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# A COMPARATIVE ANALYSIS OF THE ITALIAN AND GERMAN LAWS REGULATING ELECTRICITY BILLS DURING EXCEPTIONAL EVENTS

## *Abstract*

The article focuses its attention on analyzing, firstly, the European regulatory landmark on energy bills. Secondly, this article will investigate the electricity bills discipline of two European countries: Germany and Italy. The scope of the first part of this article is to highlight the differences in the structure and the discipline of electricity bills in the two countries. The second part of the article will investigate how both EU countries have reacted to energy bills during emergency periods. For Italy, the focus will be both on the earthquake of 2016 which destroyed 138 municipalities of the Marche Region and on the COVID-19 pandemic, while for Germany the investigation will concentrate only on the pandemic emergency regulations related to energy bills. The outline of the article will be a comparison of both energy bills practices during emergency periods thus highlighting how the countries have reacted during these exceptional events.

## *Annotasiya*

Məqalədə diqqət, ilk növbədə, enerji ödənişləri ilə bağlı Avropa tənzimləmə istiqamətlərinin təhlilinə yönəldilir. İkincisi, bu məqalədə iki Avropa ölkəsinin: Almaniya və İtaliyanın elektrik enerjisi hesablama qaydaları araşdırılacaqdır. Bu məqalənin birinci hissəsi iki ölkədə elektrik enerjisi ödənişlərinin strukturu və nizam-intizamındakı fərqləri əhatə edəcəkdir. Məqalənin ikinci hissəsində isə hər iki Avropa Birliyi ölkəsinin fövqələdə vəziyyət dövründə elektrik enerjisi hesablarına necə tənzimlədiyinə baxılacaqdır. İtaliya üçün diqqət həm 2016-ci ildə Marke bölgəsində baş vermiş və regionun 138 bələdiyyəsini dağıtmış zəlzələ zamanı, həm də COVID-19 pandemiya dövrünə yönəldilsə də, Almaniya üçün araştırma yalnız pandemiya zamanı fövqələdə vəziyyətin elektrik enerjisi hesabları ilə bağlı qaydalarına diqqət yetirəcəkdir. Məqalənin xülasəsi fövqələdə vəziyyət dövründə elektrik enerjisi hesablarının təqdimində hər iki ölkənin təcrübəsinin müqayisəsini təşkil edəcək və beləliklə, ölkələrin bu xüsusi fövqələdə hallar zamanı necə reaksiya verdiyini müəyyənləşdirəcəkdir.

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## Introduction

**S**ince the adoption of both the United Nations 2030 Agenda<sup>1</sup> and the Paris Agreement in 2015,<sup>2</sup> the European Union has started analyzing ways in which it could achieve the carbon-neutral society ruled by the 2015 Conventions.<sup>3</sup> In light of the Conventions, the European Union<sup>4</sup> has worked into implementing the strategies, such as the European Green Deal,<sup>5</sup> in order to contribute to a carbon-neutral society and economy, thus "*empowering consumer for the energy transition*".<sup>6</sup> In particular, the Green Deal, addressing into its scopes the fight for energy poverty<sup>7</sup> among European

<sup>1</sup> United Nations General Assembly, Transforming Our World: the 2030 Agenda for Sustainable Development, A/RES/70/1 (2015). Available at: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (last visited Dec. 15, 2021).

<sup>2</sup> The Paris Agreement was adopted on 12 December 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris from 30 November to 13 December 2015.

<sup>3</sup> The 2030 Agenda invites States' parties to take active action to combat climate change. In particular, goal 13 (2) demands states to "integrate climate change measures into national policies, strategies and planning". Also the Paris Agreement invites state parties to undertake emission gas reduction targets such as the one stated at Article 2 (a) which requires parties to "holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change".

<sup>4</sup> See generally Intergovernmental Panel on Climate Change, Special Report on the Impacts of Global Warming of 1.5°C above Pre-industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty (2018).

<sup>5</sup> The aim of the European Green Deal, as stated in a communication by the European Commission, is to "the European Green Deal" is a response to these challenges. It is a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use". See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions The European Green Deal, 2 (2019).

<sup>6</sup> The 2022-2025 Council of European Energy Regulator (CEER) strategy can be summarized as a strategy in three steps which consist in "enabling energy system integration: integrating renewables and incentivizing innovation; placing consumers at the centre of energy markets with consumer-centric dynamic regulation, empowering consumers to actively contribute to and benefit from a flexible energy system; and ensuring open, well-functioning and resilient markets nationally and in Europe: delivering flexibility and new business models". See generally EUROSTAT, Electricity Price Statistics. Available at: <https://ec.europa.eu/eurostat/web/energy/methodology/prices> (last visited Jul. 1, 2021).

<sup>7</sup> See Stefan Bouzarovski, *Energy Poverty in the European Union: Landscapes of Vulnerability*, 3 Wiley Interdisciplinary Reviews: Energy and Environment 276, 276-289 (2014); See also Harriet Thomson and Stefan Bouzarovski, Addressing Energy Poverty in the European Union: State of Play and Action, 6 (2018); See generally Heyd F. Más, Dirk Kuiken, *Beyond Energy Savings: The*

households, enhances the supply of clean, affordable and secure energy, thus helping "*households that cannot afford key energy services to ensure a basic standard of living*".<sup>8</sup> At the same time, in June 2021, the European Parliament and the Council of Europe have adopted the European Climate Law Regulation which rules in Article 2 that "*union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter*".<sup>9</sup> This Regulation also sets out as principle that the Union, while aiming to achieve its targets, shall take into consideration the "*energy efficiency and the "energy efficiency first" principle, energy affordability and security of supply*".<sup>10</sup>

Starting from this premise, the Article questions itself if, during the pandemic and other extraordinary events, in two European countries such as Germany and Italy, the discipline on electricity bills has been consumer-oriented, thus allowing household consumers facing energy poverty to be protected during these extraordinary times.

Moreover, this paper will start by analyzing the EU legal framework on energy bills which, today, consists of Directive 2012/27/EU (hereinafter Energy Efficiency Directive)<sup>11</sup> and by Directive 2019/944/EU (hereinafter Electricity Market Directive).<sup>12</sup> It is important to mention that, differently to the Regulations, which is a binding legislative act that must be applied in its entirety across the EU, such as the newly adopted European Climate Law Regulation, the "directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual Member States to devise their own laws on how to reach the goals set out in the Directive. In this regard is worth saying that, to date, only Germany has adopted both Directives,<sup>13</sup> while Italy has only adopted the 2012 Directive.<sup>14</sup> This means,

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*Necessity of Optimizing Smart Electricity Systems with Resource Efficiency and Coherent Waste Policy in Europe*, 70 Energy Research & Social Science (2020).

<sup>8</sup> *Supra* note 5, 6.

<sup>9</sup> See Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality, 2021/1119/EU and amending Regulations EC/No 401/2009 and 2018/1999/EU (European Climate Law), OJL/243/1, art. 2 (2021).

<sup>10</sup> *Id.*, art. 4 (5) (g).

<sup>11</sup> See generally European Parliament and Council Directive on energy efficiency, 2012/27/EU (2012); See also Amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, OJL/315/1 (2012).

<sup>12</sup> See European Parliament and Council Directive on common rules for the internal market for electricity, 2019/944/EU (2019); See also Amending Directive 2012/27/EU, OJL/158/125 (2019).

<sup>13</sup> In Germany, the EED (Energie Effizienz Richtlinie) has been adopted by the Law on Energy Services and other Energy Efficiency Measures (Energiedienstleistungsgesetz – EDL-G) taking legal effect as of 22 April 2015. In regards to Directive 2019/944 Germany has voted its adoption on 10 February 2021. The Directive has brought modifications to the Energiewirtschaftsgesetz (EnWG) in particular, to title 4 of the law (Regelungen zu den Endkundenmärkten). The EnWG modifications will enter into force by October 2021.

<sup>14</sup> The Italian Government has adopted Directive 2012/27/EU with the decreto legislativo 18 July 2014 no 102 "Attuazione della direttiva 2012/27/UE sull'efficienza energetica che modifica le direttive 2009/125/CE e 2010/30/UE e abroga le direttive 2004/8/CE e 2006/32/CE". On the contrary,

that both Germany and Italy apply within their territories the Energy Efficiency Directive, but only Germany applies also the Energy Market Directive.

## I. The EU legal framework on energy and electricity bills

### A. Energy Efficiency Directive

This analysis of the European discipline on energy bills starts with the Energy Efficiency Directive (also EED Directive) whose subject matter is to establish a common framework that will allow the Member States of the European Union to achieve "*the Union's 2020 20 % headline target on energy efficiency [and to] remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020*".<sup>15</sup> Most importantly, the Directive lays down in all its Articles a set of "minimum requirement" rules that States need to introduce in their own legal framework in order to achieve the energy efficiency target set out in Article 1 of the Directive. However, besides the rules set by the Directive, Article 1 (2) allows the Member States to adopt more stringent measures in order to achieve the goals ruled by the Directive.<sup>16</sup>

The Directive's Article 2, provides the definitions of important concepts such as "*final energy consumption*",<sup>17</sup> "*energy service*",<sup>18</sup> "*final customer*",<sup>19</sup> "*energy service provider*"<sup>20</sup> which set the standards for the entire Directive and allow us to move on into the analysis of Article 10 (billing information),<sup>21</sup> Article 11 (cost of access to metering and billing information)<sup>22</sup> and Article 12 (consumer information and empowering programme)<sup>23</sup> of Directive EU/2012/27.

What draws our attention is Article 10 which specifies the minimum requirements of energy bills according to the Directive.<sup>24</sup> In particular, the Article differentiates two billing situations. The first one is referred to the final

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Directive (EU) 2019/944 has not been adopted yet. Only recently it has been adopted legge 22 April 2021 no 53 "Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea" which produces effects from 8 May 2021, and delegates the Italian government to adopt many European regulations and acts such as Directive 2019/944/EU.

<sup>15</sup> European Parliament and Council Directive on Energy Efficiency, 2012/27 EC, recital 2 (2012).

<sup>16</sup> In case the Member State opts for more stringent rules, this, according to Article 1 (2), has to be in accordance to the EU legal frameworks as well be notified to the Commission.

