
CEER Regulatory Benchmarking Workstream Terms of Reference for the Consultancy Project on

Dynamic Regulation

27 July 2021

1. Background

For 2020, CEER's Regulatory Benchmarking Workstream (RBM WS) completed internal work on Dynamic Regulation, which resulted in a short public report that was published on 8 April 2021 (Annex 1). The 2021 deliverable of the workstream will be a "Report on Dynamic Regulation from the national regulatory authorities' (NRAs') Perspective (tools and processes)" which is foreseen as a follow-up work to the 2020 deliverable. Unlike the 2020 deliverable, which was produced by CEER alone, the 2021 deliverable is to be produced with extensive contribution from an external consultant and the finalised and published for the public by CEER.

The main aim of the deliverable is to carry out an assessment of the existing dynamic regulation (DR) tools and different projects running in the Member States of the participating national regulatory authorities (NRAs) and to provide recommendations based on lessons learnt.

In order to make a proper assessment and to evaluate the current DR projects in a professional way, a neutral approach is needed. The consultant should consider the already produced work of CEER on this topic (see [Annex I](#)). Further information is also available on the CEER Dynamic Regulation platform <https://www.ceer.eu/dynamic-regulation> (see also [Annex II](#)).

The CEER approach so far has been:

- CEER internal work on DR leading to a public report (2020, finalised in early 2021)
- CEER ongoing assessments on DR (from consumer and distribution system perspectives)
- Kick off Workshops and series of dedicated workshops
 - Discussion on concrete projects (RBM cases; CEER papers; external (OECD))
- Platform for Exchange on current projects. In order to perform an effective assessment, a platform for exchange of experiences has been established. The platform involves participants from all CEER working groups (WGs) and representatives of energy NRAs with running dynamic regulation projects. The platform is open for participation of relevant stakeholder (within the framework of CEER communication strategy). As noted above, the platform is found at <https://www.ceer.eu/dynamic-regulation>

2. Objectives and scope

The main objectives of this consultancy project are to:

1. List energy DR approaches and projects in EU Member States and where necessary other relevant countries;
2. Assess and compare these approaches and projects; and

3. Propose good practices and recommendations as for the role of NRAs.

The challenge: As there is no one-size-fits-all model for experimenting with innovative products, different types of experiments could be deployed by policy makers, NRAs and other competent bodies to suit their needs. By comparing and assessing different existing tools and examples, best practices should be found. The consultant should focus mainly on dynamic regulation projects in energy sector.

3. Work packages

This section introduces in detail the work packages (WP) for the preparation of this project. The final content and scope of the WPs is to be jointly agreed at the project kick-off meeting. The first WP tasks the consultant to identify a number of projects in EU Member States (and, if judged relevant, other European countries) would be useful to CEER to understand in light of the second WP. The second WP is to derive a list of recommendations/best practices related to DR in light of the criteria below. The third WP proposes how the consultant's deliverable should be presented, in the form of a report containing a description of each innovative/useful DR project per the specifications identified in WP1 and, in the second part of the report, a description and analysis of recommendations per the specifications in WP2.

3.1 WP 1: The identification of Dynamic Regulation approaches and projects

The consultant will identify a number of DR projects (at least five) in EU Member States (and, if judged relevant, other European countries) would be useful to CEER to understand, taking into consideration that regulation must be stable, but not static, and coherent with the fast-changing environment and market evolutions that digitalisation and decarbonisation bring about, whilst continuing to protect the European energy consumers' interests effectively and remaining predictable. The selection should also take into account useful recommendations as per WP2. Annex 1 gives a more in-depth understanding of how CEER views DR so that the consultant can understand the kinds of projects that CEER is looking to be identified in WP1. Where possible, selection of projects should also take into account geographic diversity.

The descriptions of the identified projects should contain the following:

- The name, location and responsible authority for the project
- The subject/purpose of the project
 - Which areas / business models were covered in the project (e.g. flexibility products, dynamic pricing, system integration, hydrogen, quality supply, implementation of other new technologies etc.);
- Which tools have been used;
- What was /is the role of the regulator in the project;
- Which concrete results were achieved;
- What was/is the benefit/impact on consumers;
- What were/are the general pros/cons; and
- What are the challenges?

3.2 WP 2: The identification of recommendations concerning Dynamic Regulation approaches

Recommendations to NRAs should cover the following aspects:

- Which tools the regulators should use in order to:

- enable new business models and innovation
 - ensure consumer interests
 - trigger and intensify the participation of potential candidates in the (pilot) projects/sandboxes
 - ensure compliance with the existing rules/laws
- How the regulatory framework should be adapted
 - What processes should be introduced to
 - incentivise innovation
 - minimize the bureaucratic burdens
 - enhance cooperation with/between stakeholder, consumers and NRAs.

