

REPORT ON THE RIGHT TO BASIC UTILITIES

(ELECTRICITY, WATER AND GAS)

DECEMBER 2014

SÍNDIC

EL DEFENSOR
DE LES
PERSONES

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Síndic de Greuges de Catalunya

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Report on the right to basic utilities (electricity, water and gas)

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1. INTRODUCTION AND OBJECTIVE OF THE REPORT

In recent years, and with the exacerbation of the financial crisis, our society has seen an increase in the problems faced by many persons when it comes to paying for basic utilities. This is also caused to a large degree by the increase in prices.

That is why the Catalan Ombudsman has prepared this report, which aims to examine various issues regarding basic utilities of electricity, water and gas, analyzing the current situation, the path followed up to now, and a number of proposals to clarify certain concepts and express his position, especially as concerns society's most vulnerable members. The ideas around what people's right to basic utilities should be when it comes to essential services such as electricity, water and gas aim to be an element to stimulate debate among all stakeholders to advance toward its manifestation in the legal code.

The situation experienced by some groups, which in previous reports have been partially analyzed under the heading of "energy poverty", is of great concern and deserves the attention of public authorities in order to turn it around, thus preventing a worsening that could affect the quality of

life, dignity and health of persons, while also keeping the number of persons affected by such unfavorable situations from rising.

This study, based on the study of the previous decisions of the Catalan Ombudsman in the field of energy poverty and basic utilities, the analysis of the legal framework that affects these utilities, and on the experience of organizations such as Càritas Diocesana de Barcelona, the Red Cross of Catalonia, Mambré Private Foundation, the Third Sector Social Entities Panel of Catalonia, Ecoserveis and the Alliance Against Energy Poverty, the contributions of which have been relevant to conduct a study focused on the current reality in Catalonia as concerns electricity, gas and water utility services.

Consequently, the document is set forth as a compilation of the main problems affecting a growing segment of the population, in addition to the possible initiatives for short and mid-term application with the aim of reducing the currently existing shortcomings and the vulnerability that many people face. Last, it has been conceived as an instrument for dissemination of people's rights as regards basic utilities and, therefore, to contribute to greater knowledge of these rights, especially by more vulnerable persons.

2. THE RIGHT TO BASIC UTILITIES

Recognition of the right to basic utilities

In these times, it can be objectively said that to lead a dignified life in society as a human being there are a number of services that can be considered minimal, essential, general, universal, basic or indispensable. Without any intention of falling into nominalisms, and therefore, beyond the fact that things can be adjectivally described in different ways, it must be underscored that 21st century society has a number of demands for services in daily life that cannot be ignored.

Our judicial tradition dictates that legal rules must be interpreted according to the meaning of the words themselves and the social reality of the time in which they must be applied. That is why this institution's position is that the legal framework regulating the various services must be interpreted to make them effective for the persons who are to enjoy them, and to guarantee their quality of life.

Quality public services are defining elements of the societal and state models that society has established for itself. The main rules defining them must reflect this. This is what is demanded by a social, democratic country under the rule of law, and it is what is demanded by the higher laws of the legal framework. The Constitution of Spain establishes the dignity of the person as one of the fundamental tenets of political order and social peace (Article 10), while it also includes the right to dignified, appropriate housing (article 47) and a mandate to public authorities for the defense of consumers and users, and the protection of their safety, health and legitimate economic interests with effective measures (article 51).

The Statute of Autonomy of Catalonia states that all persons have the right to access public services and economic services of general interest in conditions of equality, and that public administrations must set the conditions for access and the standards of quality for these services, regardless of the system under which they are provided (Article 30). Furthermore, the Statute acknowledges

the right of consumers and users to true, comprehensible information on the characteristics and prices of the products and services, a system of guarantees of the products acquired, and the utilities contracted, as well as the protection of their economic interests before any abusive, negligent or fraudulent behavior (Article 28).

More specifically, state lawmakers, through Article 9 of the consolidated text of the General Consumer and User Defense Act (Royal legislative decree 1/2007, of November 16), have established that “public authorities must attach priority to protecting consumers’ and users’ rights when they are directly related with goods or services of common and generalized usage or consumption.”

But furthermore, in the case of Catalonia, lawmakers have gone even further in establishing the services to be considered necessary for daily life. Along these lines, the Code of Consumer Rights of Catalonia (Law 22/2010, of July 20) defines basic services as those services of an essential and necessary nature for daily life, or that are generally used by consumers, among which are included utilities (water, electricity, gas) along with transportation, audio-visual media of radio and television, communications, health care, and those of finance and insurance (Article 251-2).

In this realm, reference must also be made to the Universal Declaration of Emerging Human Rights (UDEHR)¹, a programmatic instrument of international civil society oriented to the state-level stakeholders, and those from other specialized contexts, for the crystallization of human rights in the new millennium. The UDEHR came out of a discussion process that originated in a dialog organized by the Human Rights Institute of Catalonia, within the Universal Forum of Cultures of Barcelona 2004, entitled “Human rights, emerging needs and new commitments”.

This Declaration includes in the right to existence in dignified conditions “The right to security of life, which entails the right of all human beings and communities, for their survival, to drinking water and sanitation,

¹ <http://www.idhc.org/cat/documents/Biblio/DUDHE.pdf>

energy and adequate basic food, and to not suffer situations of hunger. All individuals have the right to a continuous and sufficient supply of electricity and to free access to drinking water in order to satisfy their basic needs of life.”

In any event, this institution wishes to demonstrate the undeniable validity of new trends that aim to complete, improve and perfect the definition of the rights in force, with the aim to guarantee a dignified, quality life.

For this reason, from this institution, whose primary duty is the defense of the rights of persons, it is considered necessary to overcome the consideration of persons as simple customers of utility companies, progressing toward the consideration of persons as holders of subjective rights to basic utilities at an affordable price, within parameters of consumption that are basic, essential or not sumptuous.

Thus, as an initial stage in the recognition of a right to basic utilities, it is necessary to focus attention on the assistance or service dimensions derived from this right. The legal system must recognize as holders of this right to basic utilities all those persons who meet the requisites to be defined as vulnerable consumers according to the parameters established in the regulations for each of the services, also including consumption parameters.

As has been stated, personal dignity makes it necessary for everyone to be able to enjoy basic utilities at an affordable price as long as their consumption remains within consumption parameters that remain basic, essential and non-sumptuous. Further, this right to basic utilities at an affordable price must also be recognized for people who do not meet the foregoing requisites for vulnerability.

Beyond these limitations, and without prejudice to guaranteed supply, tariff systems should promote energy savings and efficiency, penalize the wasting of scarce resources and convey to excessive or sumptuous consumptions the cost of basic utilities for vulnerable consumers.

In essence, the proposal is to construct the right to basic utilities on a cumulative, top-down basis: an initial rung of recognition of this right for vulnerable persons would imply guaranteed supply within parameters of basic consumption at social prices; a second rung would guarantee the right to supply for all those individuals who are not defined as vulnerable, but who have the right to pay affordable prices for basic services as long as the consumption is not considered excessive or sumptuous; and, last, on a third rung, without prejudice to the guaranteed supply of utilities, the price of the service would mean covering—among other possible items—the cost of basic utilities for persons in situations of vulnerability, as shown in the following summary table:

1	Basic consumption (people in situations of vulnerability)	Minimum, guaranteed access to the basic utilities	Social price or tariffs
2	Standard consumption	Guaranteed access to basic utilities	Affordable price or tariffs
3	Excessive or sumptuous consumption	Access to basic utilities	Price or tariff that, among other items, covers the cost of the social tariffs

Current regulatory scenario of basic utilities

In the next section, discussion will cover each of the basic utilities that are the object of this report, with the purpose of highlighting the tenets of the respective regulations that cover their characteristics as essential or indispensable elements for daily life.

As will be seen, we are still far from a regulatory recognition, on the internal as well as international levels, of a subjective right to supply as regards the utilities described in the following section, as regulations are not at all bold in this regard.

Electricity

The preamble to the Electrical Sector Act (Law 24/2013, of December 26) begins by stating that “the supply of electrical energy constitutes a service of economic interest, as economic and human activity cannot be currently conceived of without its existence.”

Nonetheless, there is no mention of considering electricity as a service that is basic or essential for daily life.

The only mentions that approach it are those referring to the tariffs subsidy, which is considered an obligation of public service according to the terms of the European regulations. This is stipulated in Article 45 of Law 24/2013, of December 26, on the electrical sector, and the essential utilities outlined in Article 52.4 of the Law, and for which the supply of electrical energy cannot be cut off in any case, to wit: public lighting, water supply for human consumption, national defense facilities and law enforcement, firefighting and civil protection bodies, penitentiary centers, hospitals, funeral service facilities and public transport services. Added to this list is the prohibition of the disconnection of “domestic supplies in cases in which there is documentary evidence formalized by medical professionals stating that the supply of electrical energy is indispensable to power medical equipment essential to keep a person alive”, as long as it is in the habitual residence of the natural persons who are in this situation.

Additionally, the preamble of Royal Decree 216/2014, of March 28, which establishes the calculation methodology of voluntary prices for small consumers of electrical energy, and the legal system to contract it, establishes that “the obligation of supply at a voluntary price paid by small consumers at a last-resort tariff is configured as an obligation of public service.”

Water

In 2010, the United Nations declared the right to drinking and sanitation water as an essential human right for the full enjoyment of life, and of all human rights, that is, “the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.”²

In the local legal framework, both the basic local legislation and the Catalan legislation include the domestic supply of drinking water among the minimum services that all municipalities must provide.

The consolidated text of the legislation regarding water in Catalonia (Legislative Decree 3/2003, of November 4) states that the Autonomous Catalan Government (Generalitat) shall exercise its competencies in the area of water and hydraulic works, ensuring the sustainable use, savings, reuse, optimization and efficiency in hydraulic resource management, making possible a basic level of domestic use at an affordable price (Article 3). Furthermore, the same precept adds that, to this end, the Generalitat shall organize its activities in accordance—among others—with the principle to “guarantee of an affordable price for domestic, family, non-sumptuous consumptions” (Article 3.1.m).

Gas

The preamble of Law 34/1998, of October 7, on the hydrocarbons sector, states that “the consideration of public service shall be eliminated from the gas sector”, and lawmakers have established the following: “It is deemed that the body of activities regulated in this Law does not require the presence and responsibility of the State for their development.

² General Comment 15 (2002) of the UN Committee on Economic, Social and Cultural Rights of the UN Economic and Social Council (ECOSOC).

Nevertheless, their consideration as activities of general interest, which was already taken up in Law 34/1992, of December 22, for the organization of the oil sector, has been kept for all of them.

Further, it must be noted that in the Hydrocarbon Sector Act, the obligation is imposed on natural gas distributors to apply “the measures established with regard to consumer protection that are considered essential” (Article 74.1m).

Butane gas, the source of energy traditionally used in 12.5 kg cylinders by many people in situations of economic vulnerability, has a maximum price that is regularly set by the Ministry of Industry, Energy and Tourism. These prices affect the cylinders of butane gas, which is bottled liquefied petroleum gas (LPG), with a load equal to or greater than 8 kilograms and lower than 20 kilograms. Otherwise, the price is freely set for tanks of 6 kg or less (also known as “camping gas”). The next butane cylinder price revision, which also includes VAT and the Special Hydrocarbons Tax, is set for March, 2015.³ Notwithstanding this regulation of the price, the Hydrocarbons Sector Act states that the retail sale of bottled liquefied gases shall be freely practiced (Article 47.1).

Groups especially protected under the Code of Consumer Rights of Catalonia

Article 42.3 of the Statute of Autonomy of Catalonia states that “Public authorities must ensure the dignity, security, and comprehensive protection of individuals, especially the most vulnerable.”

Additionally, Article 123 of the Statute of Autonomy of Catalonia establishes that “the Generalitat shall hold exclusive competency over consumer affairs, including in any event:

a. The defense of consumers’ and users’ rights, established in Article 28, and the establishment and application of administrative complaint and claim procedures.

b. The regulation and promotion of consumer and user associations and their participation in the procedures and affairs that affect them.

c. The regulation of the bodies and the mediation procedures in the realm of consumer affairs.

d. Training and education in consumption.

e. The regulation of information in consumer and user affairs.”

Along these lines, Article 111-2 of the Code of Consumer Affairs of Catalonia incorporates the concept of “especially protected groups”, which it defined in the following terms:

“Especially protected groups: groups that, due to the coincidence of certain characteristics, are especially vulnerable in terms of their relations with consumer affairs. In all cases, this special protection must be granted taking into account the average consumer in the group that the consumer belongs to. Especially protected groups specifically refer to: children and adolescents, the elderly, persons with poor health, the disabled and any other group in conditions of special inferiority or vulnerability.”