<sup>17</sup> *Supra* note 15, art. 2 (3).

<sup>18</sup> *Id.*, art. 2 (7).

<sup>19</sup> *Id.*, art. 2 (23).

<sup>20</sup> *Id.*, art. 2 (24).

<sup>21</sup> *Id.*, art. 10.

<sup>22</sup> *Id.*, art. 11.

<sup>23</sup> *Id.*, art. 12.

<sup>24</sup> *Id.*, art. 10.

consumer who has not installed smart meters in their houses,<sup>25</sup> the second one if there are smart meters applied.<sup>26</sup> In the first scenario, the EED Directive billing discipline is also regulated in Annex VII.<sup>27</sup>

In fact, Article 1.1 of Annex VII establishes that “*billing is based on actual consumption; that billing information should be taken at least once a year and that billing information should be made available at least quarterly upon the consumer's request as well as if the consumer has opted for an electronic billing*”.<sup>28</sup> Moreover, Article 1.2 Annex VII requires then that the “*minimum billing information should be: appropriate, clear and understandable to final consumers; that includes current the actual consumption of energy, a comparison of the consumer's consumption of the previous year of when he receives the bill; the contact information for final consumer's organization or other bodies that might help the consumer in improving his energy efficiency and, if possible, an average or normalized schedule of consumer's energy consumption in the same category of the billed one*”.<sup>29</sup> Finally, Article 1.3 of Annex VII advises organizations and energy companies to inform consumers on efficient energy policies to reduce energy consumption.<sup>30</sup>

It's important to underline that Article 10 (1) rules that, “*if smart meters are not installed, the obligation to roll out a bill based on the actual consumer's consumption may be fulfilled by “a system of regular self-reading by the final customers whereby they communicate readings from their meter to the energy supplier” or, if this is not the case, the bill shall be rolled out either by an estimated*

<sup>25</sup> In 2014 the Commission published “Benchmarking smart metering deployment in the EU-27 with a focus on electricity” analyzing how Member States have adopted the smart meter obligation required by the 2012 Directive. For more details, see Report from the Commission, Benchmarking Smart Metering Deployment in the EU-27 with a Focus on Electricity, COM/356 final (2014).

<sup>26</sup> The 2012 Directive refers at Article 10 (1) to two directives: European Parliament and Council Directive (UE) 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC [2009] OJ L211/55 and to European Parliament and Council Directive (UE) 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC [2009] OJ L211/55. For this article which focuses on electricity it's useful to specify that the smart meters mentioned in Article 10 of the 2012 Directive are disciplined at Article 2 of Annex 1 of European Parliament and Council Directive 2009/72 which requires that by 2020, 80% of consumers shall be equipped with intelligent metering systems. On the role of gas smart meters C. Sandei, “Distribuzione convenzionale del rischio e abuso di dipendenza economica nei contratti di fornitura degli smart meters del gas” *Rivista di diritto civile*, 230, 230-254 (2019). On the feasibility of smart meters in the Italian peninsula G. Zizzo et al., *A Feasibility Study of Some DSM Enabling Solutions in Small Islands: The Case of Lampedusa*, 140 Energy 1030, 1030-1046 (2017).

<sup>27</sup> Annex VII sets a more detailed discipline on energy bills, while Article 10 (2) rules in regards to “complementary information on historical consumption”.

<sup>28</sup> *Id.*, art. 1.1.

<sup>29</sup> *Id.*, art. 1.2.

<sup>30</sup> Article 1.3 of Annex VII states that “when sending contracts and contract changes, and in the bills customers receive or through websites addressing individual customers, energy distributors, distribution system operators and retail energy sales companies shall inform their customers in a clear and understandable manner of contact information for independent consumer advice centres, energy agencies or similar institutions, including their internet addresses, where they can obtain advice on available energy efficiency measures, benchmark profiles for their energy consumption and technical specifications of energy using appliances that can serve to reduce the consumption of these appliances”.

*consumption or on a flat rate".<sup>31</sup>* In regards to Article 10,<sup>32</sup> it's worth mentioning paragraph 3 (d) which advises the Member States to give to the final customer the billing information they need without this meaning that "*the information contained in these bills [...] constitute a request for payment*".<sup>33</sup> Most importantly, the analyzed article continues by stating that the Member States shall ensure that suppliers of energy sources offer flexible arrangements for actual payments thus keeping an eye to the customers and their potential financial difficulties.<sup>34</sup> Continuing our analysis, Article 11 of the EED Directive rules that metering, bills and billing information requested by consumers are free of charge and in any-case customers are offered free of charge access to their consumption information.<sup>35</sup> This obligation is underlined by the Article 12, which, in fact, obliges Member States to "*promote and facilitate an efficient use of energy*" as part of "*a national strategy*".<sup>36</sup>

## B. The Electricity Market Directive

Analyzing the Energy Market Directive (also EMD Directive), it is important to mention that this Directive goes a step further from the 2012 one as it gives a more detailed discipline on energy bills and consumer protection within the energy market. While the 2012 Directive's focal point is energy efficiency, the 2019 Directive's main scope is to establish common rules on the electricity market and to "*address the persisting obstacles to the completion of the internal market for electricity*".<sup>37</sup> The obstacles ruled by the Directive are those concerning prices,<sup>38</sup> energy poverty<sup>39</sup> and consumer's legal protection on electricity matters.<sup>40</sup>

Article 2 of the EMD Directive sets out the definitions of key concepts such as those of household customer,<sup>41</sup> electricity supply contract,<sup>42</sup> billing

<sup>31</sup> *Id.*, art. 10 (1).

<sup>32</sup> Article 10 (3) rules the same provisions stated in Annex VII of the Directive.

<sup>33</sup> *Id.*, art. 10 (3) (d).

<sup>34</sup> See f.n. 24.

<sup>35</sup> *Id.*, art. 11 (1).

<sup>36</sup> Art. 12 (2) includes the measures that Member States may adopt in order to fulfill the obligation of Art 12. (1). These measures can be: a) fiscal incentives, b) access to finance, grants or subsidies, c) information provision; d) exemplary projects, e) workplace activities; f) communication, in relation of possible roll out of smart meters, of cost-effective and easy-to-achieve changes in energy use and on energy efficiency measures.

<sup>37</sup> See Directive of the European Parliament and of the Council on common rules for the internal market for electricity, 2019/944/EU, recital 8 (2019).

<sup>38</sup> As stated in Recital 19, the Directive shall, by securing common rules on the market, avoid or stop that "undistorted market prices would provide incentives for cross-border interconnections and for investments in new electricity generation while leading to price convergence in the long term".

<sup>39</sup> See recital 22.

<sup>40</sup> In particular, Recital 48 points out that energy bills disputes are a key factor for the lack of interest in the energy sector of customers and for this reason the European Union should create more clear yet consumer-driven energy billing policies. See recital 36 and recital 48.

<sup>41</sup> *Id.*, art. 2 (4).

<sup>42</sup> *Id.*, art. 2 (13).

information<sup>43</sup> and electricity undertaking.<sup>44</sup> The definitions ruled in this Directive are a step beyond those disciplined in Article 2 of the 2012 Directive, because, as recital 56 of the 2019 Directive states, “*the full implementation of Directive 2012/27/EU will help consumers to reduce their energy costs*”,<sup>45</sup> thus meaning that only through the full adoption by Member States of the EED Directive, the 2019 Directive can be effective thus establishing “*a smooth transition towards a sustainable low-carbon energy system*”.<sup>46</sup> Moving forward to the Articles that discipline electricity bills, those are Article 10 (basic contractual rights),<sup>47</sup> Article 18 (bills and billing information),<sup>48</sup> Annex I (minimum requirement for billing and billing information)<sup>49</sup> and Article 28 (1) (vulnerable customers).<sup>50</sup>

Article 10 is entitled “basic contractual rights” and is a multifaceted Article as it is referred: to the Member States (Article 10 (1) and Article 10 (2)), to the consumers living within the EU territories (Article 10 (3) and Article 10 (4)) and to the energy suppliers operating within the EU borders (from Article 10 (5) to Article 10 (12)). In fact, Article 10 (1) and 10 (2) opt as general clauses as it invites Member States to ensure that all consumers are entitled to have their electricity provided by a supplier regardless of the Member State in which the energy supplier is registered.<sup>51</sup> In line with Article 10 (1), Article 10 (2)<sup>52</sup> also underlines that the following provisions should be in line with the “*union rules on consumer protection, in particular, Directive 2011/83/EU<sup>53</sup> of the European Parliament and of the Council and Council Directive 93/13/EE<sup>54</sup>*”. On the one consumer’s side, Article 10 (3)<sup>55</sup> provides a detailed list of rights addressed to consumers that shall be fair and well known in advance, prior to the conclusion of the agreement as well as in between communications if contract conditions might change from the supplier side as ruled in Article 10 (4).<sup>56</sup> On the other side, from Article 10 (5) to 10 (12), are set out the supplier’s obligations in order to allow customers to pursue their rights.<sup>57</sup>

The central Article of the EMD Directive is, however, Article 18 (bills and

<sup>43</sup> *Id.*, art. 2 (21).

<sup>44</sup> *Id.*, art. 2 (57).

<sup>45</sup> *Id.*, recital 56.

<sup>46</sup> *Id.*, art. 1 (2).

<sup>47</sup> *Id.*, art. 10.

<sup>48</sup> *Id.*, art. 18.

<sup>49</sup> *Id.*, annex I.

<sup>50</sup> *Id.*, art. 28 (1).

<sup>51</sup> *Id.*, art. 10 (1).

<sup>52</sup> *Id.*, art. 10 (2).

<sup>53</sup> Directive of the European Parliament and of the Council on consumer rights, 2011/83/EU (2011); Amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council OJL/304/2011 (2011).

<sup>54</sup> Council Directive on Unfair Terms in Consumer Contracts, 93/13/EEC (1993).

<sup>55</sup> *Id.*, art. 10 (3).

<sup>56</sup> *Id.*, art. 10 (4).