3.3 WP 3: Output form of the consultant's deliverable

The consultant's deliverable will take the form of a report which, in its first part, contains a categorised list of the projects identified in WP1, with each project having a brief but complete description that includes all of the elements requested in WP1. In gathering the descriptions, the consultant may undertake desk research of existing (recent) studies, bilateral interviews and other sources. Where appropriate, the analysis will consider the link to the provisions of the Clean Energy for All Europeans legislative package. The second part of the report will outline and explain recommendations from the identified projects as per WP2, done in a way that is pragmatic and actionable.

4. Description of Tasks

4.1 Overall work approach and role of the consultant

The overall work approach should involve close cooperation between the consultant and the responsible parties for this project: the RBM WS and with certain administrative aspects pertaining to the CEER Secretariat. The project organisation and coordination of individual work packages/activities shall be the responsibility of the consultant.

The results of the consultant's work will be integrated into a final CEER public report (see 4.2, point 3).

4.2 Meetings

The following meetings between the consultant and RBM WS are proposed and shall be considered in the budget:

1. Kick-off meeting in order to agree on the list of projects and pilots to be assessed. To reach a common understanding of scope and subject of the study.
2. Brainstorming sessions
3. Presentation of overall findings prior to finalisation of the consultant's report as an internal input/document. The final CEER report will be based on consultant's input as an external/public document (RBM WS/CEER will be responsible for the final public document). - Hence, **the final consultant's report shall be in a publishable state, although CEER will make changes that it deems fit to create the final public report.**

Unless otherwise communicated, it is expected that the kick-off meeting and brainstorming sessions will be conducted virtually. Exceptional circumstances may necessitate that physical meetings are held instead of videoconference meetings, and it can be decided later if the presentation of overall findings will be held virtually or physically. The location for the physical

meetings shall be Brussels or, subject to agreement between the consultant and RBM WS, any other location possible at comparable cost.

Any other contact between the RBM WS and consultant shall be made by e-mail, telephone conference or video conference.

4.3 Indicative Timeline

For the delivery of this project, the following timing is required:

- ▶ 27 July 2021: Launch call for bids
- ▶ 17 September 2021: Deadline for bids
- ▶ Late September 2021: Notification of selection
- ▶ Early October 2021: Sign contract with selected consultant
- ▶ Early October 2021: Kick-off meeting with RBM WS and the consultant to agree on the list on relevant Member States for the study, ensure a common understanding of scope and purpose of the project. Details of the key dates for the consultant's work to be further discussed and agreed at this meeting as well as some narrowing of the scope of the project.
- ▶ Early November 2021: Brainstorming workshop with RBM WS with the consultant on progress (Brussels or virtual meeting).
- ▶ Early December 2021: initial draft of the report by the consultant for CEER RBM WS review.
- ▶ December 2021: consultant's final report is sent to CEER for evaluation and presentation of the report/results.
- ▶ January 2022: CEER and Consultant agree to any final modifications to consultant's report.

5. Selection of the consultant

Submission of a bid by the consultant implies acceptance of the conditions stipulated in this document and the accompanying Terms and Conditions document. However, CEER's invitation to submit a bid imposes no obligation on CEER to award the contract. CEER shall not be liable for any compensation with respect to tenderers whose bids have not been accepted. Nor shall CEER be so liable if it is decided not to award the contract.

5.1 Requirements for the consultant

5.1.1 Eligibility

The consultant must declare to be independent from the interests of the gas and/or electricity industry and does not entertain any legal and/or corporate relationship with an undertaking in these industries. The declaration shall encompass a statement that the consultant can fulfil the contract independently, free of conflict of interest of any other client-related work and sufficient resources.

Bidding consortia are eligible, subject to general competition rules. Such consortia must specify the company or person responsible for the project (joint representative for conclusion and execution of the contract). The division of work between the members of the consortium shall be outlined in the proposal. If the bidder uses subcontractors to fulfil the contract, the division of work between the bidder and the subcontractors shall be outlined in the proposal also.

5.1.2 Relevant Experience

Bidders and their subcontractors must provide evidence of expertise and experience in the field of energy regulation and energy markets.

This experience and expertise shall be outlined by project references, including detailed scope, client, timing and volume of services executed. Additionally, the relevant qualification of the bidder's or subcontractor's staff assigned to the project shall be provided through CVs.