This definition is completed with the terms of Article 121-3 of the Code of Consumer Rights of Catalonia:

“1. The rights of consumers that affect especially protected groups shall enjoy special and preferential attention from public authorities, pursuant to those established by this law, the rules implementing it and the rest of the legal framework.

2. Especially persons with disabilities must have guaranteed appropriate access to information on goods and services, and the full exercise and enjoyment of the rights and guarantees taken up in this law, in the same way as the rest of consumers.”

³ Order IET/337/2014, of March 6, modifying Order IET/463/2013, of March 21, by which the system of automatic determination of maximum pre-tax sales prices of bottled liquefied petroleum gases, is updated.

According to the Code of Consumer Affairs, “any publicly-owned body or entity reporting to a Catalan public administration, which conducts tasks of information, guidance and consultancy to consumers shall have the consideration of public consumer affairs service”, and these bodies are empowered by the law itself (Article 126-10.1g) to exercise, among other things, the following duty:

“Educate and train consumers, particularly the especially-protected groups, either through direct actions or through publicly-owned communication media.”

In terms of consumer affairs training, the Code of Consumer Rights states that “the Government must ensure lifelong, permanent training for consumers, with “promotion and development” of “ongoing training of young people and adults as

consumers, with special attention being devoted to especially protected groups and those with specific needs.”¹

Last, it must be borne in mind that the code of consumer affairs classifies as a very serious infringement any committed “taking advantage of the special situation of imbalance or vulnerability of certain consumers or especially protected groups.”²

Therefore, in light of all the foregoing content, it can be confirmed that lawmakers have sought to offer an extraordinary (“special” and “preferential”, to use the same terms as Article 121-3.1 of the Code of Consumer Rights) degree of protection in any consumer relationship for persons who make up the groups defined by the law, a protection that is obviously relevant when the consumer relationship occurs in the realm of basic services such as utilities.

3. THE ENERGY EFFICIENCY OF HOUSING PROPERTIES

The right to housing and basic utilities

Law 18/2007, of December 28, on the right to housing, begins its opening statement by stating that “housing is one of the most important concerns for Catalan citizens”, and that the law “seeks to guarantee the right to housing, given that this right includes the urban environment in which it is integrated,” and that “there are connections between the right to dignified, proper housing and other constitutional rights that are not possible without the former.” The right to housing is defined in Article 1 of the law as “each person’s right to access dignified housing that is appropriate in the diverse stages of each person’s life, for their family, economic and social life and functional capacity.”

Therefore, from this definition it can be derived that basic utilities (electricity, water and gas) constitute an essential element of housing, which is confirmed by the regulations on suitability conditions for housing (Decree 55/2009, of April 7) when it states that all housing must have “cold and hot water, waste water disposal and electricity service” or an “electrical or gas cooking apparatus” for the kitchen. Additionally, electrical energy, water and gas companies are obliged to require the valid certificate of occupancy from the end users in order for them to be able to contract these services.

The right to housing is also affected by this process of redefinition in order to guarantee its effectiveness, given that, in order for this right to be fully in force, it requires housing to feature certain minimum basic utilities for a person to live with dignity and have the capacity to use them in their daily lives. The constitutional and statutory right to housing can only refer to housing in proper conditions, and that therefore can be equipped with basic services such as water or electricity or gas at prices that are reasonable and affordable for people.

Additionally, the guarantee of conditions to be able to effectively enjoy the services that

define housing are now in the hands of many social entities that help persons to pay, totally or partially, their electricity, water or gas bills. The reality is that what should be responsibility or competency of public administrations is being assumed to a large degree by civil society, either entities of the third social sector, neighbors’ associations, NGO’s, parishes, etc., or the person’s network of family members or friends. It must be noted that the social services of many municipalities conduct a noteworthy task in this realm.

Energy efficiency of housing properties

The expenses stemming from energy consumption in homes is in large part determined by people’s habits, and the construction quality of the housing. The general trend is to link the concept of well-being with high energy consumption. But in essence, what people want to enjoy are the services that energy provides for them in their homes at the moment they need them. Therefore the goal should be to achieve the maximum level of services with the minimum consumption of energy; in other words, maximum efficiency. This efficiency will imply savings in utility bills.

Therefore, on one hand, it is necessary for families to take certain energy-savings measures, changing their customs in the use of appliances and their homes in general. With this goal in mind, administrations and consumer and user organizations have conducted a major pedagogical and educational task in energy savings.

However, on the other hand, energy efficiency is significantly determined by the construction parameters of the housing. Over 40% of the final energy consumption in the European Union is linked to the residential and tertiary sectors. In light of the increase in energy consumption, in order to reduce greenhouse effect emissions, Directive 2010/31/EU of the European Parliament and the Council of May 19, 2010, which repeals Directive 2002/91/EC, of December 16, on the energy efficiency of buildings, proposes for the year 2020 achievement of a 20% savings of energy, 20% reduction in CO² emissions, and 20% of

total energy production with renewable energy production systems. There are also plans for, by December 31, 2020 at the latest, all new buildings must be nearly zero energy buildings; in other words, buildings with very high energy efficiency levels, covered for the most part by energy from renewable sources. For new occupied buildings that are the property of public authorities, the date will be brought forward to December 31, 2018. Additionally, member states must form policies and take measures to stimulate the transformation of the buildings remodeled in near-zero energy buildings.

In this new European regulatory framework, construction rules have included criteria of energy efficiency and sustainability, mainly for newly-built buildings. Along these lines, the HE basic document, on energy savings, published in the BOE (Official State Gazette of Spain) on September 12, 2013, and that forms part of the Technical Building Code has the aim of establishing rules and procedures that make it possible to meet the basic requisite of energy savings. The specifications contained therein are applicable in the construction of buildings constructed as of its entry into force. As for existing housing, its adaptation to these new criteria, to the degree possible, will be carried out through renovation activities.

In like manner, this sustainability criteria in the design, construction and use of the building is reflected in Decree 21/2006, of February 14, that regulates the adoption of environmental criteria and eco-efficiency in buildings. Through this decree, the Autonomous Catalan Government lays out the construction uses by setting eco-efficiency parameters with regard to water, energy, materials, construction systems and waste. With this purpose in mind, “the Decree stipulates that all building projects must integrate criteria, construction systems, technologies and measures that make possible sustainable development in the construction sector” (Preamble to Decree 21/2006, of February 14).

However, it must be borne in mind that in Spain there is a building stock of 25,208,622 homes, of which 21%, 5,226,133 homes, are over 50 years old and 55%, 13,759,266 homes, over 30 (Preamble to Law 8/2013 on Urban

Renovation, Regeneration and Renewal). In other words, the building stock of homes is significantly aged, and was built prior to the conditions of the technical construction code. Further, they were built without any sort of thermal barrier requirements (prior to the NBE-CT-79). In such a situation, the problems of renovation to improve energy efficiency of existing buildings must be treated in a specific way, with special attention.

To meet this goal, Law 8/2013, on Urban Renovation, Regeneration and Renewal, called the Law of the 3 R’s, was passed. It has as its objectives:

- Strengthen the renovation of buildings and urban regeneration and renewal, eliminating current barriers and facilitating the mechanisms to make it possible.
- Offer a new regulatory framework that is ideal to reconvert and reactivate the sector.
- Promote the quality, sustainability and competitiveness to bring us closer to the European model, especially in the energy performance of buildings.

European Directive 2002/91/EC, modified by Directive 2010/31/EU, which imposed the obligation of certifying the energy efficiency of buildings, must also be mentioned. Royal Decree 47/2007 transposed it to Spain’s legislation regarding new buildings. Royal Decree 235/2013 included new buildings, with regard to which, on June 1, 2013 the requirement to have this certification in order to sell or rent a home came into force. The Technical Certification is a means of conveying information on the energy performance of the building or home, useful for the person wishing to purchase or rent it. It also incorporates options to improve its energy efficiency, through the recommendations featured in the certificate.

Additionally, consumption and emissions must be known in detail in order to plan improvements. The cooperation of electrical companies is essential to collect this information.

Although the legislation applicable to building regulates the energy efficiency of buildings, and to an ever-higher degree,

focuses on the renovation of the existing building stock, the financing of these operations, in times of financial crisis such as the present, becomes a problem. It must be taken into account that households in situations of energy poverty do not have the resources necessary to invest in improving the efficiency of their homes. These families depend on the support of public financial aid to renovate their buildings and homes. Therefore, it should be noted that on May 27, 2014, the government of the Generalitat approved the Plan for the Right to Housing, with which renovation financial aid will restart. Plans are to devote up to 170 million euros to this program up to 2016. Priority is attached to the activities in the area of structural pathologies, accessibility, energy efficiency and the renovation of buildings with severe pathologies according to the Technical Building Inspection (ITE).

In relation to this problem, mention should be made of the “all-electrical” nature of social housing. Clearly, if compared to gas, the “all-electrical” nature offers an added degree of safety in domestic use. This makes it an ideal solution when housing is destined to certain social groups, such as the elderly.

Nonetheless, it must be remembered that to generate electrical energy, only a third of the heat given off by the fuel burned in an electrical plant is used. When this electricity is used to generate heat again, on a stove or through a heating system, an unnecessary transformation is made. Therefore, for appliances whose purpose is to generate heat (heaters, heating systems, stoves, water heaters, etc.) it is more sustainable to use a fuel (biomass or gas, which are cleaner), not electricity. In addition to the lack of sustainability of the “all electrical” model from the domestic economy standpoint, the electricity consumption tariffs are higher than those for gas consumption. Those who, because of these circumstances, prefer to modify the installations and connect to the gas network, must face the expenses this gives rise to.

Along these lines, it must not be forgotten that social housing is meant for people who cannot access the free housing market to fulfill their right to dignified, appropriate housing. Consequently, this economic resource parameter must be borne in mind to seek for these citizens a lessening in the costs of service, supply, conservation and modification of installations.

4. RELEVANT FIGURES ON BASIC UTILITIES

There is a vast amount of data, figures and statistics on electricity, water and gas for Catalonia, Spain and the European Union, and it would be outside the scope of this report to attempt to gather them all together here.

Additionally, it must be acknowledged that some figures are especially relevant to understand the meaning of the considerations contained in this report, and especially the conclusions, recommendations and suggestions proposed. That is why in the following sections some of these figures are mentioned, citing the source they were taken from.

Prices of electricity and gas in the European Union

On January 22nd, 2014, the European Commission published a communication addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions regarding energy prices and cost in Europe.⁴

In its conclusions, this communication stated::

“Looking at trends in energy prices since 2008, the following main conclusions can be drawn:

Electricity prices, but even more importantly, costs, continued to rise overall for both households and industry, despite falling or stable levels of consumption. Gas prices have fluctuated but did not significantly increase over the period 2008-2012.

This rise in prices is driven mainly by increases in taxes/levies and network costs. The evolution of the energy component of

prices was uneven; in countries with high penetration of wind and solar power there has been downward pressure on wholesale power prices, but not in other. Progress made in the functioning of the internal energy market should have had a positive impact by ensuring that wholesale market prices converged across Europe. This was not the case for retail prices, where network distribution systems, uncoordinated national energy and climate policies, taxes, levies and network tariff regulations differ, fragmenting the internal market.

EU trends disguise significant disparities across Member States and across industry sectors. This points to weaknesses in the internal energy market, with wide differences between Member States’ policies on network costs and taxes/levies.”

On another note, Eurostat, the statistical office of the European Union regularly publishes data on the evolution of electricity and natural gas prices, for domestic as well as industrial use, of the European Union member states, but also Norway, Iceland and others.

In the publication of these data, Eurostat underscores that the price of energy in the European Union depends on a number of different supply and demand conditions, including the geopolitical situation, the diversification of imports, the costs of the transport network and electricity grid, the costs of environmental protection, severe climatic conditions that can occur in certain states, or the levels of special taxes and the tax system of each state.