<sup>57</sup> *Id.*, art. 10 (5) - 10 (12).

billing information) which is an evolution of the EED's Article 10 and Annex VII.<sup>58</sup> In fact, beside recalling the principles of an "*accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers*"<sup>59</sup> and free of charge bill, Article 18 (5) obliges the Member States to "*consult consumer organizations when they consider changes to the requirements for the content of bills*".<sup>60</sup> The importance of this Article is that it represents the exact scope of the Directive which is to empower customers.<sup>61</sup> In fact, only through the collaboration between consumer's associations and energy suppliers, there might be changes that consider both parties best interests as both parties are represented during contractual negotiations that might affect their respective legal sphere. Article 18 (6) then is linked to Annex I of the Directive which sets in detail how exactly energy bills need to be structured and which data should be inserted, the frequency of billing, the price's breakdown, the consumer's access to complementary information and the disclosure of energy sources.<sup>62</sup>

The last Article specifically related to energy bills is Article 28 (1) which is devoted to vulnerable clients.<sup>63</sup> In particular, the EMD Directive aims to protect the vulnerable customers by defining when a customer can be defined as vulnerable, by prohibiting the disconnection of electricity in critical times, by obliging member states to respect the right and obligations set for normal customers also to the fragile ones (which include those who live in remote areas) and by applying the same levels of transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.<sup>64</sup> After having set out the perimeters in which the European legal framework disciplines energy electricity bills it is possible to investigate how electricity bills are disciplined both in Germany and in Italy during

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<sup>58</sup> See paragraph I (A) of this Article.

<sup>59</sup> See art. 18 (1) and art. 18 (2).

<sup>60</sup> *Id.*, art. 18 (5).

<sup>61</sup> See Maria Iaonnidou, *Effective Paths for Consumer Empowerment and Protection in Retail Energy Markets*, 41 Journal of Consumer Policy 135, 135-157 (2018); See also Florian Hanke, Jens Lowitzsch, *Empowering Vulnerable Consumers to Join Renewable Energy Communities – Towards an Inclusive Design of the Clean Energy Package*, 13 Energies 1615, 1615-1642 (2020).

<sup>62</sup> See *supra* note 37, article 18 (6) together with Annex I.

<sup>63</sup> There is not a uniform definition of vulnerable consumer. This can be extracted by the combined reading of Article 28 of the EMD Directive for which "*the concept of vulnerable customers may include income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria*" and of Article 3 (3) (d) of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council, OJ L 328/1 21.12.2018, which states that Member States have to take into account "*energy poverty [as] the necessary domestic energy services needed to guarantee basic standards of living in the relevant national context*".

<sup>64</sup> *Supra* note 37, art. 28 (1).

normal times.

## II. Germany's energy bills regulations during ordinary times

In Germany electricity bills are regulated by the *Energiewirtschaftsgesetz* (hereinafter EnWG). The EnWG (Energy Industry Act) at Title 4 “*Energielieferungen an Letzverbraucher*” (energy supply to final customers) from § 36 to § 42 (a) regulates the relationship between supplier (*Lieferanten*) and final customer (*Letzverbraucher*).<sup>65</sup> Differently to Italy, the German energy law scenario is regulated by State's law and not by an independent authority such as ARERA.<sup>66</sup> In regards to the entire EnWG law structure, the law is complete as it recalls in its rules and principles the European provisions such as the EED Directive and the EMD Directive, thus creating a solid regulatory framework on the matter.<sup>67</sup>

§ 36 “*Grundversorgungspflicht*” (obligation to provide the service) defines *Grundversorger* (basic supplier) as the energy supply company that supplies energy for most households in a specific area. Article § 36 obliges basic energy suppliers to publish the general contract condition and prices for low voltage electricity supply and low-pressure gas supply on their website as well as to supply each domestic customer with the prices communicated on their webpage.<sup>68</sup>

The exception to § 36 (1) is stated in the Article's paragraph last sentence which excludes the abovementioned obligation if the energy supply is unreasonable for the company for economic reasons.<sup>69</sup> In case the basic energy supplier changes in the Region, § 36 (3) allows the domestic customer (*Haushaltskunde*)<sup>70</sup> to keep valid the agreement as well as contract conditions until the agreement expires.<sup>71</sup> The exceptions to § 36 are ruled in § 37

<sup>65</sup> See EnWG § 36 - § 42 (a) (2005).

<sup>66</sup> See para. III of this Article.

<sup>67</sup> For instance, see § 40 (a) which recalls the provisions of Annex VII of the EED Directive.

<sup>68</sup> *Id.*, § 36 (1).

<sup>69</sup> The Article states: “Die Pflicht zur Grundversorgung besteht nicht, wenn die Versorgung für das Energieversorgungsunternehmen aus wirtschaftlichen Gründen nicht zumutbar ist”.

<sup>70</sup> The concept of Haushaltskunde (domestic consumer) is defined at § 3 (22) of the EnWG as following: “*Letzverbraucher, die Energie überwiegend für den Eigenverbrauch im Haushalt oder für den einen Jahresverbrauch von 10 000 Kilowattstunden nicht übersteigenden Eigenverbrauch für berufliche, landwirtschaftliche oder gewerbliche Zwecke kaufen*”. (Translation: Final consumers buying energy mainly for domestic consumption or for self-consumption not exceeding 10,000 kilowatt hours per year for professional, agricultural or commercial purposes). At the same time, Letzverbraucher (final consumer) is also defined at § 3 (25) as: “*Natürliche oder juristische Personen, die Energie für den eigenen Verbrauch kaufen; auch der Strombezug der Ladepunkte für Elektromobile und der Strombezug für Landstromanlagen steht dem Letzverbrauch im Sinne dieses Gesetzes und den auf Grund dieses Gesetzes erlassenen Verordnungen gleich*”. (Translation: Natural or legal persons who purchase energy for their own consumption; the purchase of electricity from the charging points for electric vehicles and the purchase of electricity from land power stations is equivalent to the final consumption within the meaning of this Law and to the ordinances issued pursuant to this Law).

<sup>71</sup> *Id.*, § 36 (3).

*“Ausnahmen von der Grundversorgungspflicht”* (exception to the obligation to provide the service) which states that *“prosumers and those who are supplied by a third-party energy supplier (not the basic energy supplier), are not subject to the rules stated at § 36 (1)”*.<sup>72</sup>

§ 38 *“Ersatzversorgung mit Energie”* (energy replacement supply) refers to a particular situation that happens if customers do not have an actual agreement with a supplier. In this case, to both customers and suppliers will still be applied the limits ruled in paragraph 36 (1).<sup>73</sup> This situation, as stated in § 38 (2), comes to an end if the parties rule an energy supply agreement. If this case occurs, the energy supplier is obliged, in maximum three months, to inform the customer about the supply agreement in force, thus inserting the energy consumed in the timeframe of paragraph 38 (1) in the new energy bill rolled out in accordance to the new contract.<sup>74</sup>

Entering now into detail about how actual energy bills are regulated, § 39 *“Allgemeine Preise und Versorgungsbedingungen”* (general prices and energy supply conditions) rules at § 39 (1) that energy prices as well as energy policies both before the conclusion of the supply agreement as well as after that, are set by the Federal Ministry of Economic Affairs and Energy in agreement with the Federal Ministry of Justice and Consumer Protection.<sup>75</sup>

The central articles, as they are specifically devoted on the discipline of the energy bills, are Article § 40 *“Strom-und Gasrechnungen, Tarife”* (electricity and gas bills) and Article § 41 *“Energielieferverträge mit Haushaltskunden”* (energy supply contracts with domestic customers). Article 40 recalls the EU general provisions in electricity bills matters disciplined in the EED Directive<sup>76</sup> and EMD Directive<sup>77</sup> by imposing to suppliers to send to final customers simple (*einfach*) and comprehensible (*verständlich*) bills written using a certain graphic and linguistic forms. § 40 (2) then rules in regards to all the data that bills should indicate such as the supplier’s name, address, competent court registration as well as information enabling the supplier’s quick electronic contact including the email.<sup>78</sup> In the bill, according to § 40 (2) should also be indicated the contract duration, the consumption price and the earliest possible termination date and notice period,<sup>79</sup> the relevant metering point operator and the relevant metering point designation and code number of the system operator,<sup>80</sup> the determined consumption in the accounting period and, for household customers, the initial count and the final count of the billed

<sup>72</sup> *Id.*, § 37.

<sup>73</sup> *Id.*, § 38 (1).

<sup>74</sup> *Id.*, § 38 (2).

<sup>75</sup> *Id.*, § 39 (1).

<sup>76</sup> *Supra* note 15, art. 10.

<sup>77</sup> *Supra* note 37, art. 18.

<sup>78</sup> *Supra* note 65, § 40 (2) (1).

<sup>79</sup> *Id.*, § 40 (2) (4).

<sup>80</sup> *Id.*, § 40 (2) (5).

period.<sup>81</sup>

It is also required according to § 40 (2) (7) that electricity bills report the consumption of the comparable prior-year period and in the case of household customers, using graphs to show how their own annual consumption relates to the annual consumption of peer groups.<sup>82</sup> Article 40 (2) (8) includes in the mandatory bill's information also to inform the customers of the charges arising from the concession fee and from the network charge.<sup>83</sup> Also important is Article 40 (2) (9) which obliges electricity supplier to insert in the bill information the rights of household customers in relation to dispute resolution procedures available to them in the event of a dispute; including the ADR organization established for consumer complaints under section 111 (b) and its address as well as the contact details of the consumer service of the Federal Network Agency for Electricity and Gas separately.<sup>84</sup>

Suppliers are obliged to bill energy consumption on a monthly basis or in other periods of time, which may not exceed twelve months (for example, a quarterly or semi-annual billing).<sup>85</sup> Final consumers whose consumption values are read out via an intelligent measuring system in the sense of the Metering Point Operation Act must be provided with a monthly free of charge consumption bill.<sup>86</sup> Suppliers then, according to § 40 (4) shall ensure that the final consumer receives the invoice referred to in paragraph 3 no later than six weeks after the end of the period to be billed and the final invoice no later than six weeks after the end of the termination of the supply relationship.<sup>87</sup> Article § 40 (6) rules that for final consumers, suppliers shall report the calculation factors relevant to be billed using standardized terms and definitions.<sup>88</sup> In this regard, § 40 (7) states that the Federal Network Agency may make decisions on the minimum content of invoices for energy supplies to final consumers in accordance with paragraphs 1 to 5, as well as further details on the standardized format in accordance with paragraph 6, by determining the supplier in accordance with § 29 paragraph 1.<sup>89</sup>

While § 40 sets out the general rules and content of energy bills, § 41 of EnWG, rules in particular, on domestic customer's electricity bills.<sup>90</sup> In fact, in

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<sup>81</sup> *Id.*, § 40 (2) (6).

