CEER

Council of European Energy Regulators

Fostering energy markets, empowering **consumers**.

What Regulators Stood for in the First Half of 2022

European Policy Unit

14 July 2022

The introductory part of this review is dedicated to CEER's main messages for the energy sector in first half of 2022. These messages are in line with our overall strategy, which guides CEER deliverables and activities throughout the defined period of the strategy.

Our main messages for the first half of 2022!

CUSTOMERS AND RETAIL MARKETS

- CEER encourages all national regulatory authorities (NRAs) to do an annual self-assessment of their energy retail markets to drive competition, improve market functioning and promote more affordable offers for EU consumers.
- Many aspects of energy policy must be taken into account for the assessment of national retail markets as they can influence energy prices. This is due to the complex interaction between energy prices, competition among suppliers and regulation.
- For consumers to become prosumers, attractive services and products must be made available in the market. This will help consumers to be more active and to manage their consumption in a cost and time-effective manner.

CROSS-SECTORAL

- Due to the energy transition, NRAs have to deal with new tasks such as integrating renewable energies (wind, solar, biogas, etc.) and providing helping secure the necessary investments for new infrastructure (lines, pipes, new technology, etc.). To prepare the networks for these tasks, NRAs must make adjustments to the regulatory framework and provide incentives.
- The main lessons NRAs identified from the COVID-19 pandemic include the overall resilience of the energy sector, the importance of protecting consumers, and the overall positive changes made to work procedures throughout the sector.

- NRAs played a key role in mitigating the impact of the COVID-19 pandemic on the energy system. Regulatory authorities stepped up their monitoring efforts regarding network operators and energy suppliers and coordinated or participated in the exchange of information with national governments, consumers, network operators and other energy stakeholders. Some NRAs also took steps to lower the financial burden on consumers and suppliers, while others adapted their enforcement practice and eased procedures to accomodate pandemic-related delays. The energy sector is standing at the edge of a system transformation in which innovation will play a central role.
- NRAs already rely on experimental regulatory tools to test and anticipate future evolutions such as regulatory sandboxes, pilot projects, or pilot regulations.
- NRAs should make use of all the tools at their disposal to allow for innovation and efficient regulation of the energy markets. This applies especially to NRAs from EU Member States who have to cope with new challenges in implementing the European Green Deal.

GAS

- Energy storage is set to play an increasingly important role in EU energy policy and there are important lessons that can be learnt from gas storage. At the market level, energy storage provides the means to cope with unpredictability in suppliers' production. At the system level, it can guarantee security of supply while also improving network architecture and operator flow management.

- European regulators are aware of the high level of uncertainty affecting future developments in the energy system and therefore advocate for a dynamic approach to regulation. This would allow the regulatory framework to adapt to market circumstances and industry needs.
- The capacities and use cases of small-scale liquefied natural gas (LNG) services are increasing across Europe. There are plans to build new infrastructure (such as loading bays and dedicated docks) and set up appropriate rules to advance these services. Some EU member states offer “indirect” incentives, such as supporting LNG fuelling infrastructure and regulations that favour LNG powered vessels and the establishment of low-emission zones for cleaner transportation.
- While regulated access is the most common practice in terms of capacity allocation mechanisms (CAM), there is a wide variety of CAM applied across European LNG terminals. These mechanisms vary from simple first-come-first-served approaches, mainly in non-congested services, to organised capacity auctions of different products.

1 CEER proposals on customers

In the first half of 2022, CEER published **1 report** which relates to customer issues.

CEER Roadmap to 2025 Well-Functioning Retail Energy Markets 2020 Self-Assessment Status Report[1]

With this report, CEER continues to monitor the progress of national retail energy markets in order to ensure well-functioning and resilient energy markets that promote the best and most affordable offers to energy customers throughout Europe. Therefore, CEER encourages national regulatory authorities to identify the challenges in their respective countries and to develop potential solutions on how to improve national retail market functioning. The main objective of this third round of self-assessments is to share experiences and showcase progress in establishing well-functioning retail markets by 2025.

All national regulatory authorities are encouraged to follow the development of their national retail markets and, where possible, evaluate if and how it is feasible to improve the results of individual metrics.

The self-assessment exercise on national retail gas and electricity markets is performed using a "gap-analysis" of 25 metrics defined in the CEER Handbook for NRAs and the Roadmap to 2022 Well-Functioning Retail Energy Markets, grouped into eight key property principles that define a well-functioning market, which promotes competition, a level-playing field for energy companies and the best, most affordable offers for consumers.