In any event, the following table presents prices that include taxes, charges and VAT for domestic consumers, but excludes the reimbursable taxes and charges and VAT for industrial or business users. This Eurostat table offers an overview of average prices in euros per kilowatt-hour of electricity and natural gas for the past three years (second half of each year).⁵

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0021:FIN:ES:PDF>

⁵ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Electricity_and_natural_gas_price_statistics

	Electricity Prices (per kWh)						Gas Prices (per kWh)					
	Household (1)			Industrial (2)			Household (3)			Industrial (4)		
	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1
EU-28*	0,188	0,199	0,205	0,115	0,120	0,123	0,063	0,065	0,067	0,037	0,041	0,039
EU-27*	0,189	0,200	0,205	0,115	0,120	0,124	0,063	0,065	0,067	0,037	0,041	0,039
Euro area*	0,198	0,211	0,218	0,121	0,127	0,133	0,069	0,073	0,073	0,038	0,043	0,040
Germany	0,260	0,292	0,298	0,128	0,143	0,159	0,064	0,066	0,068	0,037	0,048	0,045
Austria	0,198	0,208	0,202	0,110	0,111	0,109	0,076	0,077	0,075	0,043	0,044	0,043
Belgium	0,233	0,217	0,210	0,108	0,108	0,109	0,069	0,066	0,066	0,035	0,040	0,032
Bulgary	0,085	0,092	0,083	0,069	0,081	0,075	0,049	0,051	0,049	0,036	0,036	0,035
Croatia	0,121	0,137	0,131	0,090	0,095	0,096	0,038	0,047	0,046	0,043	0,046	0,042
Denmark	0,300	0,300	0,304	0,097	0,103	0,084	0,098	0,099	0,091	0,041	0,045	0,037
Slovenia	0,154	0,161	0,163	0,095	0,097	0,087	0,080	0,067	0,067	0,058	0,049	0,043
Slovakia	0,172	0,170	0,151	0,132	0,129	0,115	0,052	0,050	0,051	0,040	0,037	0,037
Spain*	0,219	0,223	0,225	0,121	0,122	0,125	0,066	0,073	0,075	0,036	0,039	0,037
Estonia	0,110	0,135	0,131	0,078	0,097	0,092	0,050	0,052	0,049	0,037	0,038	0,035
Finland	0,155	0,158	0,156	0,076	0,075	0,073	-	-	-	0,047	0,049	0,047
France	0,139	0,147	0,159	0,095	0,096	0,096	0,064	0,068	0,070	0,039	0,041	0,039
Greece	0,139	0,156	0,177	0,118	0,125	0,134	-	0,077	0,072	-	0,053	0,049
Hungary	0,155	0,140	0,120	0,095	0,096	0,091	0,048	0,043	0,037	0,044	0,041	0,040
Ireland	0,216	0,230	0,241	0,132	0,136	0,134	0,061	0,065	0,068	0,038	0,042	0,041
Italy	0,213	0,229	0,245	0,165	0,168	0,172	0,077	0,083	0,080	0,042	0,042	0,038
Latvia	0,138	0,138	0,137	0,110	0,113	0,117	0,051	0,051	0,048	0,037	0,038	0,035
Lithuania	0,126	0,137	0,133	0,114	0,123	0,117	0,051	0,060	0,056	0,045	0,044	0,041
Luxembourg	0,170	0,167	0,174	0,105	0,098	0,101	0,058	0,062	0,053	0,051	0,051	0,043
Malta	0,170	0,170	0,168	0,186	0,186	0,186	-	-	-	-	-	-
Netherlands	0,186	0,192	0,182	0,097	0,096	0,103	0,076	0,081	0,080	0,037	0,040	0,042
Poland	0,142	0,148	0,142	0,092	0,093	0,083	0,047	0,047	0,049	0,034	0,036	0,038
Portugal	0,199	0,208	0,218	0,114	0,115	0,116	0,074	0,084	0,093	0,040	0,042	0,043
United Kingdom	0,168	0,174	0,192	0,114	0,117	0,129	0,052	0,053	0,060	0,032	0,035	0,037
Czech Republic	0,150	0,153	0,128	0,104	0,102	0,083	0,066	0,064	0,055	0,034	0,034	0,032
Romania	0,105	0,132	0,129	0,083	0,090	0,088	0,027	0,029	0,031	0,026	0,028	0,030
Sweden	0,203	0,210	0,197	0,081	0,080	0,071	0,117	0,123	0,118	0,054	0,055	0,050
Cyprus	0,278	0,276	0,229	0,224	0,208	0,175	-	-	-	-	-	-

	Electricity Prices (per kWh)						Gas Prices (per kWh)					
	Household (1)			Industrial (2)			Household (3)			Industrial (4)		
	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1	2012 s1	2013 s1	2014 s1
Iceland	0,111	0,105	0,113	-	-	-	--	-	-	-	-	-
Liechtenstein	-	-	0,153	-	-	0,138	-	-	0,072	-	-	0,061
Norway	0,188	0,191	0,165	0,092	0,097	0,080	-	-	-	-	-	-
Montenegro	0,091	0,102	0,103	0,065	0,072	0,073	-	-	-	-	-	-
Republic of Macedonia	-	0,081	0,079	-	0,080	0,075	-	-	-	0,047	0,041	0,039
Serbia	-	0,056	0,061	-	0,057	0,051	:	0,041	0,043	:	0,038	0,037
Turkey	0,131	0,150	0,119	0,086	0,093	0,074	0,032	0,041	0,033	0,025	0,031	0,024
Albany	0,116	0,116	0,116	-	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	0,080	0,080	0,079	0,065	0,065	0,065	0,056	0,056	0,051	0,057	0,057	0,053
Kosovo**	-	0,056	0,055	-	0,070	0,070	-	-	-	-	-	-

Source: Eurostat

* Provisional data 2014 regarding electricity household use

**Kosovo according to UN Resolution 1244

(1) Annual consumption: 2 500 kWh < consumption < 5 000 kWh.

(2) Annual consumption: 500 MWh < consumption < 2 000 MWh.

(3) Annual consumption: 5 600 kWh < consumption < 56 000 kWh (20 - 200 GJ).

(4) Annual consumption: 2 778 MWh < consumption < 27 778 MWh (10 000 - 100 000 GJ).

Other documents that contribute data on electricity prices in Spain are:

- Comparative analysis of electricity prices in the European Union: a Spanish perspective”, written by the Funseam-Foundation for Energy and Environmental Sustainability.⁶
- Evaluation of electrical tariffs between 1993 and 2014” written by Facua - Consumidores en Acción.⁷

The components of electricity and water bills

Electricity bills include a number of concepts directly linked to the energy consumed and the contracted power, in addition to taxes (VAT and those levied on the electricity) and when relevant, the price of renting the meter.

The document “Contribución de las compañías que integran Unesa al desarrollo de la sociedad española” (Contribution from the companies that make up Unesa to the development of Spanish society)⁸,

⁶ http://www.funseam.com/phocadownload/Informes/informe_funseam_analisis_comparativo_de_los_precios_de_la_electricidad_ue-espaa.pdf

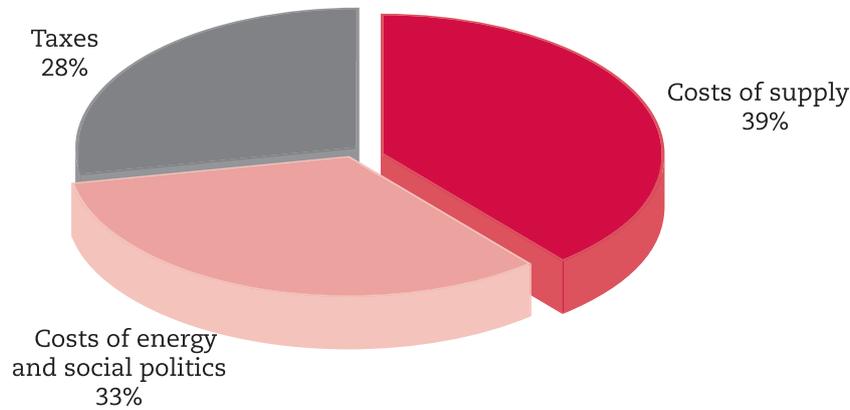
⁷ <http://facua.org/es/documentos/evoluciontarifaselectricas1993-2013.pdf>

⁸ <http://www.unesa.es/biblioteca/category/1-estudios?download=132:qcontribucion-de-las-companias-que-integran-unesa-al-desarrollo-de-la-sociedad-espanolaq>

published by Unesa, the Spanish Electrical Industry Association, outlines the percentage

weight of the different components of electricity bills in the following terms:

Components of energy bills 2013



Source: Unesa- Asociación Española de la Industria Eléctrica

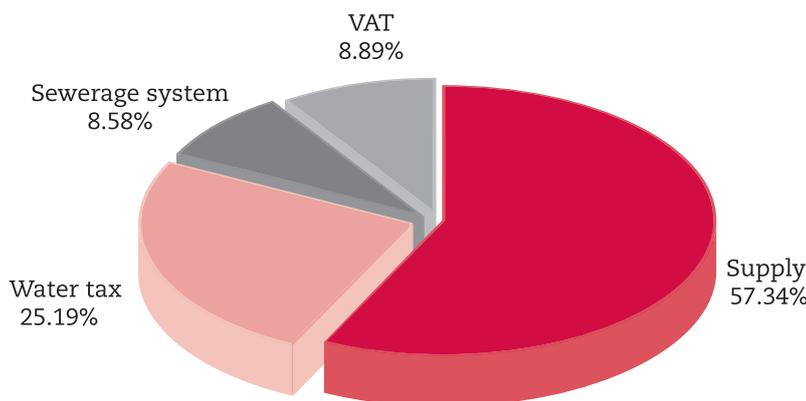
In the case of water, the Catalan Water Agency has published a document entitled “Structure of water tariffs” (2014)⁹ (2014), which discusses the composition of water bills and the distribution by concepts of the average domestic price.

or minimum consumption or billing, or a variable part by consumption blocks), the water fee, sewer fees and VAT, in addition to other possible concepts not related with the water cycle which are occasionally collected with the water bill.

In general terms, water bills include the part devoted to the tariff or supply price (which may include a fixed service fee and/

Therefore, according to this document from ACA, the distribution by concepts of the average domestic price is as follows:

Components of water bills



Source: ACA

⁹ http://aca-web.gencat.cat/aca/documents/ca/tramitacions/canon_aigua/documents/components_factura_aigua.pdf

VAT on basic utilities in the European Union

Royal Decree Law 20/2012, on measures to guarantee budgetary stability and promote competitiveness, raised the general tax rates and the reduced VAT, in the attempt to bring tax rates closer to those applied in the European Union, as is stated in the preamble of the rule itself.

Once the tax reform came into force on September 1, 2012, among other effects, the general VAT rate rose from 18% to 21%, while the reduced rate rose from 8 to 10% and the “super-reduced” rate was held at 4%.

Pursuant to this, the current VAT rate applicable to electricity and gas in Spain is 21%, although this is not the case in all EU countries, with rates ranging from 5.5% for vulnerable consumers in France or 6% in Belgium, up to 25% in Denmark, to give a few examples.

In the case of water, the rate in force in Spain is 10%, which is applicable to water consumption, sewer and water fees, although it is 21% for other operations, such as general and meter maintenance.

The following table, published by the European Commission, shows the different VAT rates in the EU for water, electricity and natural gas distribution on July 1, 2014:

Taxation in goods and services supply in members States according to Directive 2006/112/CE¹⁰

Energy goods	BE	BG	CZ	DK	DE	EE	EL	ES	FR	HR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
Water	6	20	15	25	7	20	ex 13	10	5,5	13 25	ex 23	10	5	12	21	3	27	0	6	10	8	6	24	9,5	20	24	25	0
Gas	21	20	21	25	19	20	13	21	20 5,5	25	13,5	10	19	21	21	6	27	18	21	20	23	23	24	22	20	24	25	5
Electricity	6 21	20	21	25	19	20	13	21	20 5,5	25	13,5	10	19	21	21	6	27	5	21	20	23	33	24	22	20	24	25	5

0: zero tax (exemptions with reimbursement right)

ex: exonerated

¹⁰ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_fr.pdf

5. USER INFORMATION ON BASIC UTILITIES

Information on basic utility prices

At a general level, the rights and obligations of consumer information are meant to ensure freedom and rationality in contracting decisions. In other words, it is a matter of making sure that consumers can make a proper judgment of the economic appropriateness and opportunity of the contract. Considering that the decision of whether or not to contract is affected, proper information must be given before the contract is formalized regarding the different economic and legal circumstances that it will be subject to, the suitability of the company to fulfill the contract and even the legal rights the consumer will enjoy, especially the right to rescind the contract.

But this set of information rights and obligations is also meant to protect competition on the market, considering that this must allow persons interested to make a comparison of the different existing offers.

In accordance with this, the consolidated text of the General Law for the Defense of Consumers and Users regulates, in its Article 60, the information prior to the contract and consequently, states that “before the consumer and user are bound by a contract or the relevant offer, the company must provide in a clear, comprehensible manner, unless it can be considered manifest by the context, relevant, true and sufficient information on the main characteristics of the contract, especially its legal and economic conditions.”