<sup>82</sup> *Id.*, § 40 (2) (7).

<sup>83</sup> *Id.*, § 40 (2) (8).

<sup>84</sup> *Id.*, § 40 (2) (9).

<sup>85</sup> *Id.*, § 40 (a) (1).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Id.*, § 40 (4).

<sup>88</sup> *Id.*, § 40 (6).

<sup>89</sup> *Id.*, § 40 (7).

<sup>90</sup> The provisions disciplined in both articles are basic provisions on electricity bills. In fact, according to 41 (5), the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for Economic Affairs and Energy may, by ordinance with the consent of the Federal Council, lay down more stringent rules (außerhalb der Grundversorgung) on the supply of energy to household customers outside the meet basic needs, lay down provisions of the contracts in a uniform manner and, in particular, lay down rules on the conclusion of the contract, the subject matter and the

addition to the requirements stated in Article § 40, bills sent to domestic customers need to provide also:<sup>91</sup>

- a) the duration of the contract;*
- b) the price adjustment, termination dates and notice periods as well as the right of withdrawal of the customer;*
- c) the services provided by the supplier, including the maintenance services offered;*
- d) the accepted payments methods, the liability and compensation regulations in the event of non-compliance with contractually agreed services, the information about the free (without penalties) and prompt change of supplier as well as how to update information on applicable tariffs and on the supplier's maintenance charges is available;*
- e) the information on the rights of household customers with regard to dispute resolution procedures available to them in the event of a dispute, including the conciliation body for consumer complaints under section 111b with their address and website, including the supplier's obligation to participate in the conciliation procedure thus reporting in the bill also the contact details of the consumer service of the Federal Network Agency for Electricity and Gas".*

EnWG's § 41 (2) then states three important rules related to energy bills. The first one is that the available payment methods must be offered to the household customer before the contract is concluded. The second one is that if an advance payment is agreed between parties, this must be based on the consumption of the previous billing period or the average consumption of comparable customers. In this case, if the customer demonstrates that its consumption is significantly lower than the billed one, the energy supplier must take this into account appropriately. At the same time the Article rules that advance payment is not mandatory nor required before the start of the energy supply delivery.<sup>92</sup>

On the supplier's side, § 41 (3) rules that energy suppliers must inform the final consumer in a timely manner, and in any case before the end of the normal billing period<sup>93</sup> and in a transparent and comprehensible manner,<sup>94</sup> of any intended change to the terms of the contract and on the customer's rights of withdrawal.<sup>95</sup> For instance, if the supplier unilaterally changes the terms of the contract, the final consumer may terminate the contract without observing the notice period rules. Anyway if, as stated at § 41 (3) (a), there is a change in

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termination of the contracts, as well as the rights and obligations of the contracting parties. Still, as disciplined in § 41 (4), Energy suppliers are obliged to provide the general information on the provisions of para 1 sentence 2 of both articles both in or as an annex to their invoices to household customers and in advertising material addressed to them as well as on their website.

<sup>91</sup> *Id.*, § 41 (1).

<sup>92</sup> *Id.*, § 41 (2).

<sup>93</sup> Normal billing period is the one ruled at § 40 (b) (1) for which billing information should be sent at least once a year, but it is also possible to send to the consumer monthly or quarterly or every 6 months a bill.

<sup>94</sup> See *supra* note 15, § 40 (a).

<sup>95</sup> *Supra* note 65, § 41 (3).

the passing on of additional or reduced Value Added Tax charges resulting from a legal change in the applicable VAT rates, there is no need to inform the household customer of the modification as ruled in paragraph 3 sentence 1 of § 41.<sup>96</sup> This brings to the customer no special right of termination before the natural time stated in the agreement under paragraph 3 sentence 2, thus applying the normal rules on the agreement concluded between parties.

§ 42 “*Mieterstromverträge Stromkennzeichnung, Transparenz der Stromrechnungen, Verordnungsmächtigung*” (electricity labelling, transparency of electricity bills, authorisation to issue regulations) provides provisions in regards to the actual transparency on where the energy comes from, if the electricity is an electricity mix and the environmental impact of the supplied electricity. For this information, energy suppliers are obliged, according to § 42 (1) to inform the customer before the 1<sup>st</sup> November of each year.<sup>97</sup> Finally, § 42 (a) “*Mieterstromverträge*” (tenant electricity contracts) disciplines the situation of energy consumption by a tenant. In this case, as § 42 (a) (1) rules, it is prohibited to insert in the tenancy agreement a decisive clause (*bestandteil*) on the energy consumption as part of the tenancy contractual obligation by the tenant.<sup>98</sup> If an agreement with those details is ruled by both tenant and landlord, the agreement is null. This means that, energy agreements and tenancy agreements should be separate. In detail, § 42 (a) (1) declares that both Articles § 815 BGB “*Kentniss der Nichtschuld*” (knowledge of non-debt) and § 817 BGB “*Verstoss gegen Gesetz oder gute Sinne*” (violation of the law or good morals) are not applicable in regards to energy bills.

In order to protect the customer, § 42 (a) (2) rules that if the tenancy agreement ends before the natural time conclusion of the agreement, the tenant should not stop the energy supply agreement, which remains in force.<sup>99</sup> In this case, it is on the landlord duty side to stop the energy supply agreement.

This diagram released by Clean Energy Wire Journalism for the Energy Transition<sup>100</sup> shows off in detail and in a simple yet effective way, how electricity bills expenses are divided in Germany. From the graphic which puts in relationship the 2018 and the 2019 electricity bills cost, it emerges that in 2019 the energy bills cost of an average customer were divided in: 24% of the expenses for the Grid fee, 23% for the acquisition/sale of electricity, 21% for renewables surcharges, 16% for Value Added Tax, 7% for electricity tax, 6% for concession fee and the remaining 3% in other surcharges. It emerges from 2018 and 2019 comparisons that except the acquisition/sales fee which

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<sup>96</sup> *Id.*, § 41 (3) (a).

<sup>97</sup> *Id.*, § 42 (1).

<sup>98</sup> *Id.*, § 42 (a) (1).

<sup>99</sup> *Id.*, § 42 (a) (2).

<sup>100</sup> Ellen Thalman, Benjamin Wehrmann, What German Households Pay for Power (2021), <https://www.cleanenergywire.org/factsheets/what-german-households-pay-power> (last visited Jul. 1, 2021).

price increased by +2% in 2019, the rest of the index lowered (grid fee index - 1%, renewables fee -2%) or remained stable such as the VAT and the CHP and other surcharges indexes.

### III. Italy's energy bills regulations during ordinary times

The Italian energy bills matter is regulated by the Autorità di Regolazione per l'Energia Reti e Ambiente (hereinafter ARERA). The ARERA is an independent authority which has been instituted with Law 14 November 1995 n. 481.<sup>101</sup> The scope of this authority is to protect consumer's rights in the field of energy distribution and consumption thus including electricity, gas and water.<sup>102</sup> The rules promoted by the ARERA are Decisions (Delibere) which have effects *erga omnes* within the Italian borders and affect both the private consumer (i.e. private individual or SME) as well as the public consumer (i.e. a public administration) of energy, water and gas. As for the German energy law framework, also the Italian one is complete and in line with the European energy law scenario. But the two main differences that need to be highlighted between the two systems are firstly related to the fact that in Italy it is an independent authority and not the State's direct legislative authority that regulates the energy law matters. Secondly, the copious ARERA's Decisions that discipline the subject might create a confusion for a consumer's user which is not used into digging into the intricate energy law legislation framework. So, perhaps, a codification on the matter as Germany did with the EnWG, might be useful to think of in the nearby future.

In Italy, the electricity bills subject is regulated by the Delibera 16 October 2014 "Bolletta 2.0: criteri per la trasparenza delle bollette per i consumi di elettricità e/o gas distribuito a mezzo di reti urbane" (Bill 2.0.: criteria for the transparency of energy and gas bills distributed through urban distribution)<sup>103</sup> by the ARERA which entered into force on 1<sup>st</sup> of September 2015.<sup>104</sup> The decision is composed of 1 Article and Annex A which counts 22 Articles that regulate the

<sup>101</sup> See Legge 14 novembre 1995 n. 481. The ARERA (*Autorità di Regolazione per Energia Reti Ambiente*) is the Italian independent authority on energy matters. ARERA was founded with legge 14 November 1995 n. 481 'Norme per la concorrenza e la regolazione dei servizi di pubblica utilità. Istituzione delle Autorità di regolazione del servizio di pubblica utilità'. The Law entered into force on 19 November 1995 and the ARERA began to operate from 23 October 1997.

<sup>102</sup> The Law on Norms Governing Competition and the Regulation of Public Utilities. The Institution of Regulatory Bodies for Public Utilities, art. 1 (1995).

<sup>103</sup> ARERA 501/2014/R/com 16 October 2014. It's worth noting that while in Germany both the seller and the customer obligations and duties are part of EnWG, in Italy there is as Conduit codex for the sellers "*Codice di condotta commerciale per la vendita di energia elettrica e di gas naturale ai clienti finali*" (conduit commercial codex for the selling of electricity and gas to final customers) which can be found at Annex A of the ARERA Decision 366/2018/R/com of 28 June 2018 – Coordinated text with the integrations and modifications done by Decision 109/2019/R/eel and by Decision 426/2020/R/com and Decision 97/2021/R/com which will enter into force on 1 July 2021.

<sup>104</sup> This decision was taken at the 838<sup>th</sup> assembly of the ARERA which took place on 16 October 2014.

content of energy bills in Italy. For instance, the scope of this entire provision is to “*simplify and give more flexibility on the structure and on the content of the new bills also in regards on how the tariffs are graphically shown up on the bill, on all the other information included in the bills and on the periodicity of the communications of bills*”.<sup>105</sup> The resolution of 2014 states that the new bills are structured in two:<sup>106</sup>

- the first one is a synthetic bill that summarizes the content of the bill and reports their minimum requirements ruled by law;
- and a second part of the bill which contains all the details of the bill such as detailed elements of the consumption. This second part of the bill is sent to the customer only upon his request.