Main findings:

- Several countries are seeing a rise in the number of suppliers and consequently a decrease in the concentration ratio.
- There are also markets with a low concentration of suppliers (i.e., many actors in the market) where the existence of distribution system operators (DSOs) bundled with a supplier might prevent new actors from entering the market or increasing their market shares.
- In many countries, it is also clear that higher customer awareness and trust would lead to increased customer engagement and switching rates.
- Some countries with high availability of time-of-use metering also tend to have a high number of prosumers and/or customers engaged in implicit or explicit demand response.
- There are countries where smart meters and historical consumption data are available but where dynamic price contracts are still a rarity in the market.
- The efficient price formation is influenced by many aspects of energy policy apart from end-user interventions, such as incentives to sign dynamic contracts, legal framework for entry/exit or liquidity in wholesale markets.

[1] CEER Roadmap to 2025 Well-Functioning Retail Energy Markets 2020 Self-Assessment Status Report

2 CEER proposals on gas issues

During the first half of 2022, CEER published **2 documents** related to the gas sector.

CEER Reflection Paper on Regulation of Long-Term Energy Storage from a Sector-Coupling Perspective[2]

This paper provides a reflection on the regulation of long-term energy storage from a sector-coupling perspective and the lessons learnt from gas storage. It is intended to serve as a background paper for future work on long-term energy storage and related discussions.

Guaranteeing energy systems' reliability and resilience will require filling potential gaps between production and consumption at all times, which in turn highlights the increasingly important role of energy storage in terms of security of supply (SoS) and system management.

Main findings:

- Regulatory intervention should be appreciated according to several dimensions including technological options (decentralised vs. centralised techniques, contestability), business models (role of storage in terms of business strategies and system management) and security of supply (investment planning and correction of misalignments between individual decisions and collective needs).
- Storage needs and means should be integrated into the network planning process.
- European regulators strongly recommend relying on existing gas facilities to maintain a high level of security of supply and gradually substitute natural gas by decarbonised solutions.
- CEER advocates for regulating energy storage only when the market fundamentals make it worthwhile, i.e., when there is a risk that individual decisions will not lead to appropriate capacities or volumes of stored energy.
- With the development of intermittency, it may be more difficult for suppliers to meet their obligations to their customers and to the system (in particular, balancing obligations). The role of energy storage in terms of market players' competitiveness will have to be carefully analysed in order to preserve a level playing field in supply.
- If, for security of supply purposes, there is a risk of undersized or insufficient energy storage, measures could be taken such as promoting the convergence between allocation price and storage value, strategic storage or guarantees of a minimum level of storage. European regulators suggest favouring allocations of commercial storage capacity at market value (by auction for example) and organising a recovery of security of supply costs (including strategic storage where relevant) from the categories of consumers who benefit from it.

[2] CEER Reflection Paper on Regulation of Long-Term Energy Storage from a Sector-Coupling Perspective

CEER Report on Liquefied Natural Gas Small-Scale Services in the European Union[3]

The report provides increased transparency for the LNG market segment and offers both regulators and stakeholders valuable information to understand, supervise and regulate these small-scale services, while extending best market practices.

We have witnessed the growing importance of LNG small-scale services within the zone of influence of the European LNG terminals in the last years.
These services constitute a useful and versatile instrument that allows end consumers to use natural gas in a range of settings.

Main findings:

- The LNG market is a dynamic international market in which the number of players continues to grow, and which has increasingly become more globalised.
- All over Europe, LNG terminals are offering small-scale services, such as LNG loading for bunkering purposes and truck loading services.
- In the particular case of small-scale LNG services, capacities and use cases are increasing in European LNG terminals.
- There are no notable direct incentives or subsidies in place to promote the development of new small-scale infrastructure in most EU countries. These infrastructures are mainly built based on market principles or following a regulated planning approach.
- In the case of the virtual liquefaction service, it is currently only offered in three countries.
- Access to small-scale LNG services is either regulated or negotiated, with a majority of services offering regulated access.
- In the majority of cases, a first-come-first-served principle applies either directly on the capacities or to sell the capacity that remains unsold after a market procedure.
- Congestion management procedures are in place but differ considerably in EU Member States. The main congestion management tool is to enforce payment of the reserved capacity even if it remains unused.
- Tariffs differ significantly among MS, both in structure and in the price per unit of energy loaded.
- Common practices for access regimes and tariffs definition are set either by regulation or by data sharing in the European transmission network and in regasification terminals.

[3] CEER Report on Liquefied Natural Gas Small-Scale Services in the European Union

3 CEER proposals on cross-sectoral issues

Since January 2022, CEER published **4 documents** on cross-sectoral issues targeting electricity, gas and customers sectors.