It is noteworthy that lawmakers have sought to explicitly state in the law that this obligation is also applicable to water, gas or electricity contracts.

This precept determines that for this purpose, there is a relevant obligation to inform on the goods or services and their total price, “including taxes and fees”. Additionally, the law states that if due to the nature of the goods or services, the price cannot be calculated previously, or is subject to the preparation of a quotation, the way in which the price is determined, as well as any additional expenses, must be explained.

Nonetheless, lawmakers have taken care to state that **“in all information addressed to consumers on prices of goods or services, including advertising, they must be informed of the final complete price, with a breakdown, if relevant, of the amount of the applicable increases or discounts, the expenses charged to the consumer and user and the additional expenses for accessory services, financing or other similar payment conditions.”**

It is worth noting that as regards contracts formalized at a distance, and those formalized outside the commercial establishment, Article 97 of the consolidated text of the General Law for the Defense of Consumers and Users grants the same level of protection to pre-contractual information that must be provided to citizens.

Doubt can be cast on all of this pre-contractual information theory for consumers when it comes to basic utilities, for which the consumer’s freedom of choice is limited or even non-existent. Therefore, numerous pundits have expressed their belief that deregulating electrical energy or gas has made for few benefits for consumers. And, with respect to the supply of water, for obvious reasons there is no possibility for consumers to choose their utility company.

This is exactly why consumer information mechanisms must be strengthened, and contracts, bills and any document relevant to the service at hand must be made clearer.

Information on electricity prices for citizens¹¹

In the case of electricity, the pricing mechanism established by Royal Decree 216/2014, of March 28 is paradigmatic of the complexity consumers must face in their daily lives.

Therefore, the new Voluntary Price for the Small Consumer (VPSC) system has changed the way the price of energy is calculated in the bills of small consumers. It used to be priced through a quarterly auction, but Royal Decree 216/2014 has determined that it will be billed based on electricity's market price.

Aside from the transitional provisions for implementation of a system that has been in force since April 1 2014, in the first bill under the new system, the price of electricity will be adjusted to the real market price. In other words, it will be the hourly price resulting on the electrical market, pursuant to a formula that will be calculated by Red Eléctrica de España SA (REE) and that will be published on its website the day prior to the supply.¹²

Along these lines, the National Committee on Markets and Competition (NCMC)¹³ has included on its website a tool that enables consumers enrolled in VPSC to simulate their bills by entering the necessary data. This is determined by Article 20.3 of the aforementioned Royal Decree 216/2014, that also refers to the NCMC website to consult the list of power marketers, which in their bills must include the reference to the website which publishes the information relative to requirements that must be fulfilled by vulnerable consumers for entitlement to last-resort tariffs or the tariff subsidy.

Beyond considerations that could be made on the complexity inherent to a system that bills electricity based on its price at every

hour of the day, it is worth pointing out the limitations of information and transparency for consumers that comes from a price information and publication system that is essentially telematic.

For many years, this institution has urged public administrations to avoid whenever possible the so-called "digital divide" with special attention to the more underprivileged social groups. The risk of falling into situations of discrimination due to the lack of access to information and communication technologies (IT's) is especially marked among more vulnerable consumers, who normally are not among those who have access to check future energy prices on the Internet.

Although the incorporation of new technologies can bring about great improvement opportunities in many areas, it is also a risk, as the digital divide entailed by the extension of IT's can cause existing inequalities to grow, and also create new ones if appropriate prevention and correction measures that guarantee universal access to IT's are not taken.¹⁴

There are two available alternatives for a user in the VPSC: contract electrical energy supply with any power marketer on the free market at the price and terms agreed on in each case, or contract electricity at a fixed annual price, as the regulations require the main power marketers to offer this fixed annual price as an alternative to the VPSC.

Additionally, in the case of electricity contracts at fixed annual prices, it must be borne in mind that Article 14.8 of Royal Decree 216/2014 empowers the power marketer to charge maximum penalties of 5% of the contract price for the energy estimated to be pending delivery, in the event that the consumer

¹¹ Prices vary according to whether the consumer decides to choose a power marketer (up to now called a power marketer of last resort) or they prefer to operate on the free market, where prices can have a broader variability. As regards the latter option, it is worth mentioning that the presence of small power marketers (some work only on-line) and the possible options for a collective electricity purchase. It is an emerging market that is only now beginning. Therefore, its evolution should be watched closely.

¹² <http://www.esios.ree.es/web-publica/pvpc/>

¹³ <http://comparadorofertasenergia.cnmec.es>

¹⁴ Conclusions of the State and Autonomous Community Ombudsmen Coordination Seminar, held in Seville in 2009, on citizen access and use of ICT's, available at: www.sindic.cat/site/unitFiles/2664/Conclusions%20jornades%20TIC%202009%20catala.pdf

decides to rescind the contract before the year has transpired.

In light of this, lawmakers have stipulated that “in contracts for service provision or the supply of continuing-performance products or those of continuity, it will be forbidden to include clauses that establish excessively long durations or limitations that exclude or impede a consumer or user’s rights to rescind the contract.” This is stated in Article 62.3 of the Consolidated Text of the General Law for the Defense of Consumers, which also adds:

“Consumers and users may exercise their right to rescind the contract in the same manner it was formalized, without any penalty or disproportionate or onerous charges, such as the loss of amounts paid in advance, the payment of amounts for services not effectively rendered, the unilateral execution of penalty clauses that have been contractually established or the setting of indemnities that do not match the damages effectively caused.”

Information on water prices for citizens

In the case of water, and similarly to what occurs on the electricity market, there are also significant information shortcomings on the price of water bills and their components.

Nonetheless, it must be borne in mind that water supply is a service of local competency and that, consequently, the regulation of consumers’ rights to this service is effected through local ordinances or regulations. This means that, beyond the general regulations regarding consumption, the specific ordinance or regulations must be borne in mind to know the legal system in force for each individual case. This may generate certain incomprehension for individuals who compare the price or terms of provision of the same utility among different municipalities.

It is worth noting that the shortcomings in this realm were already highlighted in the Catalan Ombudsman’s decision of June 2012 on the price of water, handed down within ex-officio action O-02582/2011. Specifically, this decision stated:

“Unawareness of the meaning of certain concepts featured in water bills can impede their comprehension by some users. A clear understanding of the bills must allow citizens to better plan their consumption while also detecting any possible error, which can be more easily and expediently amended this way.

Therefore, in addition to the terms stated in the foregoing point, the Catalan Ombudsman advocates the need to provide interested parties with enough information on the total cost involved in a consumer’s request to contract the service, taking into account that price is a determinant element.

Likewise, service providers must remember that this information must be delivered at once in a complete, easily-understood manner.

Furthermore, in the information that the user receives on the service connection, the Catalan Ombudsman believes that the reference to the agreement for approval of prices and the date of its publication in the relevant official gazette must be included, with a view to guaranteeing more appropriate information for users.”

In addition to all of this there is a need to increase transparency and information on how water prices are calculated at source (at the wholesale level) by ATLL (utility concessionaire of the Generalitat de Catalonia).

Information on gas prices for citizens

In the case of the gas, relevant reference can be made to Article 57 bis of Law 45/1998, of October 7, on hydrocarbons, as regards consumers’ gas supply rights, as it expressly mentions the right to receive transparent information on prices, fees and general conditions applicable to access to and use of gas services.”

Other consumer rights included in the same precept, and that have an impact on the information relevant to supply are the following:

“Right to one’s own consumption data.

Right to be duly notified on real gas consumption and the relevant expenses.

Right to receive liquidation of one's account after any change of natural gas supplier."

Royal Decree 1434/2002, of December 27 which regulates the activities of transport, distribution, marketing, supply and authorization procedures for natural gas installations, regulates consumers' obligation to pay service connection rights "before completion of the installations necessary for the requested supply (Article 26.4)". This rule also regulates the contracting rights and supply contracts.

Information on the right to desist and prohibition of unrequested utilities

Mention must be made of two new elements introduced in the latest modification to the consolidated text of the General Law for the Defense of Consumers and Users, by virtue of Law 3/2014, of March 27, to include EU directives in the subject matter.

In the first place, reference can be made of the increase from 7 to 14 calendar days of the term that citizens have to exercise their right to desist. In other words, the right one has as a consumer to rescind a formalized contract, notifying the company within the established term, without any need for justification and without penalization.

This notwithstanding, it can be objected that lawmakers did not do more to guarantee consumers' rights, as they could have stipulated that the 14 days be "working" and not "calendar" days.

In any case, it must be noted that Article 106.6 of the consolidated text of the General Law for the Defense of Consumers and Users, establishes the following for basic utilities:

"In the case of contracts for water, gas and electricity supply (...), in which supply was already underway prior to the contracting of the service, unless explicitly stated otherwise, the consumer's interest in continuing with the supply of service will be understood to exist, with the utility being supplied by their previous supplier. On the contrary, if prior to the contracting

of service the supply was not underway, the request to desist will make for cancellation of the service."

The relevance of the right to desist and the way to accredit its exercise is made very clear by the fact that the Annexes to the consolidated text of the General Law for the Defense of Consumers and Users includes a model of consumer information document and a model withdrawal form.

The second issue to underscore can be found in Article 66 quater, devoted to the prohibition of utilities not requested by consumers. It is significant that the legal framework includes on a general level an express prohibition of this nature and that, furthermore, it specifically refers to electricity, water and gas utilities, as can be seen as follows:

"1. The sending and supply to the consumer and user of goods, water, gas or electricity (...) or the provision of services not requested by them, when these shipments and supplies include plans for any sort of payment.

In the event that this is done, without prejudice to the infringement it represents, recipient consumers and users will not be obliged to return or keep the good or service, nor will the company that sent the good or supplied the unrequested service be able to claim any payment. In this event, the lack of response from the consumer or user to this unrequested shipment, supply or service provision will not be considered consent.

In the case of contracts for water, gas and electricity supply (...), in which supply was already underway prior to the supply of the unrequested service from the new supplier, the consumer's interest in continuing with the supply of service from their previous supplier will be understood to exist, with supply being performed by this supplier, who will be entitled to charge the company that made the unrequested supply for the utilities supplied."

Article 108.4 of the consolidated text of the General Law for the Defense of Consumers and Users in which consumers do not have to assume any expenses when the supply of electricity, water or gas has been carried out during the withdrawal period.

Therefore, this prohibition must be disseminated and with it, the rights of consumers as regards unrequested utilities, a problem that unfortunately occupies the Catalan Ombudsman's

attention on frequent occasions, as was taken up in the Annual Report for 2012 in the chapter devoted to contracting and unrequested utility contract modifications.¹⁵

¹⁵ See pages 66 and after of the Report, available at the following link: <http://www.sindic.cat/ca/page.asp?id=53&ui=3401&prevNode=248&month=1>

6. A CLEAR, EASY-TO-UNDERSTAND BILL MODEL

Bills must be clear and easy to understand

Utility bills must be clear and contain useful information. Therefore, they must allow the person to understand how much they are paying for the electricity, water or gas they have consumed. It must also allow the consumer to compare the prices they pay with other offers from different suppliers, in order to be able to change if they are not happy with the service they receive. In essence, it is recommended that bills be user-friendly for consumers.

Pursuant to this concept, bills must make it possible to quickly and intuitively grasp what the consumption is in kWh or m³ per consumer. It is necessary that information for people on measurement units (m³, kWh, etc.) used to calculate consumption and therefore, the price to pay, be easy to understand. In order to meet this goal, it may be appropriate to provide very clear examples to people on daily situations that link measurement units with the use of the services, such as, the average expenditure in kWh, cubic meters or liters to take a shower with hot water, heat up a glass of milk in the microwave, wash a load of laundry or run the dishwasher. A demonstration of the complexity inherent to this point can be found in the fact that many people would have difficulty stating, even approximately, what their monthly consumption of electricity, water and gas is.

Furthermore, the bill must also clearly include contact details (telephone, postal address, website, etc.) of the customer service department of the supply company, as well as the manner and means by which to present a claim against the bill itself with the company or with the ombudsmen or other alternative dispute resolution channels that meet criteria of European Union directives.

That is why it is proposed that the administration develop a standard model bill for every basic utility that includes the aforementioned elements.

Electricity and gas

The European Commission has published on its website¹⁶ a model bill, made up of two pages. The first page features the name of the supplier company, the contract expiration date, the tariff applied and the unit price in euros/kWh. Also featured are the company's contact details, the amount to pay and the deadline by which to pay it, in addition to the indication of any pending amount. The second page features the concepts that make up the price, the kWh consumed (distinguishing between day, night and weekend consumption) and finally, other data on the origin of the energy consumed and how to save energy.