5.1.3 Project Outline

The consultant shall prepare – **as integral part of its bid** – a project outline that summarises at least:

- General description of their experience in the field of dynamic regulation, innovative solutions in the energy sector, implementation of flexibility products;
- Identification and list of potential dynamic regulation examples and potential number of the projects to be examined
- Identification of some gaps and commonalities
- Identification of some best and misleading practices
- List of Member states which would be in the scope of the analysis,
- Other pertinent information

5.2 Selection Process

The contract will be awarded based on the following criteria and weighting:

Criterion	Weighting
Relevant experience of the applicant	20%
Qualification of applicant/applicant's employees	20%
Provided project outline, approach and specifications	30%
Price	30%

On price, the assignment shall be carried out at a fixed price of not more than €40,000, not including VAT. VAT is a non-recoverable cost to CEER (including on non-Belgian contracts). Given Belgian VAT of 21%, this would mean inclusive of VAT the maximum amount would be €48,400. This amount shall cover all costs for the consultant related to this project (e.g. travelling, potentially attending a CEER event to present the consultation paper, meetings with stakeholders and/or the RBM WS, person-hours, office supplies, telephone bills and any other costs).

6. Confidentiality

All commercial and business secrets, information and data as well as company related matters, data, material, reports, etc. especially all information about the contracting entities retrieved within this tender procedure and obtained within the contract for works and deliverables to be concluded with the consultant must to be handled strictly confidential by the consultant.

The consultant accepts full liability and shall protect CEER against any prohibited disclosure or use of the confidential information by employees or subcontractors of the consultant.

The consultant undertakes to use the confidential information solely and exclusively for this project. Any other use is expressly prohibited, except subject to the prior written consent of CEER.

7. Ownership and Copyrights

The commercial and intellectual property rights in the materials developed as part of the services delivered by the consultant shall be transferred without limitation to the Council of European Energy Regulators (CEER).

8. Applicable Law and Jurisdiction

The contract between CEER and the consultant selected according to section 5.2 shall be governed by and construed in accordance with Belgian law.

9. Contact and Bid Deadline

All communication with regards to the tender procedure, submission of bids and awarding of the contract shall be made in writing transmitted via e-mail. The relevant contact person in the contracting authority shall be:

Mr Charles Esser
CEER Secretary General
Council of European Energy Regulators
Cours Saint-Michel 30a, Box F
1040 Brussels, Belgium
E-mail: charles.esser@ceer.eu
Tel. +32 (0)2 788 73 36

A valid bid must be submitted to the above email address by 17 September 2021.

TOR Annex I

CEER Approach to More Dynamic Regulation

8 April 2021

Following the Bridge to 2025 Conclusions Paper¹, CEER decided in 2018 to re-assess how to address the challenges that energy regulators are facing, particularly in the context of the energy transition. This was done by publicly consulting on a forward-looking 3-year strategy (the “3D Strategy”²) and draft proposals for the 2019 CEER Work Programme, the first year implementing the 3D Strategy.

The core elements of CEER’s current 3D Strategy are **Digitalisation** in the consumer interest; **Decarbonisation** at least cost; and **Dynamic regulation** (hereafter “DR”) for European solutions for adaptive regulation in a fast-changing world. Each of the “Ds” should be considered in conjunction with the other two. In CEER’s view, DR might notably be an efficient tool for decarbonisation and digitalisation that is capable of driving growth and innovation within the energy system.³

Furthermore, in their Bridge Beyond 2025 Conclusions Paper⁴, ACER (the EU Agency for the Cooperation of Energy Regulators) and CEER proposed to provide for an **“EU umbrella” for the sandbox approach**, allowing time-limited derogations with the view to generate information that is useful in the public interest and that there is no significant risk of a material impact on the wider market. The resulting lessons should be shared between National Regulatory Authorities (NRAs) to avoid the need to replicate the pilots in each Member State and to accelerate decisions on whether regulation or legislation needs to be adapted. This note gives an initial look at the use of DR tools amongst NRAs and related considerations.

CEER’s Strategic Objectives include designing effective regulatory oversight and implementing regulatory approaches dynamically for new business models and market actors, which an intelligent use of data (at the same time respectful of privacy principles) can facilitate and accelerate.

CEER considers that **regulation must be stable, but not static**, and coherent with the fast-changing environment and market evolutions that digitalisation and decarbonisation bring about, whilst continuing to protect the European energy consumers’ interests effectively and remaining predictable.