CEER Report on Regulatory Frameworks for European Energy Networks 2021[4]

This year, CEER published the 10th edition of the Regulatory Frameworks Report that analyses different regulatory systems of electricity and gas networks (at the Transmission System Operator (TSO) and Distribution System Operator (DSO) level). It includes an analysis of most EU Members States, Great Britain, Northern Ireland, Iceland, Norway as well as information on eight Energy Community Regulatory Board (ECRB) countries.

The report provides a general overview of the regulatory practices in place by focusing on topics such as the calculation of a rate of return, the determination of the regulatory asset base (RAB) and the depreciation of assets in the different regulatory systems. In Annex 5, interested readers can find an in-depth collection of case studies of eleven countries (Austria, Finland, Germany, Greece, Latvia, Lithuania, the Netherlands, Norway, Portugal, Spain and Sweden).

As tariff regulation schemes are highly complex, a direct comparison of certain parameters, such as capital costs, is difficult and should only be done in the context of the whole regulatory system.

Main findings:

- The preferred method for asset valuation of many national regulatory authorities is the weighted average cost of capital (WACC). The real WACC is used for profitability calculations for re-evaluated assets and the nominal WACC is used for calculating historical values of assets.
- The regulatory framework must be considered as a whole, as singling out elected parameters would distort the overall picture.
- According to the survey data, almost all NRAs include fixed assets in the regulatory asset base (RAB).
- The RAB value is usually linked with depreciation, depending on the NRA. In gas and electricity regulation, straight-line depreciation is applied by most NRAs.
- The developments of the energy networks in Europe should regularly be closely analysed in the future due to changes caused by the energy transition. The switch from conventional to renewable energy sources, a growing cooperation between (and inside) European energy networks, and the integration of smart elements into the networks can be seen as the next challenges for network operators, but also for the national authorities.

[4] CEER Report on Regulatory Frameworks for European Energy Networks 2021

CEER Analysis of the COVID-19 Pandemic's Effects on the Energy Sector - Second Report[5]

National regulatory authorities played a key role in mitigating the impact of the COVID-19 pandemic on the energy system.
They took measures to support consumers and suppliers and/or complemented or carried out governmental measures to that effect.

The aim of this report was to continue with the analysis of the effects of the COVID-19 pandemic on the energy sector covering a period ranging from January 2020 to June 2021 and to complement the analysis of the first report published on 29 March 2021. It covers a longer period and examines the restrictions imposed by public authorities to limit the spread of the disease and the restrictions' effects on indicators such as electricity and natural gas consumption and prices. It also provides an inventory of the measures taken to support energy stakeholders and identifies lessons learnt.

Main findings:

- The energy system has proved resilient and measures such as disconnection moratoria have shielded consumers from the worst impact.
- The pandemic-related restrictions have fostered teleworking, remote operations and digital solutions across the energy sector.
- Lockdowns and generalised teleworking have changed the way regulators and businesses have interacted during the crisis. Many processes were delayed, and personal contact and physical meetings were greatly reduced.

CEER Paper on Regulatory Sandboxes in Incentive Regulation[6]

The document addresses the reasons why national regulatory authorities (NRAs) should promote innovation and remove barriers that can obstruct power system transformation. The document discusses the relationship between regulatory sandboxes and incentive regulation for grid operators (DSOs and TSOs) and provides a toolkit for NRAs that is suitable for supporting innovation in different conditions.

Main findings:

- NRAs should engage at least in removing barriers to innovation, as a first preliminary step.
- NRAs could use the toolkit, selecting the best-suited tool, or combination of tools, according to specific cases.
- When approaching the toolkit, NRAs should take into account the

Sandboxes are a general framework that innovators can apply to test their innovative products, services, and methodologies (including new business models) for a certain period of time.

[5] CEER Analysis of the COVID-19 Pandemic's Effects on the Energy Sector - Second Report
[6] CEER Paper on Regulatory Sandboxes in Incentive Regulation

different regulatory treatment between regulated grid activities and competitive market activities, including funding.

- When supporting innovation, NRAs must avoid the foreclosure of competition in wholesale, retail, and adjacent markets. Improving the learning process among all involved parties, regulators included, and the dissemination of knowledge are ultimately the goals of each regulatory tool for supporting innovation.
- There is a diverse range of dynamic tools (regulatory sandboxes, pilot projects, regulatory experiments, pilot regulations) available to NRAs seeking to unleash the potential of innovation to contribute to the energy system transition.