In this realm, reference must also be made to the proposed model of telematic, electronic or on-line bill of the European Commission presented at the 6th Citizens' Energy Forum, held in London on December 16-17, 2013.¹⁷ In any case, the electronic or telematic bill must be a tool available to consumers to reduce their expenses and better supervise the energetic consumption of their home.

Specifically, in Spain, Royal Decree 216/2014, of March 28, by which the calculation methodology for voluntary prices for small electrical energy consumers and their contracting system are established, supports this concept by empowering the Directorate General of Energy Policy and Mining of the Ministry of Industry, Energy and Tourism by stating "the minimum mandatory content and a standard format of the bills that should be sent to the consumers by main or last-resort distributors of electricity or gas and the free-market electricity distributors to consumers of low voltage up to 15 kW of contracted power not enrolled in the voluntary price for small consumer scheme".

¹⁶ http://ec.europa.eu/consumers/citizen/my_rights/docs/regular_electricity_bill_en.pdf (document en anglès)

¹⁷ http://ec.europa.eu/consumers/citizen/my_rights/docs/12_10A4ebilling.pdf (document en anglès)

It must be stated that, although this Royal Decree empowers the state administration to establish a model bill for electricity and gas, the Ministry of Industry, Energy and Tourism has published a decision, on May 23, 2014, that sets out the minimum content and model bill solely for electricity.¹⁸

A bill that will consist of two pages, for which the content to be included on each of its sides (front and back) will be determined. Therefore, as of October 1, 2014, persons holding electricity contracts will receive a bill with four pages of information on, among other items, their electrical consumption, the contract information (for example, contracted power, meter type and expiry date of the contract), the toll-free telephone numbers for customer service, faults and emergencies, and the alternative dispute resolution body that the power marketer would recur to if necessary.

The aforementioned ministerial Decision of May 23, 2014 determines that the NCMC will publish on its website detailed information on the model bill and its components, in addition to a glossary containing the meanings of each of the terms included in the invoice.

Additionally, analysis is needed on whether this bill model will make for improvement in the information available to consumers, and especially, if this model will help improve citizens' comprehension of electricity prices. It cannot be denied that the fine print and profusion of data can be an obstacle for certain individuals to whom the Ministry addresses this effort, to make this model bill useful to increase transparency, and for the bill to be a tool that facilitates consumers' choice of power marketer.

Water

The thoughts previously expressed on electricity and gas can likewise be applied to water utilities and, along these lines, included among the conclusions of the Catalan Ombudsman's Decision of June 2012 on the price of water, issued within the ex-officio action O-02582/2011, was a proposal for a standard bill model in the following terms:

"Therefore, a significant clarification of the receipt or bill would be necessary to guarantee that the person understands what they pay and the price of the water that they consume. That is why there should be an evaluation of the appropriateness of the competent administrations, in conjunction with the service providers, of promoting a standard bill model."

Citizens' right to receive a paper copy of the bill and choose the method of payment

Mention must be made of consumers' right to receive a paper copy of their bill. Pursuant to this idea, it must be borne in mind that the law conditions the issuing of an electronic invoice to the company having previously obtained the express consent of the consumer.

The request for consent must specify the way in which the electronic bill will be received, in addition to the possibility that the person who has given their consent be able to revoke it, and the way in which this revocation can be made.

In any event, the law determines that the right to receive a paper copy of the bill cannot be predicated on the payment of any monetary amount (Article 63 of the consolidated text of the General Law for the Defense of Consumers and Users).

In addition to this, reference must also be made to citizens' right to choose the method of payment.

Although neither the consolidated text of the General Law for the Defense of Consumers and Users nor the Code of Consumers' Rights of Catalonia expressly state the right to choose the method of payment—as opposed to the sectoral electricity and gas laws—it is true that lawmakers have forbidden companies from billing consumers who use certain payment methods any charges that exceed the cost borne by the company for the use of these methods. Furthermore, the law states that the company must prove its compliance with this condition (Article 60 of the consolidated text

¹⁸ Decision of May 23, 2014, of the Directorate General for Energy Policy and Mines, which establishes the minimum content and the electricity bill model (BOE no. 131, of May 30), <http://www.boe.es/boe/dias/2014/05/30/pdfs/BOE-A-2014-5655.pdf>

of the General Law for the Defense of Consumers and Users).

Electricity

The regulations governing the electrical sector are very clear in their recognition of consumers' right to freely choose their method of payment in Article 44 of Law 24/2013, of December 26, on the electricity sector. Within this precept, there is a list of rights and duties of consumers in the realm of utilities, and within it, the following right is included:

“f) To be able to freely choose the method of payment, so that no undue discrimination among consumers arises. Advance payment systems will duly reflect the conditions of supply and probable consumption.”

Additionally, Royal Decree 216/2014¹⁹ specifies the minimum content that must be included in electrical utility contracts with main distributors, and within this minimum content, the “recognition of the right to choose the method of payment, from among those commonly used in commercial trade” is included (Article 19).

Gas

The sectoral legislation on gas also recognizes in similar terms consumers' right to freely choose their method of payment. Along these lines, Article 57 bis.h of Law 34/1998 on hydrocarbons states:

“h) To be able to freely choose the method of payment, so that no undue discrimination among consumers arises. Advance payment systems will duly reflect the conditions of probable consumption. Any difference in the conditions will reflect the costs implied by the various payment systems for the supplier. General conditions will be fair and transparent. These will be explained in a clear, understandable language, and will not include non-contractual barriers to the exercise of clients' rights; for example, excessive contractual documentation. Customers will be protected against abusive or misleading sales models.”

Given the clarity of the law when dealing with the right to choose the method of payment, it is surprising that a rule of lower hierarchical rank such as Royal Decree 1434/2002,²⁰ determines that “when a fixed monthly fee is agreed on, the distributor will be able to demand a specific method of payment” (Article 52.3).

Water

As regards water, and considering that there is no general rule, it will be necessary to consult the regulations or ordinances that regulate the supply service in each municipality. Notwithstanding this lack of general regulations devoted to water, it should be remembered that the terms of the service regulations cannot contradict the above-described provisions for consumer and user defense legislation.

¹⁹ Royal Decree 216/2014, of March 28, which establishes the calculation methodology for voluntary prices among small consumers of electrical energy and their legal contracting system.

²⁰ Royal Decree 1434/2002, of December 27, which regulates activities of transport, distribution, marketing, supply and procedures for authorization of natural gas installations.

7. CONSIDERATIONS ON PUBLIC POLICIES REGARDING BASIC UTILITIES

On the electricity and gas tariffs deficit

The current situation of electricity and gas utilities has much to do with the prolonged crisis period that has followed many years of expansion, leading to a significant drop in income and increase in utility prices, occasionally with a close correlation with the international evolution of energetic commodities. The other trigger of the current situation of rising prices is related with an energy planning process carried out in the final expansive period of the economy, when no consideration was given to the moment when a change in the economic cycle would come about, inevitably leading to an over-sizing of, essentially, the gas and electrical grids. During the expansive period, and as a result of persistently low interest rates, there began many construction projects for major great energy-generating infrastructures, now in disuse due to the lower demand, for the most part on an industrial level, that does not allow compensation of the volume of investments made during the times of prosperity. Consequently, supervisory bodies must be required to develop mid and long-term planning with greater awareness of the diverse scenarios of settings that could be found in the future.

There are other reasons, which date back further in time, also associated with the energy policy and manifested in the vast planning deficits and situations that have not been correctly resolved. The generalized process of privatizations and deregulation that began in the 1980's indubitably contributed to the current deficit situation now being faced, which has translated into constant price increases in recent years. On another note, the small number of electrical companies makes for little competition. Here it is necessary for the supervisory body to closely watch the activities of the different companies in the sector to prevent them from coordinating to reduce the offering and raise prices, and be able to guarantee supply with favorable conditions for domestic consumers. Along these lines it must be borne in mind that during recent years the final prices for

domestic consumers have risen more than the final price paid by large industrial consumers.

Several aspects have already been discussed, along with others, such as the nuclear moratorium; subsidies for deep coal, with little heat potential and very deep; hydro-electric power plants; Spanish companies' high level of debt and leveraging to invest in foreign markets; extra-peninsular supply; or the change of electrical policy in 2004 (manifested in a major expansion of photovoltaic, and as of 2010, thermosolar, energy). This led to high subsidies being given to renewable energies, partially following the rules of the EU that gave them priority. All of these factors have surely led to worsening the so-called "tariff deficit", which is nothing other than the difference between the cost of electrical supply and the electrical tariff, given that direct and indirect costs of generating, transporting, distributing and marketing electricity do not seem to explain it on their own.

Lately, reference has also been made to the term "governmental wedge" to designate this difference between the final price of electricity and the expenses to purchase it and regulated activities; in other words, the expenses added to the price of electricity as a result of political decisions.

Another clear example of these distortions in the price of basic utilities can be found in the Spanish government's decision—through Royal Decree Law 13/2014, of October 3—to charge in the gas bill the amount for the indemnity of 1.35 billion euros, corresponding to the compensation to the company Escal UGS SL for the closure of the "Castor" gas storage project off Spain's Mediterranean coast. By virtue of this operation, the company Enagas Transport SAU will be the holder of the gas system's right to charge the aforementioned amount to the turnover from access tolls and fees of the gas grid for 30 years until the entire amount is met.

A stable regulatory framework for energy policy

The legal framework is a fundamental tool with which to provide people with the security they need, and establish the conditions that will lead to energy efficiency and sustainability. That is why it is fundamental that public

authorities draw up energy plans with a long-term view, that are sustainable, and that adapt to the needs of consumers, especially covering those of the most vulnerable. The current regulations, according to analyses conducted by many experts in the energy sector, have been plagued by inefficiencies for many years that, despite the passage of time, have not been solved. To the contrary, they have increased as complexity has been introduced into the system by all involved players.

In any event, one of the questions that must be asked is why the energy market was designed as it now stands. The answer must be sought at the end of the 1990's with the presence of a significant ideological component that led to the deregulation of the electricity and gas sectors, until then controlled by the state. One of the aims was the diversification of power sources, and to reduce dependency on fossil fuels. Since then there have been changes, although in many cases the underlying situation remains intact. This is one of the main problems: that a system designed in 1997, with technologies very different from those currently existing, no longer has meaning and must be changed.

For example, one of the aspects that must be addressed are the different incentives used to help sectors like that of renewable energies, combined cycles, etc. The characteristics on which they were established at the outset have changed a great deal over the years, and the current socio-economic conditions are quite different from the initial ones. Therefore, it does not seem to make sense to maintain the same calculation parameters, or that they have not been recalculated as inefficiencies detected in the initial criteria that should have been corrected some time ago to adjust them to new circumstances. For example, this would affect the remuneration of the regulated part of the price of electricity, established in a period of economic prosperity, and that has been kept up to the present without any changes.

It is also worth pointing out the excessive euphoria that developed around renewable energies, with a certain lack of planning for their growth; a growth that, if it had been slower and more suitable it would now be more efficient in every regard. If they had been incorporated gradually into the system,

as they technologically matured, the energetic mix could have been reconfigured depending on the needs at any given time. Nonetheless, at the present time, when they are ready to compete with the traditional forms, they cannot be allowed to fail, as this would imply the same problem; generation of inefficiencies due to a lack of mid and long-term analysis.

Therefore, and given this country's energy dependency, within the framework of designing a future energy plan, governments should promote a debate on the physical interconnections with the rest of the EU, at the electricity and above all, gas level, to receive energy as well as export it at times of surplus generation.

Certain factors that influence public policies on basic utilities

The factors that influence public policies affecting electricity, water or gas, and therefore their price and provision conditions can be grouped into three main blocks based on market conditions, personal circumstances and the conditions of the housing properties.

With respect to the first, the most important aspect refers to the degree of competition existing on the market, facilitating the provision of utilities at more economical prices. Second, personal circumstances would include all aspects related with people as is relevant to their levels of income, health, possible disabilities, educational levels (that helps a person understand the various aspects related with contracting and costs), age, family and occupational situation, etc. Third, as regards housing, this would involve all aspects related with energy efficiency (it may involve addressing important changes in domestic consumption), the type of heating and cooling systems, quality of building materials, location of the home or its level of occupancy.

It is with regard to all of these aspects that public authorities should rethink the public policies affecting basic utilities, to solve problems suffered by vulnerable consumers and at a more general level; above all, when planning future energy policy. In any case, the objective of financial aid for consumers

facing problems to meet their basic utility expenses must be to rationalize the system so that with less aid, more persons can benefit.