This **need for adaptive regulation** recently has been proven in the course of the implementation of Clean Energy for All Europeans package (CEP), where it became clear that the rules and ways NRAs use to regulate need to evolve to facilitate the changes proposed in the CEP. This is to ensure that consumers will be protected and empowered which will also contribute to the energy system transition and integration.

In other words, DR can be defined as **“adaptive regulation”**, stimulating regulators to be enablers of the adaptation of the energy regulatory framework, in connection with the society-

¹ [EU Agency for the Cooperation of Energy Regulators \(ACER\) A Bridge to 2025 Conclusions Paper](#), 19 September 2014.

² [CEER’s 3D Strategy \(2019-2022\)](#), Ref: C18-BM-124-04, 9 January 2019.

³ Dynamic regulation is also a major element of CEER’s proposed draft strategy for 2022-2025: <https://www.ceer.eu/public-consultation-on-new-strategy>

⁴ [ACER-CEER The Bridge Beyond 2025 Conclusions Paper](#), 19 November 2019.

wide digitalisation trend, smart technologies, decarbonisation policies and decentralisation of energy generation.

Furthermore, CEER considers that there is a need to develop regulatory frameworks that balance the tension between **achieving regulatory goals without discouraging innovation**. In the energy sector, there is a need to have trials for innovative solutions for a future energy system which are, for instance, based on renewable energy, energy efficiency, decarbonisation and which are generally also highly digitised. Regulatory sandboxes, as well as other tools that the regulator can use for fostering innovation as described below, aim at offering temporary spaces in which solutions for technical, economic and regulatory challenges relating to the energy transition can be developed, tested and demonstrated.

In most of Member States, the **existing national legal and regulatory frameworks already allow for the development of innovation and/or incentive regulation**, in particular through tariff regulation and flexibility products. NRAs are continuously looking at and learning from existing tools of DR in other sectors. **NRAs have setup exchanges of information on cross-sectoral issues** (telecoms, transport, postal services, water) which mostly include topics such as prices and tariffs setting, innovative uses of energy, transport data, electric mobility, integration of renewables, fuels prices and market developments, consumer protection issues, digitalisation, cybersecurity, synergies and possibilities of reducing costs of the roll out of networks and energy storage⁵.

In many European countries, national governments and/or NRAs are also defining the goals to be achieved in terms of innovation and adaptive regulation in their strategic plans or orientation frameworks.

NRAs already rely on experimental regulatory tools to test and anticipate future evolutions such as 1) **regulatory sandboxes**, 2) **pilot projects** or 3) **pilot regulations**.

Some NRAs already have regulatory sandbox regimes or pilot projects in place; some others are in the process of setting these up. Pilot projects are put in place to trial on a local basis new and modern solutions (advanced measurement systems, self-consumption, electric vehicles, storage, flexibility, renewable energy sources (RES), etc.) or to contribute, more broadly, to the better functioning of the electricity wholesale market and system operation.

A more comprehensive approach to innovation is at the core of pilot regulations which are new and transitional regulatory frameworks put in place for a limited time frame (a few years) to consolidate experience and learn through these early applications before introducing a new regulatory regime. Pilot regulations are open to all market players willing to deploy innovation consistent with an innovative framework.

It appears that the **major trends driving DR** are: (increasing share of) RES generation, smart technologies such as adaptive thermostats, and other trends e.g. sector coupling, new uses for gas networks and deployment of electric vehicles.

Consumer involvement is key to support innovation and most NRAs take into consideration consumer views through consultations, transparent discussions or even through dedicated task forces or consultation bodies. Where innovation incentives are set through network tariff regulation, one of the objectives is very often to reduce overall costs paid by

⁵ CEER's [Partnership for the Enforcement of European Rights \(PEER\)](#) initiative aims to bring together interested authorities from various sector to share knowledge and exchange information.

consumers, as addressed in the CEER paper on whole system approaches⁶. NRAs are in constant exchanges with stakeholders (i.e. regulated entities and market players) but also with academics, consumer representatives or other authorities (e.g. Think Smartgrids in France).

