



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-359/11 and C-400/11  
Alexandra Schulz v Technische Werke Schussental GmbH und Co. KG and  
Josef Egbringhoff v Stadtwerke Ahaus GmbH

**Consumers supplied with electricity and gas within the framework of a universal supply obligation must be informed, with adequate notice before any price increase comes into effect, as to the reasons and preconditions for that increase and its scope**

*By not providing for such information, the German legislation at issue in the present case does not comply with the Electricity Directive and the Gas Directive*

The German Federal Court is hearing two disputes between electricity and gas customers, respectively, and their suppliers concerning several price increases introduced between 2005 and 2008. Those customers, who are covered by a universal supply obligation (standard rate customers)<sup>1</sup>, consider those increases to be unreasonable and based on unlawful clauses.

The German legislation in force at the material time determined the standard terms and conditions of consumer contracts and incorporated those terms and conditions directly into contracts concluded with standard rate customers. It allowed the supplier to unilaterally adjust the prices of electricity and gas without indicating the reasons or preconditions for that adjustment or its scope, while ensuring, however, that customers are informed of the increase in charges and that they can terminate their contract if they so wish.

In reply to the questions from the German Federal Court, the Court of Justice finds, by today's judgment, that the Electricity Directive<sup>2</sup> and the Gas Directive<sup>3</sup> preclude national legislation (such as the German legislation at issue in the cases before the referring court) which determines the content of electricity and gas supply contracts with consumers who are covered by a universal supply obligation<sup>4</sup> and which allows the suppliers to adjust the price of that supply but does not ensure that consumers are informed, before the adjustment comes into effect and with adequate notice, of the reasons and preconditions for that increase and its scope.

The Court notes in particular that those two directives require the Member States to ensure that consumers have a high level of protection with regard to the transparency of the contractual

<sup>1</sup> In such circumstances, the supplier is bound, in the framework of the duties imposed by German legislation, to enter contracts with customers who request this and who are entitled to the conditions laid down by that legislation.

<sup>2</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37, and corrigendum in OJ 2004 L 16, p. 74). The 2003 directive was **repealed** by Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (OJ 2009 L 211, p. 55).

<sup>3</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57). The 2003 directive was **repealed** by Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas (OJ 2009 L 211, p. 94).

<sup>4</sup> For the duty to inform vis-à-vis customers who are covered by a **special** rate, see the judgment of the Court of 21 March 2013 in *RWE Vertrieb* (C-92/11), and PR n° [36/13](#). According to that judgment, the information regarding the reasons for and the method of adjustment of the gas supply costs, communicated to the consumer transparently before the contract is entered, is of fundamental importance. That conclusion does not apply, however, to contracts with **standard** rate customers (the customers at issue in the present proceedings). The contracts with the customers at issue in *RWE Vertrieb* (**special** rate customers) were governed not only by Directive 2003/55, but also by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29). However, the content of contracts with **standard** rate customers is determined by mandatory German legislative provisions, with the result that the Directive on unfair terms is not applicable to them.

conditions. The Court considers that in addition to the right to terminate the contract (a right laid down by the directives in the event of price adjustment), consumers must also be empowered to challenge such adjustments.

In order to fully and effectively benefit from those rights and to take an informed decision whether to terminate the contract or to challenge the adjustment of the supply price, customers who are covered by a universal supply obligation must be informed, with adequate notice before any adjustment enters into effect, of the reasons and preconditions for that adjustment and its scope.

In reply to the request to minimise the financial consequences of the judgment, the Court is unwilling to grant that request and, consequently, to limit its temporal effects. In that regard, the Court notes in particular that it has not been demonstrated that calling into question legal relations which have exhausted their effects in the past would retroactively cast into confusion the entire electricity and gas supply sector in Germany. Consequently, the interpretation of the Directives applies to all the price adjustments that have taken place in the period during which the directives<sup>5</sup> have been applicable.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>5</sup> Directives 2003/54 and 2003/55 entered into force on 4 August 2003, the final date for their transposition into national law being 1 July 2004. They were repealed with effect from 3 March 2011 (see notes 2 and 3 above).