Annex A of the Delibera regulates from Article 4 to Article 10 the minimum requirements that an energy bill should have. In fact, Article 4 is entitled “*Struttura della bolletta sintetica*” (structure of the synthetic bill) gives the general provisions on the matter. In particular, the Article requires that the bills need to be in line with the fiscal provisions and also to respect the requirements stated from Article 5 to Article 10 of Annex A.<sup>107</sup> Article 4 (2) then states that bills should be written in a clear manner not only graphically but also on the type of character used to write the bill. In regards to the graphic design of the bill, the mentioned Article 4 (2) rules that energy suppliers should be free to decide the design while at the same time they need to opt for a clean and clear communication of the data of the bill.<sup>108</sup>

Article 5 “*Elementi minimi della bolletta sintetica*” (minimum elements of the synthetic bill) discloses in detail all the data that the synthetic energy bill should have. For instance, the Article requires that the billing information reports the data of the consumer (name, address) and the type of energy supply contract purchased.<sup>109</sup> Article 6 “*Dati relativi alle letture, ai consumi e ricalcoli degli importi*” (data referred to reading, consumptions and recalculation of the bill amount) states that when the provider is issuing the bill, the reading on the energy consumption should be calculated on all the periods in which the bill is referred to. In particular, in the bill, there needs to be highlighted:<sup>110</sup>

- a) how the readings have been done (self-reading, estimated reading or measured reading) in relation to the hours in which the consumption has taken place;
- b) the details of the consumption distinguished into effective consumption, estimated consumption and billed consumption with the indication of the

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<sup>105</sup> *Supra* note 103, recital 4.

<sup>106</sup> *Id.*, art. 3.

<sup>107</sup> *Id.*, art. 4 (1).

<sup>108</sup> *Id.*, art. 4 (2).

<sup>109</sup> *Id.*, art. 5.

<sup>110</sup> *Id.*, art. 6 (1).

- hours in which the electricity has been used;
- c) the reactive consumption;
- d) if the consumption is estimated, the amount that will be recalculated in the next bill.

If the bill is based on estimated consumption, Article 6 (2) states that the recalculation should provide the time frame in which the new calculation is referred to and the consumption that has been already calculated in relationship with previous energy bills and the detraction of them in regards to the just released bill.<sup>111</sup> If the estimated calculation of energy consumption occurs for reasons not according to Article 6 (2), Article 6 (3) obliges the energy supplier to motivate the new calculation thus providing the reasons for the impossibility to apply the recalculation of the bill according to 6 (2). The same rule is applied also if energy prices change.<sup>112</sup>

Article 7 "*Informazioni relative al pagamento e alla rateizzazione*" (information regarding payments and installments payments) disciplines how energy payments should be communicated by the energy supplier to the domestic customer and how the customer can pay the bills. In particular, the bill should provide:<sup>113</sup>

- a) the payment methods that customer might have to pay the bill;
- b) the entire billing situation of the customer;
- c) if the domestic customer has unpaid bills in its account;
- d) the interest rates per day for each delayed payment bill.

In case that the customer does not serve his payment obligation, Article 7 (2) states that the bill should also indicate the procedure to resolve this situation, how to start the proceeding to fulfill the obligation and its cost.<sup>114</sup> If, as ruled in Article 7 (3) the payment of the bill can be paid through installments, the energy supplier should state how to apply to this service and its cost.

Article 8 "*Sintesi degli importi fatturati*" (synthesis of the billed tariffs) states that energy tariffs should indicate:<sup>115</sup>

- a) the cost of energy or gas;
- b) the cost for transportation;
- c) the cost for the system.

Besides, Article 8 (2) states that bills should also provide information in regards of the recalculation made according to Article 6 (2) or 6 (3) as well as all the index voices that contain a cost, including the social bonus that a domestic customer might have obtained due to its financial situation.<sup>116</sup>

<sup>111</sup> *Id.*, art. 6 (2).

<sup>112</sup> *Id.*, art. 6 (3).

<sup>113</sup> *Id.*, art. 7 (1).

<sup>114</sup> *Id.*, art. 7 (2).

<sup>115</sup> *Id.*, art. 8 (1).

<sup>116</sup> *Id.*, art. 8 (2).

Article 8 (4) obliges suppliers also to include in a separate index the VAT related to the expenses.<sup>117</sup>

Article 9 “*Costo medio fornitura*” (average supply cost) then defines what the average cost of the bill and of the energy supply is. The average cost of the bill is the ratio between the total amount price in the bill and the energy consumed by the customer. While it can be defined as the average cost of the energy supply, the ratio between the transportation costs and the consumption billed.<sup>118</sup>

Article 10 “*Ulteriori elementi minimi*” (other minimum elements) makes a list of all the other data that should be inserted in the synthetic bill thus including:

- a) *the latest bills consumption in 12 months divided, if possible, in time hours;*
- b) *the data related to the main characteristics of the agreement between supplier and customer so that he can manage to control his energy consumption. In particular, Article 10 (1) (b) rules that it is mandatory that the first bill has the data of when the supply has started, the tension of the electricity supply according to Article 5 and;*
- c) *the information related to the energy mix if used for the supply. Those obligations are mandatory also for energy suppliers' part of the free market as entered into force in 2007.<sup>119</sup> The rest of the Article is a list full of specifications that require synthetic bills. Article 12 then disciplines how a customer can require all the details of the full bill as regulated in Article 4 of the Delibera 16 October 2014 501/2014/R/com.<sup>120</sup>*

It is also worth mentioning the Delibera 4 August 2016 “*Disposizioni relative alla fatturazione di periodo, indennizzi a carico dei venditori e delle imprese di distribuzione e ulteriori obblighi in capo alle suddette imprese in tema di misura*” (rules regarding the billing time, indemnification of sellers and distribution undertakings and additional obligations on those undertakings in respect of the measure)<sup>121</sup> disciplines the timing of when bills should be shipped to

<sup>117</sup> In Italy the VAT is 22% on the cost of the good/service purchased. See Come si calcola il fatturato imponibile Iva, <https://www.agenziaentrate.gov.it/portale/web/guest/iva-regole-generaliali-quote-esenzioni-pagamento/norme-generalie-aliquote> (last visited Jun. 26, 2021).

<sup>118</sup> *Supra* note 103, art. 9.

<sup>119</sup> The free market in the energy sector has been introduced in Italy by the decreto legge 16 March 1999 no 79, *Attuazione della direttiva 96/92/CE recante norme comuni per il mercato interno dell'energia elettrica* (called “Bersani Decree”). For an analysis of the Italian energy market see the Italian Implementation Plan published by the European Commission Ref. Ares 3317597-25-06-2020 (2020). Available at: [https://ec.europa.eu/energy/sites/default/files/italy\\_market\\_reform\\_plan.pdf](https://ec.europa.eu/energy/sites/default/files/italy_market_reform_plan.pdf) (last visited Jun. 30, 2021) and IEA Energy Policies of IEA Countries: Italy 2016 Review (2016).

Available at: <https://www.iea.org/reports/energy-policies-of-ia-countries-italy-2016-review> (last visited Jun. 30, 2021).

<sup>120</sup> *Supra* note 103, art. 10.

<sup>121</sup> ARERA Delibera 463/2016/R/com 4 August 2016. This decision was approved at the 930<sup>th</sup> assembly of the ARERA which took place on the 5 August 2016. This Delibera approves the “*Testo integrato delle disposizioni dell'Autorità per l'energia elettrica il gas e il sistema idrico in materia fatturazione del servizio di vendita al dettaglio per i clienti di energia elettrica e di gas naturale (TIF) ed introduce indennizzi a carico dei venditori e delle imprese di distribuzione e ulteriori*

customers.

Article 4 “Emissione e frequenza della fattura di period” (emission and frequency of billing) of Annex A of this Decision disciplines in detail when bills should be sent to customers. In particular, Article 4 (2) rules that billing should be sent before the 45<sup>th</sup> solar day of the last day of the billed consumption.<sup>122</sup> At the same time, the mentioned article provides two exceptions on bill timing:

1. the first one is that the free-market supplier can adopt a more frequent billing emission timing;
2. and the second one that free market suppliers might adopt another timing as the 45 days stated in Article 4 (2).

In any case, for more detailed information, the Article refers to table 1 which in a simple manner explains when bills should be sent to customers.

Table 1: Frequency of electricity billing for type of customers<sup>123</sup>

Type of Customers	Frequency of Billing
Non-domestic customers with low voltage and with a power of more than 16,5 kW	Monthly
Non-domestic customers with low voltage and with a power minor or of 16 kW	Bimonthly
Domestic customers	Bimonthly

This second diagram provided by ARERA<sup>124</sup> shows off in detail for the 3<sup>rd</sup> semester of 2021 how electricity bills expenses are divided in Italy for an average domestic customer.

From the graphic it emerges that, on an average domestic bill, 49% of the expenses are for the energy itself, 20% are devoted for ancillary charges, 19% of the bill is related to transport and electric meter management and 13% on taxes.

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*obblighi in capo alle suddette imprese in tema di misura*” (Integrated text of the provisions of the Electricity, Gas and Water Authority concerning the invoicing of the retail service for electricity and natural gas customers [TIF] and introduces indemnification for sellers and distribution undertakings and additional obligations on the undertakings concerned in respect of the measure).<sup>122</sup>

<sup>122</sup> *Id.*, art. 4 (2).

<sup>123</sup> This table is the translation of Table 2 of Annex A of Delibera 463/2016/R/com 4 August 2016.

<sup>124</sup> ARERA, Composizione Percentuale Del Prezzo Dell'energia Elettrica Per Un Consumatore Domestico Tip, <https://www.arera.it/it/dati/ees5.htm> (last visited Jul. 1, 2021).