Public financial aid for vulnerable consumers

There are many types of financial aid and, in principle, it cannot be said that any are better than the rest. The fact that various countries inside the EU have chosen different forms of financial aid is a good example. Often, the most widely-repeated comments are on the distortions that originate from mixing social policy and energy policy.

That is why one of the important debates within the EU is about finding the best way to set financial aid so as to not disrupt the unity of the energy market. As they are two different policies, combining them to provide basic utilities to persons who cannot pay for them could lead to the introduction of inefficiencies within the energy system, which in the worst case scenario could end up being borne by consumers on the borderline of vulnerability, given that in many cases payments would be the responsibility of the rest of consumers. This could occasionally be translated into price hikes for all consumers, regardless of the economic situation they are in.

The other essential factor is that which refers to the behavior of vulnerable consumers. People who receive economic support must have incentives to practice efficient energy behavior and be aware of what they spend and what is being economically covered for them. Therefore, any financial aid must be coupled with reasonable and efficient consumption.

The tariff system and social tariffs

“Electrical tariffs subsidies” need to be reformulated, rethinking and restructuring them based on energy efficiency, capacity and need for savings, financing and its scope. Clearly, there is a need for establishment of “social prices” or reduced/subsidized tariffs for persons in situations of vulnerability that makes it possible to have the minimum indispensable required to have minimally dignified and healthy living conditions. Directly linked with the establishment of this type of financial aid, consideration must be given to its financing, either with increases for consumers with “excessive” expense,

coverage by State budgets or with other systems, as long as they introduce minimal distortions within the system.

Perhaps the best possibility would be the creation of a number of blocks used for pricing services depending on the consumer’s level of vulnerability and their energy expense, distinguishing between the most vulnerable consumers in situations of energy poverty, those who can meet payments of the different utilities, and also those with great energy expense. As for the first group, the subsidized block, it would be necessary to decide who pays and how it is paid, in addition to making a calculation of the estimated consumption depending on the members of the family unit and location of the home with the objective of preventing wastage of resources and improper energy utilization. Along these lines, to strengthen the environmental awareness, it is important to tax consumption depending on the expense incurred, so that waste or excessive usage is economically penalized.

Another type of financial aid could be one that allowed deferral of payments for basic utilities in order to make them without the need to receive a subsidy, or with a subsidy, but of a lower amount. This way, there would be fewer social repercussions, and the contribution of the rest of citizens would be alleviated.

Turning to butane gas, it must be considered that it is a more economical energy source than natural gas or electricity, partly thanks to the subsidies it receives. Nonetheless, in the not-too-distant future, plans are to cease subsidizing this energy source, and therefore, it will have to be paid at its market price. Given its lower cost, a subsidy could be established that was not generalized. In the current situation, both citizens with lower income levels as well as summer residences or business establishments (mainly from the hospitality industry) benefit. The new subsidy could be devoted only to citizens with low income levels or in situations of vulnerability. This way, the subsidy would acquire full meaning, not like now, in which the objective of the subsidy is completely diluted by the different uses that have nothing to do with energy vulnerability of the person or their needs for financial aid.

Conditioning necessary for housing properties

Public financial aid public to improve the situation of housing properties, with a view to make them more energetically efficient is one of the most important aspects in many EU countries. Along these lines, in Europe there are also considerations of providing incentives for tenants to condition housing properties. This is a form of long-term savings, as it means reduction in utility bills and therefore allows reduction of direct financial aid to payment. These resources can then be used for other purposes. It must be borne in mind that one of the objectives should be rationalization of financial aid, so that, with lower amounts, but more efficiently employed, more and

better coverage can be provided to people in situations of energy poverty.

Last, thought should also be devoted to introducing general tariffs for entire buildings instead of just for individual housing properties. These tariffs can be contracted with benefits for consumers that allow them to achieve significant savings on their bills. Nonetheless, it would be important and necessary to raise awareness of all residents of the building as concerns responsible energy consumption.

In any case, it is worth recalling that measures conceived for the long-term are always those that contribute to the greatest benefit and allow a more efficient allocation of the resources of all persons.

8. THE EUROPEAN REFERENCE

1. The European Union and consumers' energy rights

The Regulation (EU) 254/2014 of the European Parliament and of the Council, of February 26, 2014, approves the multiannual consumer program for years 2014-2020, the general objective of which is to guarantee a high level of protection for consumers, to empower them and place them at the center of the domestic market within the framework of a general strategy for smart, sustainable and inclusive growth.

The Program will do so by contributing to protecting the health, safety and the legal and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests. In keeping with this aim, the Program should help, among other things, contribute to sustainable growth by moving towards more sustainable patterns of consumption, on social inclusion by taking into account the specific situation of vulnerable consumers.

It must be noted that Objective II of the Program, devoted to consumer information and education, requests that the specific needs of vulnerable consumers be taken into account, and proposes a stepping up of transparency in consumer markets and consumer information, ensuring that consumers have comparable, reliable and easily accessible data with a view to help them compare not only prices, but also quality and sustainability of goods and services. That is why the program seeks the enhancement of actions that improve the transparency of consumption markets and cites, as an example, the energy market.

Also relevant is Objective III of the program (rights and access to redress) when it proposes facilitation of dispute resolution systems for consumers, in particular to alternative dispute resolution schemes, paying specific attention to adequate

measures that meet vulnerable consumers' needs and rights, for whom it is sought that there be development of specific tools to facilitate access to redress, as vulnerable people are less inclined to seek redress.

Along these lines, and in light of the will to facilitate more information to consumers on their rights in the realm of energy (electricity and gas), mention is deserved by the document published in June 2014 by the European Commission entitled "European energy Consumer's Rights – What you gain as an energy consumer from European legislation²¹".

This document lists in a brief and easily understood manner the rights that the legislation of each member state must ensure, which are the rights to:

1. An electricity connection
2. A choice of electricity or gas supplier.
3. An easy and fast switch of electricity or supplier
4. Clear contract information and right of withdrawal
5. Receive accurate information on your consumption
6. Receive information on how to use energy more efficiently and on the benefits of using energy from renewable sources
7. Specific consumer protection measures for vulnerable consumers
8. File a complaint or claim with your gas or electricity supplier and, in the event your complaint is not managed to your satisfaction, send your complaint to an independent body for a prompt out-of-court settlement
9. Receive information about the energy efficiency of the property you wish to buy or rent
10. Contact a single point where you can find more information on these rights.

²¹ http://ec.europa.eu/energy/gas_electricity/consumer/doc/20140617_consumer_rights_en.pdf

1. 6th European Citizens' Energy Forum²²

The 6th European Citizens' Forum took place in London on December 16-17, 2013.

The Third Energy Package is focused on improving the operation of retail markets to produce real benefits for electricity and gas consumers. The European Commission established the Citizens' Energy Forum in 2007 as a new regulation platform based on the experience acquired in the Forums of Florence and Madrid, and with the goal of implementing a competitive retail market that was fair and efficient in the field of energy. Various working groups have been established to focus on the matters brought up in the Forum, groups that cover topics such as vulnerable consumers, price transparency or consumers as stakeholders in the energy market.

In its sixth year, the Forum offered a platform to the European energy industry, consumers and policy makers to evaluate the current state of their work and identify and prioritize future plans. Focused on the development of competitive retail markets in the benefit of consumers, in addition to the principle of the energy industry's need for a vision focused on consumers, the Forum reached—among others—the following conclusions, included here because of their relevance to the objective of this report:

1. Implementing the IEM Regulatory Framework

1. The Forum recognizes that although the internal energy market (IEM) is starting to bear fruit for Europe's consumers, a significant amount of work is still needed for them to reap the benefits and to complete the retail part.

The Forum urges close structural collaboration on enforcement at Member State level among relevant actors, including energy regulators, public consumer authorities, independent energy ombudsmen and consumer organizations.

Noting that consumers are the final points in the energy flow and are affected by decisions which are made upstream by other players, the Forum calls on the industry,

regulators, and consumer and civil society organizations to be enablers of consumer awareness and choice and of the development of accessible, competitive and innovative services that will stimulate market activity. The Forum encourages harmonized gas and electricity market development and requests that there be greater collaboration in the interests of consumer choice and security of supply. The Forum notes the need for well-functioning, transparent and accountable wholesale energy markets.

2. Consumer Engagement and Empowerment

2. The Forum considers consumer engagement both possible and necessary for proper functioning of retail energy markets. As consumer engagement depends on access to simple and transparent information and tools for consumer participation, the Forum calls on national regulators to ensure fair competition for all services as well as consumer access to non-biased and accurate, relevant information.

The Forum notes with concern that lack of trust in the players and of knowledge of processes in the energy markets is widespread and can impede consumers' participation in markets. The Forum stresses that greater citizens' engagement in energy topics can best be achieved through a continued structured dialogue, with stakeholders and the wider public, including public administrations.

3. Consumer Information, Rights and Protection of Vulnerable Consumers

The Forum is concerned that price comparison websites are not accessible to all consumers and that even consumers with Internet access may not yet be aware of their existence or may not be able to effectively use information from them for action.

The Forum recognizes that putting consumers at the center of a competitive retail market also means that consumers/prosumers should be the owners of their consumption data, own production data and personal data.

²² http://ec.europa.eu/energy/gas_electricity/forum_citizen_energy_en.htm

To effectively protect vulnerable consumers, the Forum calls on Member States urgently to define the concept of vulnerable customers where they have not already done so. The Forum further calls on Member States to thoroughly consider, in the implementation of the 3rd Energy Package and in the transposition of the Energy Efficiency Directive, the specific needs and conditions of vulnerable consumers to ensure that these consumers also fully benefit from the new energy efficiency measures and new opportunities offered by competitive markets.

NEON²³ (National Energy Ombudsman Network)

NEON, the National Energy Ombudsmen Network, is a network made up of ombudsmen and mediation services in the energy sector, recognized as a provider of Alternative Dispute Resolution consistent with EU directives.

The network began its work in 2013 with the support of the Ombudsman Services (United Kingdom), the Médiateur National de l'Énergie (France), the Service de médiation de l'énergie (Belgium), the Commission for Energy Regulation and the Síndic de Greuges de Catalunya (Catalan Ombudsman).

NEON acts as a representative of energy ombudsmen before the European Commission and, as such is a privileged interlocutor in the realm of energy, consumption, mediation and alternative dispute resolution. For these purposes, it participates in various working groups, such as those relative to vulnerable consumers, the protection of consumers or e-billing. NEON also participates annually in the London Citizens' Energy Forum.

It must be noted that energy Ombudsmen are autonomous and independent authorities, or they belong to an independent authority, the jurisdiction of which is found in all or part of a member state of the European Union, or the European Free Trade Association. They are established by a federal, national, or regional law, or by the local authorities. The ombudsman that make up NEON act as an

external review body toward energy companies (electricity and gas), public bodies over which they have jurisdiction, resolving disputes based on current legislation and regulations and respecting the principle of fairness. To perform this task, Ombudsmen have investigation powers. They prepare opinions, suggestions and recommendations and publish a report, at least once a year, available to the public.

Along these lines, it is worth noting that NEON gives its full support to the "2020 Vision for Europe's energy customers"²⁴, developed by the CEER (Council of European Energy Regulators) and the BEUC (Bureau Européen des Unions de Consommateurs). This document is characterized by establishing the four principles that must govern the relationship between the energy sector and consumers: reliability, affordability, simplicity, and protection and empowerment.

In their daily activity, NEON members work with public administrations and regulators to improve and strengthen the protection of consumers on the energy market.

The energy transition Ombudsmen

With respect to the content explored in section 3 on energy efficiency in housing properties, mention must be made in this report of the trend underway in Europe to expand the realm of intervention of ombudsmen to the supervision of actions to improve the energy efficiency of housing properties, derived from governmental plans and programs, as is shown in the examples of the United Kingdom and France discussed hereafter.

United Kingdom

The Ombudsman Services have been designated as the alternative dispute resolution service for any conflicts arising from the "Green Deal" designed by the UK government to help homes and companies increase the energy efficiency of their buildings, making the necessary renovations and improvements, and thereby reducing greenhouse gas emissions throughout the United Kingdom.

²³ <http://www.neon-ombudsman.org/>

²⁴ http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab3/CEER-BEUC%202020%20VISION-joint%20statement_Long_v161014.pdf

Under this program, users and payers of electricity bills are able to benefit from energy efficiency improvements without any need for economic outlays. In fact, private investors will put up the necessary capital, recovering their money through the electricity bill, so that the savings estimated on consumers' bills must be more than enough to assume the cost of the remodeling. The expense resulting from the investment in improvement of energy efficiency is deferred over time with payment through electricity bills, which will be diminished thanks to the improvements implemented.