Dynamic NRAs to Boost Innovation[7]

This report presents the state of play of Dynamic Regulation from NRAs' perspective. It highlights the understanding, main developments, and approaches of Dynamic Regulation in the energy sector.

The Dynamic Regulation definition:
"A regulatory approach that is limited in time, focused on the energy sector activities it covers and/or the energy sector actors who can participate, and which aims to cope with some kind of novelty in the energy system with the ultimate goal of informing future regulatory decision-making through experimentation."

Main findings:

- The economic regulation of energy services is characterised by a tension between the need for stability and predictability and the need to evolve over time to reflect the changing fundamentals of the energy system driven by climate change and technological innovation.
- Dynamic Regulation can be considered the way NRAs enable the regulation to evolve over time, but do so in a predictable way, whilst also keeping the regulatory framework stable in order to enable innovation.
- The common aims of Dynamic Regulation are the promotion of consumers' interest, enabling the decarbonisation of the energy system and enabling innovation (including in the form of competition/market entry).
- The three common types of enabling environments for Dynamic Regulation include 1) flexibility within the legal framework that applies to market participants and implemented by a NRA 2) flexibility within the NRA's tariff-setting processes that apply to network companies and 3) introduction of specific legislation.
- The role a NRA can play in Dynamic Regulation will depend on the scope of activities for which the NRA is the competent authority, as well as the level of discretion autonomy the NRA has under national legislation.
- In setting Dynamic Regulation, NRAs often stress the need for innovators or participants to focus on the consumer impacts of their innovation, whereas it is important to note that some of the cases currently do not have live trials.

[7] Dynamic NRAs to Boost Innovation

4 CEER Advocacy work

In first half of 2022, CEER drafted **6 reactions** to the European Commission's consultations or proposals. Below are the topics and main messages which were sent to the institutions and/or published.

Response to the Commission's consultation on the Action Plan for digitalising the energy sector	19 January 2022

- A wide array of tools can be developed to address the different levels of consumer engagement and digital literacy. Tools may be economic (e.g., explicit monetary rewards/savings) and non-economic (e.g., green behaviour or tools aimed at enhancing consumers' effective understanding of the energy sector).
- Efforts must be made top-down, especially from the public sector, to create a positive data-sharing environment.
- CEER believes that the NIS-2-Directive and, especially, the introduction of a network code on cybersecurity represent a first step in reducing cybersecurity risks on an EU level, in particular when it comes to possible consequences for cross-border electricity flows.
- CEER believes the European Commission could also consider establishing a network code for the cybersecurity of gas operations.
- General societal awareness about cybersecurity threats needs to be sharpened and general knowledge of energy consumers on how to act in conformity with cybersecurity needs to be expanded.
- Regulatory tools must go along with public support, but also run parallel with developments in the industry.
- Data exchange must be carried out in a cost-effective way. This implies avoiding duplication. Or more specifically, in some instances, a single actor (or a single type of actor) may be more appropriate to play the role of data access manager – e.g., making data available to consumers and third parties – rather than multiple types of actors playing the same role.

ACER/CEER Reflection on EC offshore strategy	11 April 2022

- Caution and further analysis are needed as not all the challenges are known and fully understood. The appropriate solutions could be developed and implemented gradually, addressing the foreseeable challenges.
- Current market rules governing real-time trading, favour the home market approach more than offshore bidding zones. As a consequence, this aspect needs to be addressed in a way that does not discriminate between internal and cross-zonal trade close to real-time.
- ACER and CEER recommend the European Commission further analyse the option of creating offshore bidding zones for the integration of hybrid systems as well as analyse potential mitigation measures to address possible concerns.
- The objective of supporting offshore investment may be achieved by traditional renewable support systems (where and until needed) with fewer disruptive effects and more targeted to the specific needs of offshore RES.
- ACER and CEER do not see the need for specific solutions regarding the network development and financing of offshore RES.

Feedback to the European Commission on the Hydrogen and Decarbonised Gas Market Package (Directive & Regulation)	12 April 2022