## IV. Emergency regulations and energy bills in Germany

In the previous pages, it has been analyzed as a “normal” situation on energy bills. In the upcoming paragraphs it will analyze the policies adopted by both countries in relation to energy bills. On the 27<sup>th</sup> of March 2020, the German Bundestag has adopted the “*Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht*”.<sup>125</sup> This law entered into force on 27 March 2020 but its Article 5 “*Änderung des Einführungsgesetzes zum Bürgerlichen Gesetzbuche*” (modifications to the *Einführungsgesetzes zum Bürgerlichen Gesetzbuch* or EGBGB) modified § 240 of the EGBGB<sup>126</sup> and entered into force on the 1<sup>st</sup> of April 2020.<sup>127</sup> In particular, the new Article 240 EGBGB rules in regards to the new contractual principles applicable due to the COVID-19 pandemic.<sup>128</sup> The Article is divided into seven sections. Section one introduces a moratorium on continuous obligations (*Dauerschuldverhältnis*), sections two and three discipline both rent and mortgages agreements, section 4 disciplines the applicability time frame of sections one, two and three of the Law, sections five and six are devoted to events and travel contractual obligations while section 7 on the disturbing behavior of mortgages and rents. In regards to electricity bills, only section 1 which introduces a “*moratorium*” on payments can be applicable.

In fact, as stated in Article 240 (1) (1) both consumers as well as micro enterprises<sup>129</sup> who have concluded before the 8<sup>th</sup> of March 2020 a continuous agreement were allowed to refuse performance until no later than 30 June 2020.<sup>130</sup> It is important to underline that these provisions are applicable only if consumers were not able to render performance because of a consequence of circumstances which can be attributed to the SARS-CoV-2 virus (COVID-19 pandemic). The rules stated in Article 240 (1) find the exception at subsection 3 and subsection 4. Article 240 (1) (3) allows the consumer creditor to pretend the honoring of the obligation – contrary to what is stated in Article 240 (1) (1) – if the obligation itself does not “*endanger the economic foundations of his or her business undertaking*”.<sup>131</sup> The same right is applied also to the

<sup>125</sup> See M. Meißner, Gesetzgeber plant umfangreiche Änderung des Insolvenzrechts (COVID-19-Insolvenzaussetzungsgesetz – COVInsAG), <https://community.beck.de> (last visited Sept. 9, 2021).

<sup>126</sup> See Einführungsgesetz zum Bürgerlichen Gesetzbuche in der Fassung der Bekanntmachung vom 21 September 1994 (BGBI. I S. 2494; 1997 I S. 1061), das zuletzt durch Artikel 2 des Gesetzes vom 25. Juni 2021 (BGBI. I S. 2133) geändert worden ist.

<sup>127</sup> Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht, art. 8 (6).

<sup>128</sup> Vertragsrechtliche Regelungen aus Anlass der COVID-19-Pandemie, art. 240.

<sup>129</sup> The adopted definition of microenterprise is the one adopted by the Commission Recommendation 2003/361/EC of 6 May 2003 [2003] OJL/124/36.

<sup>130</sup> This means that the moratorium starts from when the law enters into force until 30 June 2020. For a detailed overview of the law, the Ministry of Economy released on the 1<sup>st</sup> of July 2020 a FAQ related to the Moratorium.

<sup>131</sup> This sentence has to be read together with Article 2 of the Basic Law of the German Republic which rules that “every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law”. In

microenterprise creditor who can pretend the fulfillment of the obligation to the debtor if “*non-performance would endanger his or her own decent livelihood or that of his or her dependants or the economic foundations of his or her business undertaking*”.<sup>132</sup>

The other exception is ruled in Article 240 (1) (4) which clearly rules that subsection (1) and (2) do not apply in regards to leases and usufructuary leases pursuant to section 2, loan agreements and in regards to entitlements under labor law. On the debtor side, beside Article 240 (1) (1), there is also the last sentence of Article 240 (1) (3) and Article 240 (1) (5). In particular, Article 240 (1) (3) states that “*where the right to refuse performance under sentence 1 or 2 is ruled out, the debtor has the right to terminate the contract*”.<sup>133</sup> The importance of this sentence lays down to the fact that if the conditions stated in Article 240 (1) (1) or Article 240 (1) (2) apply, the debtor can terminate the contract thus deciding to not use anymore the service previously used (i.e.: mobile phones promotion agreements) due to the COVID-19 economic loss he is facing. Article 240 (1) (5) then rules that “*derogations from subsections (1) and (2) which are prejudicial to the debtor are not permissible*”.<sup>134</sup> This means that also if there is a significant insolvency situation on the debtor’s side, this cannot produce worse contractual and economic effects on him.

For example, due to this situation the debtor cannot face a future surcharge on the continuous agreement he had sealed before the 8<sup>th</sup> of March 2020 or he needs to pay a penalty because of the derogations ruled according to Article 240 (1) (1) or Article 240 (1) (2). Analyzing the central part of the “*moratorium*” disciplined in Article 240 (1) (1) and Article 240 (1) (2), it’s important to underline a few characteristics. The first one is that it refers only to continuous obligations.<sup>135</sup> Secondly, the procedure in order to receive the beneficium of the moratorium starts after the claim by the debtor to the creditor of his performance impossibility.<sup>136</sup> The creditor may, after he received the debtor’s claim, refuse to receive the obligation performance by the debtor thus applying the payment deferral until 30 June 2020.

The Article also states that in order for the creditor to allow the deferral of the payment, the debtor has to demonstrate that the continuous obligation is referred to “*a service of general interest*”.<sup>137</sup> Lastly, in order for this provision to

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this case, the moratorium will not apply if the corresponding temporary waiver by the creditor is as unreasonable as the performance by the debtor because their creditor’s rights would be violated by the debtor’s request.

<sup>132</sup> *Supra* note 128, art. 240 (1) (2).

<sup>133</sup> *Id.*, art. 240 (1) (3).

<sup>134</sup> *Id.*, art. 240 (1) (5).

<sup>135</sup> *Id.*, art. 240 (1) (1).

<sup>136</sup> *Supra* note 132.

<sup>137</sup> The second sentence of Art. 240 § 1 (1) states “Das Leistungsverweigerungsrecht besteht in Bezug auf alle wesentlichen Dauerschuldverhältnisse” (The right to refuse performance applies to all essential continuous obligations). The Article defines essential continuous obligations as the ones that, for the consumer, “are necessary so that consumers are adequately supplied with services of

fully operate, the agreement had to be concluded before the 8<sup>th</sup> of March 2020. This means that if a debtor has sealed an agreement after this date, the provisions ruled in Article 240 (1) (1) or Article 240 (1) (2) are not applicable. The legal consequences of the *moratorium* are many. The first one should be a right of the debtor to refuse performance. By asserting this effect, the debtor may not be in default with his performance.

This in any case precludes the creditor from a right of withdrawal under § 323 I BGB (withdrawal due to services not provided or not provided in accordance with the contract) and the right to claim damages instead of performance under § 281 I BGB (Damages instead of performance due to not or not due performance). Furthermore, the refusal to perform does not constitute a breach of duty which could justify an extraordinary termination of the agreement by the creditor's side under § 314 BGB (termination of continuous obligations for good cause). This does not preclude, however, that the adherence to the contract becomes unreasonable for the creditor for other reasons, which would entitle him to extraordinary termination of the contract. With the end of the *moratorium* on 30 June 2020 brings the expiry of the right to refuse performance, all outstanding payments are due in one fell swoop.<sup>138</sup> In regards to electricity and gas bills, the German ruler, has not disciplined the total prohibition to interrupt during COVID-19 pandemic *moratorium* time the supply of gas and or electricity, thus allowing energy suppliers to interrupt the energy supply service also citizens in need.<sup>139</sup>

In fact, Article 19 "*Unterbrechung der Versorgung*" (energy supply service interruption) of the "*Stromgrundversorgungsverordnung*" (also StromGVV) – ordinance regulating the provision of basic electricity supplies)<sup>140</sup> – allows electricity suppliers to interrupt the energy supply if the consumer is in debt from 100 – and more euros for more than four weeks. Jumping now to the conclusions on the policies adopted by Germany in regards to energy bills during COVID-19 has not been effective because it did not allow the household consumer to fully recover from the economic crisis given by the pandemic, thus creating only a potential billing stop for 2 months<sup>141</sup> and allowing the energy suppliers to interrupt the service also in the time of a

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general interest" and for the microenterprise are "necessary to ensure a supply of services which is adequate to continue the business undertaking".

<sup>138</sup> T. Rihiem, Gesetzesentwurf der Bundesregierung zur Abmilderung der Folgen der COVID-19-Pandemie: Allgemeines Zivilrecht, <https://community.beck.de> (last visited Sept. 9, 2021).

<sup>139</sup> See Zehntausenden Haushalten wurde in Bayern der Strom abgedreht, <https://www.nordbayern.de/politik/zehntausenden-haushalten-wurde-in-bayern-der-strom-abgedreht-1.11140907?cid=19.1611682> (last visited Jul. 3, 2021).

<sup>140</sup> Stromgrundversorgungsverordnung vom 26. Oktober 2006 (BGBI. I S. 2391), die zuletzt durch Artikel 4 der Verordnung vom 14. März 2019 (BGBI. I S. 333) geändert worden ist (2019).

<sup>141</sup> In this regard, a statement by the National Consumer Association of 1 December 2020, asks the *Bundestag* to study a law that will allow a longer moratorium or will find an exception to Art. 19 *StromGVV*. Available at: <https://www.vzby.de/pressemitteilungen/verbraucher-nicht-im-kalten-und-dunklen-sitzen-lassen/> (last visited Jul. 3, 2021).

global pandemic.<sup>142</sup> At the same time, as Rüfner has stated,<sup>143</sup> the *moratorium* ruled Article 240 § 1 (1) and Article 240 § 1 (2), on the one hand was too short, and on the other hand the obligations included were too general, thus being uncertain and mining the certainty of law, which is very important in case of emergencies.

However, it's important to underline that the interruption of energy supply on household customers that were unable to pay for the electricity supply during the pandemic, is a direct violation of Article 28 (1) of the EMD Directive where is ruled the "*to the prohibition of disconnection of electricity to such customers in critical times*". In fact, as the COVID-19 pandemic, with its both social and economic effects, has put all European citizens in crisis, the interruption of electricity supply harms the German households affected by energy poverty which, also during the pandemic, have faced policies against their consumer's rights.

## V. Emergency regulations and energy bills in Italy

After the analysis of the German scenario, it is time to analyze the electricity bills scenario in Italy during emergency periods. As mentioned in the previous pages, Italy has been hit by two disasters in recent years: the first is the earthquake that hit the Abruzzo, Lazio, Marche and Umbria regions in August and October 2016 and January 2017,<sup>144</sup> the second one is the COVID-19 pandemic. As for Germany, the Italian government, due to the seismic events, adopted a policy of "suspension".