The work of the Ombudsman Services is therefore to resolve any claims between customers and Green Deal-accredited suppliers, and any related with the issuing of energy efficiency certificates or the actions of supplier companies included in the Green Deal program.

France

Although parliamentary debate did not begin on the draft bill related with the energy transition until October 2014, the Médiateur National de l'Energie already offered, as did

its British opposite number, to become the "Energy Transition Ombudsman". In other words, the alternative dispute resolution and mediation service for any conflicts related with energy and energy efficiency improvements. As the French Ombudsman institution stated in its 2013 annual report, this would make it possible to improve consumers' and companies' confidence in investments essential to the energy transition.

Considering that the Médiateur National de l'Energie's scope of competencies is now limited to consumption of electricity and gas, it is desired to broaden it to the entire consumption of energy, and also the installation of renewable energies and energy efficiency with the aim of ensuring professionals', individuals' and public players' engagement in the energy transition.

In the words of the Médiateur National de l'Energie, "Without an independent, effective partner to help resolve their problems, consumers may continue to suffer instead of taking action. Our actions can contribute to consumers becoming players in the energy transition."

9. CONCLUSIONS, RECOMMENDATIONS AND SUGGESTIONS

Basic utilities for the people

1. It is considered necessary to overcome the consideration of persons as simple customers of utility companies, progressing toward the consideration of persons as holders of subjective rights to basic utilities at an affordable price, within parameters of consumption that are basic, essential or not sumptuous.

2. The law assigns the Catalan Ombudsman with the duty to protect the rights of persons. That is why in this report, the effort has been made to not use the concepts of customers, users or consumers—by nature more limited—although in some cases this terminology is used to be more faithful to what the regulations determine or facilitate their interpretation.

3. Public administrations and companies must bear in mind that the Code of Consumer Rights of Catalonia attributes special protection to certain protected groups in their consumer affairs, specifically children and adolescents, the elderly, persons with poor health, the disabled and any other group in conditions of special inferiority of vulnerability.

4. From an assistance or service provision standpoint, work must be done in order for the legal system to recognize as holders of this right to basic utilities all those persons who meet the requisites to be defined as vulnerable consumers according to the parameters established in the regulations for each of the services.

5. It is necessary for everyone to be able to enjoy basic utilities at an affordable price as long as their consumption remains within consumption parameters that remain basic, essential and non-sumptuous. Further, this right to basic utilities at an affordable price must be recognized for people who do not meet the foregoing requisites for vulnerability.

6. Beyond these limitations, tariff systems should promote energy savings and efficiency, penalize the wasting of scarce resources and convey to excessive or sumptuous consumptions the cost of basic utilities for vulnerable consumers.

Defense of persons' rights

7. Compliance with the Directive on alternative resolution of disputes must be ensured, so that consumers can file claims against traders through organizations that offer alternative dispute resolution procedures, and who are independent, impartial, transparent, effective, fast and fair.

8. Directive 2013/11/EU, of May 21, 2013, on alternative dispute resolution makes it possible for consumers and companies to resolve their conflicts without having to go to court for any type of contractual disagreements in a prompt, simple manner, whether or not the contract has been formalized in person (for example, on-line or by telephone).

9. Beyond the debate of whether the services of general interest should be provided by public or private organizations, there is a common, essential element to both cases, which is the guarantee of the rights of persons, and therefore, that citizens not see a diminishment of their rights depending on who provides the service. Considering that when these services were provided directly the Administration it was the Ombudsman who supervised them, this supervision should be continued by the same institution, regardless of who is providing the service, to guarantee the defense of persons' rights.

The Parliament of Catalonia, in Article 78.1 of the Statute of Autonomy of Catalonia and in Law 24/2009 of December 23, on the Catalan Ombudsman, was a forerunner for including within the Catalan Ombudsman's area of competencies "the private companies that render public services or perform activities of general or universal interest".

10. The Parliament of Catalonia, in the application of Directive 2013/11/EU, of May 21, 2013, on alternative dispute resolution for consumer affairs, should follow the line begun with Article 78 of the Statute of Autonomy, and endow the Catalan Ombudsman with the tools necessary for him to act as a mechanism to guarantee rights and alternative dispute resolution in the area of basic utilities that is independent from utility companies.

11. Establishment by law of the Catalan Ombudsman as a supervisor of basic utilities, appointed by the Parliament of Catalonia,

would make it possible to offer all companies from the electricity, water and gas sectors an effective mechanism to comply with the alternative dispute resolution directives, and for the supervision of people's right to basic utilities. As occurs with other legal frameworks, regulation by law adds guarantees to the rights of people and ensures independence from the utility companies

12. The law regulating the ombudsman of basic utilities must establish the shared public and private financing system through one part being charged to the budgets of the Autonomous Government of Catalonia, and another to the utility companies based on their turnover in the territory.

13. Access to dispute resolution mechanisms must be guaranteed free of charge, especially for vulnerable consumers.

14. The publication of an annual report on the activities performed in defense of the people's right to basic utilities, and its presentation and debate in the Parliament of Catalonia, is a guarantee of independence in the resolution of the complaints and disputes that arise.

Information for persons and billing

15. Utility providers must deliver complete, precise, accurate and easily-understood information on the services they provide, their conditions and price, whether they do it in person or remotely (by telephone, telematically, etc.).

16. It is necessary for utility companies to clearly inform on the prices of the services and possible rebates, surcharges and taxes that will be charged along with the consumption, such as VAT, the water fees, special electricity tax or water meter maintenance. Utility companies must also make this information public in their advertising.

17. Especially in the electrical and gas sectors, power marketers must facilitate consumers' change of marketer, and be proactive when it comes to applying the most beneficial price for the consumer, always in accordance with their will.

18. In reference to the foregoing point, there must be a firm commitment on the part of electricity and gas power marketers to eradicate dubious—and on occasions, legally questionable—practices by their sales forces, be it in the so-called “cold calling” or telephone sales, specifically with respect to groups especially protected by the Code of Consumer Rights of Catalonia, such as the elderly or anyone else in a situation of special inferiority or vulnerability.

19. Utility companies must supervise the activities of the companies that they hire for the collection of outstanding debts, to guarantee their ethical behavior free from any malpractice.

20. Utility companies must be especially careful not to include anyone in debt default lists or files until the debt is confirmed, and they have exhausted all the pending claims, be they out of court or in court, so as to not impinge on people's right to the protection of their personal data, their honor and own image.

21. Basic utility (electricity, water and gas) bills must be clear, easily-understood and transparent, with print of a size that facilitates consumers' comfortable reading.

22. Utility companies must immediately alert consumers when they detect situations of excesses, leaks or anomalies in electricity, water or gas consumption, as is already done in other sectors, such as telecommunications.

23. If the person requests it, it would also be appropriate for utility companies to inform by letter, e-mail, whatsapp, sms, etc. when they detect that the person has already consumed an amount equivalent to 75% of their average historical consumption for any billing period.

24. It is necessary for the person to have full and immediate access to all of their consumption data as an ideal means of properly planning their consumption.

Companies' exercise of social responsibility

25. Utility companies must strengthen the role of basic municipal social services and

social organizations, especially by facilitating information and training of their personnel.

26. Utility companies must include in their social responsibility plans specific programs to address their most vulnerable consumers, and that these programs be public and well-known especially by the social services and social organizations that assist these persons.

27. The management of social tariffs for basic utilities and the processing of financial aid for vulnerable consumers must be simplified, so that anyone who needs to can access these benefits.

28. There must be established an organization that operates like a “one-stop shop” that is common to all companies that could be considered providers of basic services for persons to gather information and process all of the social tariffs and financial aid existing for vulnerable consumers, while also working as a reference body for guidance and information on basic utilities for basic social services and social organizations.

29. Utility companies must establish criteria for automatic application of social tariffs in force in the sectors of electricity, water and gas for beneficiaries of housing properties that form part of social inclusion housing networks, whether they belong to public administrations or social organizations (legal entities).

30. Relationships among the public services or bodies working in consumer affairs and basic social services must be improved, so that with common training and information on basic utilities, the competency area of each one is known, with the objective of offering better service to persons requiring it.

Handling complaints and claims

31. Prompt, thorough handling of complaints and claims presented by citizens must be ensured, with special emphasis on avoiding standardized answers.

32. Utility companies must clearly inform citizens on the channels for claims, alternative dispute resolution resources and the ombudsman. This information must be

clearly stated in contracts, bills, websites and establishments or offices of utility companies or their agents.

33. It must be ensured that utility companies offer toll-free telephone service that people can call to inform the company on any possible incidents, occurrences or circumstances that affect the normal operations within their consumer relations, in addition to presenting complaints on their bills, pursuant to the Code of Consumer Rights of Catalonia.

34. Utility companies must ensure that consumers, to exercise their rights, have record, in writing or on any other sort of durable medium, of the presentation of any possible complaint or claim on incidents, occurrences or circumstances that affect the normal operations within their consumer relations. That is, that they deliver to the consumer a confirmation of receipt, the incident number and any other document that accredits their complaint or claim.

35. Utility companies must ensure compliance with the Code of Consumer Rights of Catalonia in cases that refer to the obligation to keep providing the service despite non-payment of any bill if the person has filed a claim about the bill with the utility company itself or through the judiciary or out-of-court mechanisms for dispute resolution, whose final decision is still pending.

Electricity

36. The new regulations on electricity billing do not promote energy savings, since, until the tele-managed smart meters come on-line, pre-established consumption patterns will be applied. There are reasonable doubts as to whether the new regulations are aligned with the principles of non-wastage of scarce resources, promotion of renewable energies and reduction of CO2 emissions.

37. Pursuant to the foregoing point, there must be an intensification of the meter replacement process to advance the date of implementation of digital or telemanaged (smart) meters, to ensure that all consumers have real, instant information on their consumption, with the purpose reducing it or making it more efficient.

38. Due to the complexity of the subject matter and the misinformation that affects the majority of people, often victims of contradictory messages, power marketers must properly inform consumers on the prices they offer, the concepts making up the bills to be paid, the possibilities to benefit from the “tariff subsidy” and the different tariff modalities, depending on whether they are enrolled in the VPSC or free market programs.

39. It must be determined whether the electrical utility bill model approved by the Ministerial Decision of May 23, 2014 proves useful to increase transparency, improve people’s information and understanding of the price of electricity and facilitate the choice of power marketer.

40. Tariff diversification must be promoted, expanding the range of hourly discrimination modalities, to better meet consumers’ needs.

41. Especially when contracting, but also when reductions are sought, electrical power marketers must provide accurate information on the electrical power required by the consumer, pursuant to the principles of responsible, energetically efficient consumption.

42. Efficient and decentralized generation of electricity for self-supply through renewable sources contributes to the achievement of EU objectives on reducing CO2 emissions. For this reason, a critical view must be taken on the removal of incentives for self-supply effected by the new electricity sector regulations through the so-called “sun tax” (endorsement toll).

43. An external, comprehensive and rigorous audit must be conducted on the electricity sector that particularly addresses the so-called “tariff deficit”.

44. There must be an update of the amounts (30 euros or 10% of the first complete bill) that the state regulations (Article 105.6 of Royal Decree 1955/2000) determine that electricity distribution companies must pay consumers for breach of individual quality as concerns consumer services, as they have never been updated.

45. State electricity regulations must be modified so that, in cases that supply is cut

off due to non-payment with its origin in the person’s vulnerability, the user does not have to pay twice the reconnection expenses to have access to the utility again.

46. Electricity sector legislation must be modified to redefine the “electrical tariff subsidy” to see that it is applied to vulnerable consumers, eliminating—among other criteria—the possibility to benefit from the social tariff on the sole criterion of being a large family.

47. Mechanisms must be established to reduce electrical power before cutting off supply in cases of vulnerable consumers with difficulties to pay their bills.

48. Public administrations and utility companies must implement a package of financial aid aimed at vulnerable consumers for the purchase or renewal of appliances and lighting apparatuses that are more energy-efficient.

49. VAT regulations must be modified to apply reduced VAT to vulnerable electricity consumers, to assimilate it to the 10% applied to water, or what is done in other countries.

50. It is necessary for distributors to inform the respective local councils on a quarterly basis as to the number of electrical utility cut-offs for non-payment and of other relevant incidents, particularly those affecting especially protected groups.

Water

51. A model bill for the water utility must be developed.

52. Competent local administrations must remove from water bills all concepts not related with the water cycle, such as curb cut or waste management fees.