- CEER welcomes the mirroring of certain provisions in the Electricity Directive as regards consumer rights to the present Gas Directive proposal.
- Given the level of uncertainty and maturity of renewable and low-carbon gas technologies and their deployment for household consumers, discretion should be left to the Member States regarding when and how to apply innovation-dependent provisions based on socio-economic cost-benefit assessments.
- Policymakers should conduct a "distributional impact assessment" of planned policies on consumers, to ensure that actions to decarbonise the energy system do not put an unreasonable extra burden on consumers, particularly those in vulnerable situations.
- Regulators reiterate their views on the need to adopt a gradual approach to the regulation of the hydrogen sector, in line with the evolution of the market and infrastructure.
- Considering that the hydrogen sector is at a very early stage, lighter forms of unbundling should be allowed initially and then gradually strengthened towards ownership unbundling as the hydrogen network evolves.
- CEER advocates the need for periodic monitoring of the development of the hydrogen sector by NRAs to identify the possible need for adaptation of the regulatory framework.
- Cost reflectivity is a fundamental principle to design network tariffs. CEER's view is that targeted deviations could be envisaged to allow for other policy objectives, such as fostering cross-border trade to be more effectively pursued.
- The planning process for hydrogen infrastructure development implies that harmonisation at the EU level should not require the development of separate hydrogen national development plans, and should be consistent with the gradual and flexible regulatory approach envisaged for the hydrogen market.
- Regulators continue to call for stronger links between the electricity and gas sectors, asking for scenarios for network development planning to be developed jointly for electricity and gas in a neutral way.
- Network tariffs should be cost-reflective and should be applied to comparable activities across the electricity and gas sectors in a technologically neutral way. They should not be used to subsidise technologies, activities or users. Furthermore, the distortive effects of taxes and levies should be avoided.
- Regulators agree that it could be useful to establish a comprehensive EU-level legislative framework for cybersecurity for the energy sector, covering electricity, gases (including hydrogen), other energy carriers and the heating sector, given that they face similar cybersecurity challenges.

Feedback to the European Commission on the Methane Emissions Regulation	18 April 2022

- CEER welcomes the Commission's proposal, in particular the need to ensure an independent body is responsible for verifying the data provided. Such verification should be assigned to an independent entity, such as a third-party auditing company or an independent agency of the EU (for data referring to the EU domain).

• NRAs should be given unlimited direct access to all reported data for all reporting entities. If this is not possible, a second-best solution would be to grant at least unlimited direct access to all data for all entities from the NRA's Member State. • Regulators believe there is a clear need to establish a consistent ("harmonised") methodology for the quantification of methane emissions across the EU, complemented with an equally consistent and transparent system of quantified data reporting, storage, and access. • In order to achieve reasonable consistency and reliable data availability on fugitive emissions across MS, guidance should be provided on minimum technical standards for leak detection and repair (LDAR) programmes. • NRAs should have oversight over the mitigation of methane emissions associated with regulated assets (such as TSOs and DSOs).

ACER-CEER views on the proposal for a regulation amending the SoS and gas storage Regulations	29 April 2022
• Measures must be exceptional, temporary and specifically targeted to the current circumstances. • Intervention should be proportionate to the goals and should avoid distorting the market where it is able to fulfil the adequate level of gas storage. • The EU institutions should find an appropriate balance between top-down and bottom-up approaches. • Filling targets should apply a demand-based rather than capacity-based rationale, combining the collective level with national levels. • For 2022, apply simple but realistic measures, taking into account national specific characteristics and constraints. • For the future (2023 and beyond), there should be a better estimation of storage needs on the basis of several parameters (LNG tanks, diversity of supply, demand seasonality, interconnection capacities, dependence on Russian supplies). • Risk mitigation measures should minimise the use of public funding. • ACER-CEER recommend implementing an EU-wide monitoring of storage filling levels and of prices paid for that fill.	

ACER-CEER Reaction to the European Commission's Hydrogen and Decarbonised Gas Market Package	3 June 2022
Regulators underline the following recommendations that enable future-adaptive framework to secure the decarbonisation of the energy system: • Ensure flexibility to phase in regulation of hydrogen networks by allowing derogations and exemptions, while keeping the 2030 target date. • Ensure that NRAs have a primary role in the governance of the Inter-TSO compensation (ITC) mechanism for tariff discounts and in the financial compensation for cross-border hydrogen networks. • Clarify the scope of "entry-exit systems" to avoid misinterpretations and overregulation of the distribution level. • Reinforce the use of cost-benefit assessments in the processes for gas quality coordination. • Ensure regulatory oversight on hydrogen network development once regulation is fully in place.	

- Restrict the possibility of cross-border cost allocation to regulated hydrogen networks included in national development plans approved by NRAs.
- Put in place alternative models to a CBCA based on proven user needs.
- Mitigate the impact on consumers of mandatory fuel switches and decommissioning.
- Safeguard against potential policy “maladaptations” by ensuring investments deliver cost efficiency and value-for-money for present and future consumers.
- Introduce a link between actual gas consumption and MS storage capacity and other specificities such as LNG availability or demand seasonality when setting filling requirements to ensure security of gas supply.

About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 39 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

More information is available at www.ceer.eu.

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