In particular, Article 48 (2) of the Decreto Legge 17 October 2016 n.189<sup>145</sup> ruled that for the energy sectors (electricity, gas and water), the energy authority Autorità di Regolazione per l'Energia Reti e Ambiente (ARERA), should provide legislative acts related to bill suspensions for a maximum period of six months.<sup>146</sup> At the same time, the Article demands the ARERA to rule before 120 days from the entry into force of the decreto legge, all the provisions concerning the installments methods for the suspended payments as well as discounts on the tariff for the inhabitants of the municipalities that

<sup>142</sup> A FAQ of the German's Consumer Association says, with concern, that the Moratorium has not been extended thus obliging consumers to pay regularly the bills they will receive after 1<sup>st</sup> of July 2020. "Stromsperrre - was nun?". Available at: <https://www.verbraucherzentrale.de/wissen/geld-versicherungen/kredit-schulden-insolvenz/stromsperrre-was-nun-11674> (last visited Jul. 3, 2021).

<sup>143</sup> Thomas Rüfner, *Das Corona-Moratorium nach Artikel 240 EGBGB*, 75 JuristenZeitung 443, 443-448 (2020).

<sup>144</sup> For more information about the 2016 and 2017 earthquakes, see SISMA (2016), <https://sisma2016.gov.it> (last visited Jul. 3, 2021).

<sup>145</sup> The first law that entered into force due to the seismic events of 2016 is the decreto legge 17 October 2016 no 189 *Interventi urgenti in favore delle popolazioni colpite dagli eventi sismici del 2016*. Today, in 2021, because the reconstruction of the territories hit by the earthquakes are not finished, this decree law is still in force and maintains its importance as the primary rule for the regions hit by the seismic events of 2016-2017.

<sup>146</sup> Decreto Legge 189/2016, art. 48 (1) (2016).

have been hit by the earthquakes.<sup>147</sup>

On the 18<sup>th</sup> of April 2017, almost 200 days after the seismic events of 2016, the ARERA adopted the Decision 964-bis which introduced the definitive<sup>148</sup> provisions recalled in Article 48 (2) of the Decreto Legge 189/2016.<sup>149</sup> This decision<sup>150</sup> is very important because it sets the entire discipline on energy bills for the populations which faced the seismic events. Article 1 of the decision rules the definitions that will be valid for the entire provision. The definitions are related in regards to the property damages that have faced the inhabitants of the territories affected by the earthquakes. In fact, the suspensions benefices were based depending on the property in which people were living or people were owners of.

Article 2, then, rules on the characteristics to receive the benefits from the Decision.<sup>151</sup> In particular, the benefits apply to the energy supply agreements stipulated before the 24<sup>th</sup> of August 2016 or before the 26<sup>th</sup> of October 2016 or before the 17<sup>th</sup> of January 2017.<sup>152</sup> The Article also distinguishes two types of beneficiaries. In fact, benefits can be automatic if people live in emergency housing such as SAE, MAPRE, MAP or in houses built for the population's assistance.<sup>153</sup> On the other side, benefits can be given upon the request of the interested person if those demonstrate the relationship between the destroyed house or the property damage and the earthquake.<sup>154</sup> As stated in Article 2 (3), benefits lasted until 31 December 2020.<sup>155</sup> Important is Article 2 (4) which states that the earthquake benefits can be combined with other bonuses given by law<sup>156</sup> and Article 2 (7) which allows people who put the residence in a

<sup>147</sup> The Decreto Legge 189/2016 entered into force on the October 19, 2016.

<sup>148</sup> Before the Delibera 18 Aprile 2017 252/2017/R/com, the ARERA adopted on the 28<sup>th</sup> of December 2016 which ruled that the bill suspension period was valid for six months from the date of both seismic events of 2016.

<sup>149</sup> Delibera 18 April 2017 252/2017/R/com, Disposizioni in materia di agevolazioni tariffarie e rateizzazione dei pagamenti per le popolazioni colpite dagli eventi sismici verificatisi nei giorni del 24 agosto 2016 e successivi.

<sup>150</sup> This decision has been integrated by other ARERA decisions until the last one: 111/2021/R/com, Misure urgenti in materia di servizi elettrico, gas e idrico integrato a sostegno delle popolazioni colpite dagli eventi sismici verificatisi a far data dal 24 agosto 2016 nel centro Italia e in data 21 agosto 2017 nei Comuni di Casamicciola Terme, Lacco Ameno e Forio.

<sup>151</sup> *Id.*, art. 2.

<sup>152</sup> *Id.*, art. 2 (1) (a) - 2 (1) (c).

<sup>153</sup> *Id.*, art. 2 (1) (d).

<sup>154</sup> *Id.*, art. 2 (1) (e) – art. 2 (1) (h).

<sup>155</sup> The original text of the Delibera 252/2017/R/com ruled that the suspensions were valid for 36 months. With the integration at article 5(3) of Delibera ARERA 587/2018/R/com, the suspension is valid until the 31<sup>st</sup> of December 2020. In fact the article states that “All'articolo 2 della deliberazione 252/2017/R/com, dopo il comma 3, è aggiunto il seguente comma: “2.3 bis. Limitatamente alle utenze e forniture localizzate in una zona rossa, in deroga a quanto previsto al precedente comma 2.3, le agevolazioni di cui al presente provvedimento sono riconosciute fino alla data del 31 dicembre 2020”. Delibera 587/2018/R/com entered into force on the 20<sup>th</sup> of November 2018, the same day of when the Decision has been made. In 2020, the Delibera 54/2020/R/com extended the billing suspension also to the municipalities of Comuni di Casamicciola Terme, Lacco Ameno e Forio which faced an earthquake on 21 August 2017.

<sup>156</sup> Le agevolazioni disciplinate dal presente provvedimento sono cumulabili con il bonus elettrico e il bonus gas, art. 2 (4) (2016).

house after the earthquake of 2016, to join the benefits provided by this Decision for both the condemned building as well as the new house where the residence after the 2016 earthquake is located regardless of what stated in Article 2 (1).<sup>157</sup>

In order to join these benefits, Article 3 of the Decision disciplines the procedure to request them, if not given automatically as ruled in Article 2 (3). The procedure to request the benefits was the following. The consumer had to provide to the energy supplier, the certificate from the municipality of the property rights of the condemned house,<sup>158</sup> that no other benefits have been requested,<sup>159</sup> the identifying elements of the energy supply agreement,<sup>160</sup> that the condemned house is the residency house<sup>161</sup> and, if the person requesting the benefits is another one from the rightful owner of the house, that the interested party is resident in that house.<sup>162</sup> In order to successfully fulfill the request, people had 18 months to send all the requested documents, in particular, the certificate that the house is condemned. The energy supplier then, according to Article 3 (5) (a) (ii) will send the benefits request to the energy distributor in 30 days from when they received it.

After, the distributor will proceed in 30 days to ensure that all the documentation sent by the customer to the supplier is correctly filled and will inform the energy supplier on the results of the control. If the procedure is positive, the distributor will grant him the benefit. In order to "protect" the customer, Article 4 sets the discipline that energy suppliers need to apply for these emergency periods. In fact, Article 4 (1) obliges energy suppliers to inform on their official website about the possibility to request the benefits. It's also mandatory for the energy supplier to inform the customer that:

- a) he has the right to receive the benefits;
- b) the end of period of the benefits.

The supplier is also obliged to inform the customer, at least once a year, of the amount that is related to the benefit generated from the energy supply agreement. Lastly, because the Decision entered into force in April, Article 4 (4) rules that the energy distributor should inform before the 17<sup>th</sup> of September 2017 the energy supplier in regards the energy consumption made by customers from the earthquake until the date of the entry into force of the Decision.<sup>163</sup>

From this, the energy supplier will calculate the bill for the customers. In regards to this paper, the central part, is Article 5 of the Decision, which rules the bills benefits for the population hit by the earthquake. In particular, Article

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<sup>157</sup> *Id.*, art. 2 (7).

<sup>158</sup> *Id.*, art. 3 (1) (a).

<sup>159</sup> *Id.*, art. 3 (1) (b).

<sup>160</sup> *Id.*, art. 3 (1) (c).

<sup>161</sup> *Id.*, art. 3 (1) (d).

<sup>162</sup> *Id.*, art. 3 (1) (e).

<sup>163</sup> *Id.*, art. 4 (4).

5 states that the components ruled respectively in Article 29 (1) will not apply for the year 2017, 30 (1), 30 (2) will not apply for the year 2016 and 39 (1) of TIT<sup>164</sup> will not apply. This means that the person who faced the emergency should not pay the costs for the transmission, distribution, measurement and infrastructures of the energy supplier as well as the ancillary surcharges inserted in the bill but only the effective cost of the consumed energy. While Article 6 regulates the benefits for non-domestic energy supply contracts, Article 7 (1) rules in regards the benefits that people who live in emergency accommodations such as SAE, MAPRE or MAP have the right to ask for. In fact, as the Article states, the inhabitants of those houses can request the benefit of the nonapplication of TITLE II<sup>165</sup> and Article 28 (1)<sup>166</sup> of the TIC.<sup>167</sup> Article 14, then, rules in detail the payment methods of the suspended energy bills. In particular, the Article allow consumers to ask for an installment payments method and obliges energy supplier to not apply any kind of interests for the suspended bills.<sup>168</sup> In this regard, Article 14 (3), rules that bills arrive on a regular basis, that installments are not possible for bills under 20 euros and that the installments can be asked for maximum 24 months after the customer has received the bill.<sup>169</sup> The same rules apply also if the customer has both gas and electricity supply service provided by the same supplier.<sup>170</sup> Article 14 (6) allows the customer also to pay the entire amount without installments. If the energy supplier has stopped sending energy bills to the customer or the timing period of the bill payments,<sup>171</sup> he is obliged to send one bill either before 31 December 2017 for the customers whose suspension payment time is before the 30<sup>th</sup> of April 2017 or before six months from the end of the suspension period provided by law.<sup>172</sup> In any case, this only bill will take into consideration the benefits ruled by the Decision.