53. Competent local administrations must approve social water tariffs, linked to basic consumption.

54. It is necessary for distributors to inform the respective local councils on a quarterly basis as to the number of water utility cut-offs for non-payment and of other relevant

incidents, particularly those affecting especially protected groups.

55. Local administrations must thoroughly enact their competencies for the supervision, inspection and monitoring of water utility concessionaire companies.

56. Both local administrations and utility companies must regularly and proactively inform in detail on the quality of the water supplied, especially on the parameters that regulations make it mandatory to check, providing a specific space on their respective websites that contains all of this information.

Gas

57. Legislation in the hydrocarbons sector must be modified to establish a social price for butane gas in accordance with personal circumstances, to overcome the current situation in which the price of the cylinder is the same regardless of whether it is being used as a source of basic energy for persons or as an element for business or recreational establishments, such as bar and restaurant terraces on the street.

58. Legislation in the hydrocarbons sector must be modified to establish a “tariff subsidy” for gas.

59. State gas regulations must be modified so that, in cases that supply is cut off due to non-payment with its origin in the person’s vulnerability, the user does not have to pay twice the reconnection expenses to have access to the utility again.

60. VAT regulations must be modified to apply reduced VAT to vulnerable gas or butane gas consumers, to assimilate it to the 10% applied to water, or what is done in other utilities.

61. A model bill for the gas utility must be developed.

62. It is necessary for distributors to inform on a quarterly basis the respective local councils on the number of gas utility cut-offs for non-payment and of other relevant incidents, particularly those affecting especially protected groups.

Energy efficiency of housing units

63. It must be taken into account that the renovation to improve the energy efficiency of buildings and existing housing properties has specific characteristics that set it apart from new construction. Furthermore, other agents are involved in it. Therefore, it would be recommendable for, from a regulatory standpoint, these renovation operations be regulated in a specific way, separated from new constructions.

64. Utility companies must inform private individuals and administrations on consumption details of buildings and homes to obtain specific data that allow them to rationalize renovation operations for the improvement of energy efficiency.

65. Mechanisms must be established for promotion and financing that reach all players involved in energy efficiency, whether public or private. Special care must be taken to ensure that persons with fewer resources are not excluded from the public financial aid schemes.

66. Before construction of social homes is begun, careful analysis must be performed on the systems that allow a more efficient use of energy, with the goal of not generating unaffordable bills for persons who are beneficiaries of the housing.

ADDENDUM

There follows a proposed alternative classification to that of section 8 for the conclusions, recommendations and suggestions depending on their possible consideration as general principles, best practices that can be implemented by utility companies or measures that could require regulatory action of varying ranks, in the competency realm of the Autonomous Government of Catalonia, which also includes those that affect the local administration, as well as the State.

In any event, it must be remembered that this is not a closed classification, as the concepts used and the competency areas are interpretable, and that it has been decided to maintain the number of each of the conclusions in Section 8 to facilitate their reading and location.

■ General principles

It is considered necessary to overcome the consideration of persons as simple customers of utility companies, progressing toward the consideration of persons as holders of subjective rights to basic utilities at an affordable price, within parameters of consumption that are basic, essential or not sumptuous.

2. The law assigns the Catalan Ombudsman with the duty to protect the rights of persons. That is why in this report, the effort has been made to not use the concepts of customers, users or consumers—by nature more limited—although in some cases this terminology is used to be more faithful to what the regulations determine or facilitate their interpretation.

3. Public administrations and companies must bear in mind that the Code of Consumer Rights of Catalonia attributes special protection to certain protected groups in their consumer affairs, specifically children and adolescents, the elderly, persons with poor health, the disabled and any other group in conditions of special inferiority of vulnerability.

4. From an assistance or service provision standpoint, work must be done in order for the legal system to recognize as holders of this right to basic utilities all those persons who

meet the requisites to be defined as vulnerable consumers according to the parameters established in the regulations for each of the services.

5. It is necessary for everyone to be able to enjoy basic utilities at an affordable price as long as their consumption remains within consumption parameters that remain basic, essential and non-sumptuous. Further, this right to basic utilities at an affordable price must be recognized for people who do not meet the foregoing requisites for vulnerability.

6. Beyond these limitations, tariff systems should promote energy savings and efficiency, penalize the wasting of scarce resources and convey to excessive or sumptuous consumptions the cost of basic utilities for vulnerable consumers.

■ Best practices

15. Utility providers must deliver complete, precise, accurate and easily-understood information on the services they provide, their conditions and price, whether they do it in person or remotely (by telephone, telematically, etc.).

16. It is necessary for utility companies to clearly inform on the prices of the services and possible rebates, surcharges and taxes that will be charged along with the consumption, such as VAT, the water fees, special electricity tax or water meter maintenance. Utility companies must also make this information public in their advertising.

17. Especially in the electrical and gas sectors, power marketers must facilitate consumers' change of marketer, and be proactive when it comes to applying the most beneficial price for the consumer, always in accordance with their will.

18. In reference to the foregoing point, there must be a firm commitment on the part of electricity and gas power marketers to eradicate dubious—and on occasions, legally questionable—practices by their sales forces, be it in the so-called “cold calling” or telephone sales, specifically with respect to groups especially protected by the Code of Consumer Rights of Catalonia, such as the

elderly or anyone else in a situation of special inferiority or vulnerability.

19. Utility companies must supervise the activities of the companies that they hire for the collection of outstanding debts, to guarantee their ethical behavior free from any malpractice.

20. Utility companies must be especially careful not to include anyone in debt default lists or files until the debt is confirmed, and they have exhausted all the pending claims, be they out of court or in court, so as to not impinge on people's right to the protection of their personal data, their honor and own image.

21. Basic utility (electricity, water and gas) bills must be clear, easily-understood and transparent, with print of a size that facilitates consumers' comfortable reading.

22. Utility companies must immediately alert consumers when they detect situations of excesses, leaks or anomalies in electricity, water or gas consumption, as is already done in other sectors, such as telecommunications.

23. If the person requests it, it would also be appropriate for utility companies to inform by letter, e-mail, whatsapp, sms, etc. when they detect that the person has already consumed an amount equivalent to 75% of their average historical consumption for any billing period.

24. It is necessary for the person to have full and immediate access to all of their consumption data as an ideal means of properly planning their consumption.

25. Utility companies must strengthen the role of basic municipal social services and social organizations, especially by facilitating information and training of their personnel.

26. Utility companies must include in their social responsibility plans specific programs to address their most vulnerable consumers, and that these programs be public and well-known especially by the social services and social organizations that assist these persons.

29. Utility companies must establish criteria for automatic application of social tariffs in force in the sectors of electricity, water and gas for beneficiaries of housing properties that form part of social inclusion housing networks, whether they belong to public administrations or social organizations (legal entities).

30. Relationships among the public services or bodies working in consumer affairs and basic social services must be improved, so that with common training and information on basic utilities, the competency area of each one is known, with the objective of offering better service to persons requiring it.

31. Prompt, thorough handling of complaints and claims presented by citizens must be ensured, with special emphasis on avoiding standardized answers.

32. Utility companies must clearly inform citizens on the channels for claims, alternative dispute resolution resources and the ombudsman. This information must be clearly stated in contracts, bills, websites and establishments or offices of utility companies or their agents.

33. It must be ensured that utility companies offer toll-free telephone service that people can call to inform the company on any possible incidents, occurrences or circumstances that affect the normal operations within their consumer relations, in addition to presenting complaints on their bills, pursuant to the Code of Consumer Rights of Catalonia.

34. Utility companies must ensure that consumers, to exercise their rights, have record, in writing or on any other sort of durable medium, of the presentation of any possible complaint or claim on incidents, occurrences or circumstances that affect the normal operations within their consumer relations. That is, that they deliver to the consumer a confirmation of receipt, the incident number and any other document that accredits their complaint or claim.

35. Utility companies must ensure compliance with the Code of Consumer Rights of Catalonia in cases that refer to the obligation to keep providing the service

despite non-payment of any bill if the person has filed a claim about the bill with the utility company itself or through the judiciary or out-of-court mechanisms for dispute resolution, whose final decision is still pending.

38. Due to the complexity of the subject matter and the misinformation that affects the majority of people, often victims of contradictory messages, power marketers must properly inform consumers on the prices they offer, the concepts making up the bills to be paid, the possibilities to benefit from the “tariff subsidy” and the different tariff modalities, depending on whether they are enrolled in the VPSC or free market programs.

41. Especially when contracting, but also when reductions are sought, electrical power marketers must provide accurate information on the electrical power required by the consumer, pursuant to the principles of responsible, energetically efficient consumption.

64. Utility companies must inform private individuals and administrations on consumption details of buildings and homes to obtain specific data that allow them to rationalize renovation operations for the improvement of energy efficiency.

■ Regulatory competency of the Autonomous Catalan Government and local administrations

7. Compliance with the Directive on alternative resolution of disputes must be ensured, so that consumers can file claims against traders through organizations that offer alternative dispute resolution procedures, and who are independent, impartial, transparent, effective, fast and fair.

8. Directive 2013/11/EU, of May 21, 2013, on alternative dispute resolution makes it possible for consumers and companies to resolve their conflicts without having to go to court for any type of contractual disagreements in a prompt, simple manner, whether or not the contract has been formalized in person (for example, on-line or by telephone).

9. Beyond the debate of whether the services of general interest should be provided by public or private organizations, there is a common, essential element to both cases, which is the guarantee of the rights of persons, and therefore, that citizens not see a diminishment of their rights depending on who provides the service. Considering that when these services were provided directly the Administration it was the Ombudsman who supervised them, this supervision should be continued by the same institution, regardless of who is providing the service, to guarantee the defense of persons' rights.

The Parliament of Catalonia, in Article 78.1 of the Statute of Autonomy of Catalonia and in Law 24/2009 of December 23, on the Catalan Ombudsman, was a forerunner for including within the Catalan Ombudsman's area of competencies “the private companies that render public services or perform activities of general or universal interest”.

10. The Parliament of Catalonia, in the application of Directive 2013/11/EU, of May 21, 2013, on alternative dispute resolution for consumer affairs, should follow the line begun with Article 78 of the Statute of Autonomy, and endow the Catalan Ombudsman with the tools necessary for him to act as a mechanism to guarantee rights and alternative dispute resolution in the area of basic utilities that is independent from utility companies.

11. Establishment by law of the Catalan Ombudsman as a supervisor of basic utilities, appointed by the Parliament of Catalonia, would make it possible to offer all companies from the electricity, water and gas sectors an effective mechanism to comply with the alternative dispute resolution directives, and for the supervision of people's right to basic utilities. As occurs with other legal frameworks, regulation by law adds guarantees to the rights of people and ensures independence from the utility companies

12. The law regulating the ombudsman of basic utilities must establish the shared public and private financing system through one part being charged to the

budgets of the Autonomous Government of Catalonia, and another to the utility companies based on their turnover in the territory.

13. Access to dispute resolution mechanisms must be guaranteed free of charge, especially for vulnerable consumers.

14. The publication of an annual report on the activities performed in defense of the people's right to basic utilities, and its presentation and debate in the Parliament of Catalonia, is a guarantee of independence in the resolution of the complaints and disputes that arise.

27. The management of social tariffs for basic utilities and the processing of financial aid for vulnerable consumers must be simplified, so that anyone who needs to can access these benefits.

28. There must be established an organization that operates like a "one-stop shop" that is common to all companies that could be considered providers of basic services for persons to gather information and process all of the social tariffs and financial aid existing for vulnerable consumers, while also working as a reference body for guidance and information on basic utilities for basic social services and social organizations.

48. Public administrations and utility companies must implement a package of financial aid aimed at vulnerable consumers for the purchase or renewal of appliances and lighting apparatuses that are more energy-efficient.

51. A model bill for the water utility must be developed.

52. Competent local administrations must remove from water bills all concepts not related with the water cycle, such as curb cut or waste management fees.

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incidents, particularly those affecting especially protected groups.

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66. Before construction of social homes is begun, careful analysis must be performed on the systems that allow a more efficient use of energy, with the goal of not generating unaffordable bills for persons who are beneficiaries of the housing.

■ Regulatory Competency of the State

36. The new regulations on electricity billing do not promote energy savings, since, until the tele-managed smart meters come on-line, pre-established consumption patterns will be applied. There are reasonable doubts as to whether the new regulations are aligned with the principles of non-wastage of scarce resources, promotion of renewable energies and reduction of CO2 emissions.

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SÍNDIC

EL DEFENSOR
DE LES
PERSONES

Síndic de Greuges de Catalunya
Passeig Lluís Companys, 7
08003 Barcelona
Tel 933 018 075 Fax 933 013 187
sindic@sindic.cat
www.sindic.cat

