastes arising as a result of the use of solid fuels, including:

⁽¹⁾ OJ No L 196, 26. 7. 1984, p. 3.

- using the ash arising from fluidized bed combustion as a raw material in the building industry or in the manufacture of a raw material for the building industry,
- new flue-gas scrubbing techniques.

4. GASIFICATION INTEGRATED WITH A COMBINED GAS/STEAM CYCLE

Eligible projects are those designed to produce electricity in a module consisting of a gasifier producing a gas which is burned directly in a gas turbine and a thermodynamic steam cycle. Projects must use totally new configurations.

Special conditions

Projects in this sector must:

- be carried out on Community territory,
- entail cooperation between several undertakings from several Member States, at least one of which must be an electricity-generating company. Priority will be given to projects involving the most extensive intra-Community cooperation,
- have a minimum capacity of 150 MW (e),
- preferably use a gasifier constructed with the help of Community support within the framework of the programme of demonstration projects in the field of energy,
- be appreciably more efficient than conventional power stations so as to reduce carbon dioxide emissions.

The Commission shall participate in meetings of the bodies managing projects concerning gasification integrated with a combined cycle.

5. ELIGIBILITY

Projects that have received partial support under the Regulations referred to in point 2 shall also be eligible for support under this Regulation.

ANNEX IV

HYDROCARBONS

LIST OF SECTORS OF APPLICATION REFERRED TO IN ARTICLE 3 AND ADDITIONAL CONDITIONS REFERRED TO IN ARTICLE 6 (2)

I. SECTORS OF APPLICATION

For the purposes of this Regulation, 'hydrocarbons' means mixtures constituted mainly of hydrocarbons, in other words of compounds whose basic constituents are carbon and hydrogen. These mixtures are present in their natural state in a gaseous, liquid or solid form. Tar sands and oil shales are included in this sector of application; however, solid fuels referred to in Annex III are excluded.

Projects likely to be supported under this Regulation will have among their objectives the development of techniques, tools and processes designed to improve the efficiency of operations, reduce costs and increase the safety of equipment and personnel, while offering environmentally appropriate solutions.

As regards safety, the projects adopted will have as their principal objective the reduction of risks by using advanced techniques including robotics and telecommunications.

As regards the environment, the projects submitted will have to aim at the development of techniques that offer the best guarantees of respect for the environment.

Projects eligible for support are those dealing with exploration, production, transport and storage, as defined hereafter.

Projects that have received partial support under Regulation (EEC) No 3639/85 are also eligible for support under Thermie.

1. *Exploration*

- prospecting of basins in order to locate reservoirs, especially in complex geological zones,
- knowledge of oil deposits (geometric characteristics, internal structure, fluid-rock relation in reservoirs),
- drilling (methods and equipment, including automation and systems for data acquisition and handling).

2. *Production*

- processes for improving the rate of oil recovery,
- methods for monitoring the developments in reservoirs during exploitation,
- offshore production plants:
 - fixed structures: emphasis will be put on the safety and reliability aspects and on the methods of removal,
 - floating supports.

Systems for bringing marginal fields into production which, by the use of innovative techniques, reduce investment costs and enable fields hitherto regarded as unsuitable for exploitation to be exploited under acceptable economic conditions are covered,

- submarine production systems, including the production of multiphase fluids,
- production equipment and processes operating in the extraction, the transport and the treatment of flow, including the automation of offshore production plants,
- submarine operating equipment and processes for carrying out work related to offshore hydrocarbon production.

3. *Transport*

Techniques and processes for transporting processed flow by pipeline and by slip, including, in this case, loading installations.

4. *Storage*

Installations and processes for storage of fluid products connected with production operations, particularly in offshore exploration.

II. SPECIAL CONDITIONS IN THE HYDROCARBONS FIELD

Projects as defined in Article 2 (2) (b) may not be supported in this sector unless they are of Community interest and involve particularly high technical risks or unless their penetration of the market encounters particular obstacles.

Projects relating to refining are not covered by this sector of application.

ANNEX V

ASSOCIATED MEASURES

Encouraging the application and market penetration of energy technologies as referred to in Article 5 requires the undertaking of associated measures by the Commission. Such measures are to be undertaken by the Commission only in so far as market conditions require it or undertakings' contractual obligations under this Regulation do not provide for it and the undertakings concerned are not able to carry them out by themselves. Such measures include:

1. Analysis of the features and evaluation of the potential of the market (including sectoral diagnosis and possible feasibility studies) for the application of energy technologies and their market penetration.
2. The monitoring and evaluation of projects financed by the Community, preferably with the assistance of independent experts.
3. The dissemination of information on the promotion of energy technologies and the results of projects, by greater exploitation of databases (for example by making the Sesame database more user-friendly), the organization of technical seminars, technological cooperation conferences, participation in technical fairs, the production of documentary material, etc.
4. Recourse to public or private national/regional/local institutions cooperating in the above activities and, if appropriate, their strengthening or the training of their staff.
5. Recourse to the above activities with a view to industrial cooperation with third countries.

The Commission will inform the Member States annually of the guidelines it proposes to follow in this area; it will report on the results achieved in the context of the periodic reports to be submitted under Article 15.

ANNEX VI

INDICATIVE ALLOCATION OF THE AMOUNT BETWEEN THE FIELDS, MEASURES AND MECHANISMS DEFINED IN ARTICLES 3, 5 AND 7 (5)

The indicative breakdown of the amount of the appropriations intended for the financial support provided for in Articles 5 and 7 is as follows:

1. A 75 % share of the total amount will be allocated on the basis of at least one quarter to each of the four fields of application referred to in Article 3.
2. A provisional margin of 25 % of the total amount may be allocated between these fields by the Commission, in accordance with the procedures defined in Articles 9 (2) and 10 (1), depending on developments in the situation regarding requirements and technologies.
3. An indicative amount of 10 to 15 % of the total appropriation will be allocated to the associated measures referred to in Article 5.

II

(Acts whose publication is not obligatory)

COUNCIL

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.

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 appropriate 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.

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.

Article 7

In the case of any changes to the Annexes, as referred to in Article 6, the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

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.

Done at Luxembourg, 29 June 1990.

For the Council

The President

M. SMITH

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 I₁ to I₅, 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:

$$nd = \frac{Q_a}{Q_{d_{max}}}$$

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:

$$nh = \frac{Q_a}{Q_{h_{max}}}$$

In the above formulae:

Q_a = annual volume consumed.

Q_{d_{max}} = maximum daily offtake.

Q_{h_{max}} = maximum hourly offtake.

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,
 - 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,
 - Portugal: Lisbon,
 - 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.

ANNEX II

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

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 $\cos \phi = 0,90$. 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 $\cos \phi = 0,90$.

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 or 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 representative) for the given supply conditions should be reported.
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 Kingdom 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:

<i>Member State</i>	<i>Zones</i>
Federal Republic of Germany ⁽²⁾ :	— North/Central, — West, — South;
United Kingdom:	— England and Wales, — Scotland, — Northern Ireland.

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 category (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

⁽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.

⁽²⁾ The Länder will be divided into three zones, namely:

- North/Central: Schleswig-Holstein, Hamburg, Bremen, Berlin, Lower Saxony, North Hessen,
- West: North-Rhine-Westphalia, Rhineland-Palatinate, South Hessen, Saarland,
- South: Baden-Württemberg, Bavaria.

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