Lastly, it is important to underline that, according to Article 15 (1) of the Decision, if the customer is in arrears, the payment of the arrear, starts from

<sup>164</sup> The TIT is the *Testo Integrato delle distribuzioni per l'erogazione dei servizi di trasmissione e distribuzione dell'energia elettrica*. In regards to the seismic events of 2016, the TIT applicable was the one approved by the ARERA Decision of 23 December 2015, 654/2015/R/EEL. The Mathematics referred to the TIT bills voices are available at: <https://www.arera.it/it/docs/15/654-15.htm> (last visited Jul. 10, 2021). The TIT entered into force on the 1<sup>st</sup> of January 2016.

<sup>165</sup> Title II of the TIC is entitled “provisions for ordinary low-voltage connections”. In this regard, the final customer will not have to face costs for the installment of low-voltage connections.

<sup>166</sup> Article 28 is entitled “vulture e subentro” (vulture and replacements) and states that for the vulture and replacements there is a fixed price for administrative costs of it. Art. 28 (2) then states that for the change of energy supplier, no fee is applicable for the customer.

<sup>167</sup> The TIC is the Testo Integrato delle condizioni economiche per l'erogazione del servizio di connessione. In regards to the seismic events of 2016, the TIC applicable was the one approved by the ARERA Decision of 23 December 2015, 654/2015/R/EEL. The TIC entered into force on the 1<sup>st</sup> of January 2016.

<sup>168</sup> *Id.*, art. 14 (2).

<sup>169</sup> *Id.*, art. 14 (3).

<sup>170</sup> *Id.*, art. 14 (5).

<sup>171</sup> *Id.*, art. 14 (7).

<sup>172</sup> *Id.*, art. 14 (8).

the end of the suspension period. As we have seen in the previous pages, the bill suspension for the people who faced the seismic events of 2016 had been extended until the 31<sup>st</sup> of December 2020. In this regard, a new Delibera by ARERA of 18 March 2021<sup>173</sup> has extended the billing suspension period until the 31<sup>st</sup> of December 2021. This suspension period has been recently extended until the 31<sup>st</sup> of December 2022 due to the entry into force of the Delibera 34/2022 of the ARERA which in Article 2 (2) extends the period of suspension of one year.<sup>174</sup> So the suspension period for the Italian households customer's affected by both the seismic events of 2016-2017 and by COVID-19 has lasted six years since its introduction in April 2017.

## VI. Energy bills policy comparison

In the previous paragraphs it has been analyzed the discipline for both Germany and Italy in regards to electricity bills after COVID-19 and the Italian seismic emergency. It's now time to give some remarks in regards to both of them.

Starting from the German policy, the biggest problem faced by domestic customers concerns the short time of the suspension. For instance, also if the pandemic is in due course, the suspension of the electricity bills lasts for only two months, thus affecting the categories of the people in need. It is also worth of highlight that German energy suppliers have interrupted the supply of energy to households customers facing energy poverty, thus violating the provisions ruled in Article 28 (1) of the EMD Directive. On the other hand, if we analyze the billing policy adopted by the Italian government, few problems need to be highlighted. The first one is referred to the fact that from January 2021 until March 2021, no decisions by ARERA in regards to the billing suspension have been made, thus bringing much confusion to the customers and at the same time allowing energy suppliers to believe that the suspension period had finished, thus pretending the billing payment from customers. Furthermore, because the billing suspension has been so long (almost 60 months from the first seismic event of 2016) and because Article 14 (7) of the Delibera 252/2017/R/com allows energy suppliers to send a cumulative bill for the entire suspension period, customers might receive, when the suspension period ends, an expensive electricity bill.<sup>175</sup>

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<sup>173</sup> Delibera ARERA 111/2021/R/com, Misure urgenti in materia di servizi elettrico, gas e idrico integrato a sostegno delle popolazioni colpite dagli eventi sismici verificatisi a far data dal 24 agosto 2016 nel centro Italia e in data 21 agosto 2017 nei Comuni di Casamicciola Terme, Lacco Ameno e Forio (2021).

<sup>174</sup> See generally Delibera ARERA 34/2022/R/com (2022).

<sup>175</sup> In this regard, the Italian newspaper Il Resto del Carlino reports that a customer, victim of the seismic events of 2016 who is resident in Pieve Torina (Macerata), received in December 2020 an electricity bill of 16.985,98 euros. See Lucia Gentili, Terremotato riceve bolletta da 17 mila euro (2021), <https://www.ilrestodelcarlino.it/macerata/cronaca/terremotato-bolletta-17-mila-euro-1.5878185/> (last visited Jul. 10, 2021).

## Conclusion

This article has been the stage to reflect and understand the electricity bills matter both on a European level as well as at a national level. In particular, this paper has started to analyze the European legal framework on electricity bills which is constituted by the Energy Efficiency Directive and by the Electricity Market Directive. Both Directives have the scope to discipline the electricity bills matter. In particular, the Directives rule in regards to the minimum information that an electricity bill, within the European Member States, should have in order to protect the consumer's right.

The second part of this article has analyzed then the discipline concerning electricity bills in two European Member States: Germany and Italy. The result of the investigation has brought up few conclusions. The first one is that both countries' regulations on the electricity bills matter are in line with the rules set out by the European legislator. The second one is that, if Germany's energy bills discipline, is enclosed in the EnWG act which is a State's legislative act, in Italy there is an independent authority, the ARERA, which regulates, with its decisions which are valid *erga omnes*, for the entire energy sector thus including electricity, water and gas supply. Still, Italia's biggest problem in this regard is the copious legislative activity of the Authority which might lead the consumer to confusion while informing itself on the matter. So, perhaps, an Italian codification on the energy bills matters might be an option to consider in order to create a clear and easy-to-read legal framework on energy law.

The third part of the paper, is the central one of the entire article, as it analyzes the rules adopted in both countries during the two emergency periods they have faced: the seismic events of 2016-2017 and the COVID-19 pandemic in Italy and just the pandemic in Germany. Both countries have adopted the same type of discipline: a *moratorium*. But there are few differences and problems that need to be highlighted.

Starting from Germany, the biggest problem that needs to be addressed is the duration of the *moratorium* which did not take into consideration the effective duration of the COVID-19 pandemic. In fact, in light of Article 240 (1) (1) of the *Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht* adopted on March 27, 2020, the suspension for the payment of continuous obligations (including electricity bills) lasted only until June 30, 2020 and was valid only to agreements sealed before March 8, 2020. On the one hand, this policy helped household consumers in need, because for two months it allowed consumers to not pay for the electricity supply. On the other hand, because the time of the *moratorium* was too short, it allowed energy suppliers to interrupt the supply service of electricity if consumers were unable to pay for the bill by July 1, 2020. With the introduction of this *moratorium*, another problem has concretely impacted the

most vulnerable consumer. In fact, by allowing the electricity suppliers to interrupt - in light of Article 19 of the *Stromgrundversorgungsverordnung* law - the supply of electricity to consumers who weren't able to pay the bill, this policy was in direct violation of Article 28 (1) of the EMD Directive which Germany had adopted. In fact, the mentioned Article 28 (1) prohibits explicitly the "*disconnection of electricity to such customers in critical times*". Still, the interruption of service has concretely damaged the families affected by energy poverty, thus creating for them a set of regulations that were contrary to the consumer's rights ruled by the EMD Directive, causing them serious inconveniences also during the pandemic.

Analyzing the second country, Italy, it is worth saying that the *moratorium* opted by this country has gone in the opposite direction of the one ruled in Germany. In fact, beside this provision has entered into force almost 120 days after the 2016-2017 seismic disaster happened, the duration of the *moratorium* is still in force, thus being in force a 6 years-old *moratorium* for the households affected by the disasters. This has led to one big problem. In fact, because the *moratorium* allows energy suppliers to send an omni-comprehensive bill for the entire period of suspension, this policy has led many consumers to receive a bill of several thousands of euros regarding all the period of suspensions requested by them. This has brought the consumers to serious financial uncertainty as the request of the energy supplier, also if legitimate and possible to be paid through installments, has led household consumers to face concrete financial losses due to the adoption of this policy by the ARERA.

Summarizing the policies adopted by both countries and their effectiveness on the consumer's side is worth noting that none of them has protected the consumer, especially the most vulnerable one facing losses because of a natural disaster or the economic losses due to the COVID-19 pandemic.

The question that arises naturally is how to avoid this scenario if future disasters happen. Perhaps, the answer might be the adoption, for both countries, of a protocol that disciplines the energy bills mater during extraordinary times (i.e. natural disaster, pandemic, war etc.). In order to achieve a just and balanced protocol, this needs to be adopted by all the parts part of the energy supply chain: the energy distributor, the energy supplier, the consumer's associations that represent household consumer's and the national government.<sup>176</sup> In fact, only through the representations of all the parties involved in the agreement it can guarantee the outcome of a policy

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<sup>176</sup> In the direction of a protocol involving all the parties of a supply agreement, it has been recently adopted the Ordinanza of 23 December 2021 n. 4 by the Special Commissioner for Reconstruction of the 2016 earthquake, the Coordinator of the technical structure of earthquake mission 2009 and the Manager of Energy Services - GSE S.p.A. The Ordinance's scope is to implement, pursuant to Article 2 paragraph 2 of the Agreement, "the implementation of centralized systems for the production and intelligent distribution of energy and/or heat from renewable sources (subsection A2.3), possibly also useful for the creation of local energy communities for the sharing of electricity produced from clean sources submeasure A2.4)".

that might protect all the personal and economic interests involved in the supply of electricity, especially the uncertainty of the consumer's during the period of *moratorium*.<sup>177</sup>

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<sup>177</sup> Giovanni Iorio, *Gli Oneri Del Debitore Fra Norme Emergenziali E Principi Generali (A Proposito Dell'art. 91 Del D.L. N. 18/2020, "Cura Italia")*, 12 Actualidad Jurídica Iberoamericana 366, 366-377 (2020); See also M. Franzoni, *Il Covid-19 E L'esecuzione Del Contratto*, 1 Rivista Trimestrale di Diritto e Procedura Civile 1, 1-23 (2021); See also A. Semprini, *Responsabilità Del Debitore Da Prestazione Pecuniaria E Principi Solidaristici*, 1 Responsabilita' Civile E Previdenza 300, 300-315 (2021).