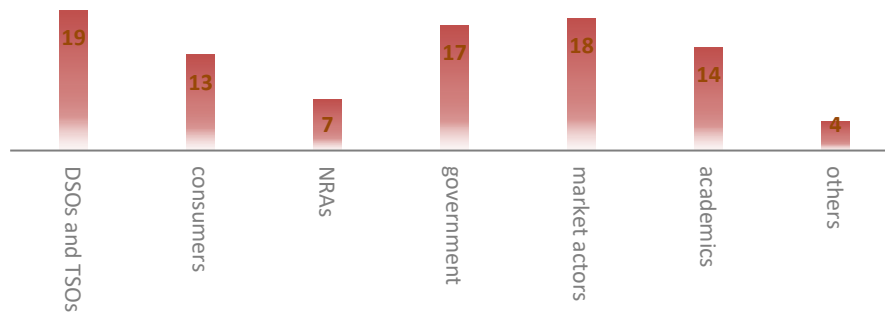


Figure 1 – Main cooperation partners of NRAs in regard to energy sector evolution

The main areas where **DR tools** have been implemented are the tariff structure, the price or revenue controls and smart metering. In many countries, NRAs are already implementing DR tools and four regulators have already implemented regulatory sandboxes. For countries which do not implement regulatory sandboxes, the following tools of DR are commonly used to implement the projects:

- “Classic regulation tools” such as output-based incentive regulation;
- Widening and innovating the participation/consultation of market participants in the process; or
- Pilot projects, pilot regulations and regulatory experiments.

The table below highlights seven examples of regulatory sandboxes and regulatory experiments that have already been put in place.

Country	Example
Austria	The Austrian NRA (E-Control) sets the functional requirements of smart meters in their ordinances and did not put down detailed technical specifications. This enables system operators to define their requirements for smart meter systems and adjust them flexibly according to new developments, e.g. if more efficient solutions become available through advances (such as increasing digitalisation).
France	The French NRA (CRE) and the French Ministry of Ecological and Solidarity Transition can select market participants on which to test innovative products or services with adapted regulatory requirements. The energy-climate law ⁷ allows the NRA to grant derogations from conditions of access to and use of networks and facilities for the experimental deployment of innovative technologies or services for energy transition and smart grids and infrastructure.

⁶ [CEER Paper on Whole System Approaches](#), Ref: C19-DS-58-03, 30 June 2020.

⁷ [LOI n° 2019-1147 du 8 novembre 2019 relative à l'énergie et au climat](#) (Article 61), 8 November 2019.

Country	Example
Germany	<p>The digital Agenda for the Energy Transition (“SINTEG”) combines digitisation and experimentation. A key goal within the SINTEG programme is to obtain practical experience and to use this to enhance the regulatory framework. The Federal Government has, therefore, adopted an ordinance that provides a temporary framework for experimenting (SINTEG ordinance⁸).</p>
Italy	<p>In Italy two recent initiatives of DR have been launched by the NRA (ARERA):</p> <ol style="list-style-type: none"> 1) The pilot regulation on flexibility services (UVAM) aims at testing the voluntary participation in the ancillary services market (MSD) of small-scale and RES production units as well as flexible consumption units, including storage, currently not enabled to that market, on an aggregate basis. These constitute the Mixed Enabled Virtual Units (UVAM). The pilot regulation aims at testing to what extent widespread generation and final customers are really capable of providing flexibility resources on an aggregate basis. The results of the pilot regulation will be considered for subsequent regulatory innovation initiatives; 2) Regulatory experiments: Distribution System Operators (DSOs) can present a “regulatory experiment”, i.e. their own proposal for a new incentive scheme. In the regulatory experiment, the DSO may request a waiver to any of the several aspects of the incentive regulation (including valuation of energy not supplied, algorithms for calculating rewards and penalties, etc.), except the final target of continuity requested at the end of the four-year period of reference. The proposals submitted by DSOs are scrutinised and need to be approved (even with amendments) by the regulator. In case the “regulatory experiment” is approved, DSOs are relieved from the ordinary incentive regulation for four years.
Lithuania	<p>The Energy Innovation Pilot Environment (pilot environment) was introduced following amendments of the National Law on Energy adopted in April 2020, which includes new definitions for energy innovations. With these amendments, the Lithuanian NRA (VERT) will be responsible for the preparation of the procedures for the operation in the pilot environment, for the determination of criteria for definition of energy innovation, and for the measures incentivising innovations. Innovators will be allowed to operate in that pilot environment where there would be: no regulation of energy activities implementing innovation; exemption from sanctions; and guaranteed incentivising measures. The objective is to assess the potential impact of energy innovation on consumers and the energy sector, in order to identify potential regulatory deficiencies in energy innovation.</p>

⁸ [SINTEG-Verordnung](#), 14 June 2017.

Country	Example
The Netherlands	In the Netherlands, a regulatory sandbox regime is in place to allow communities and homeowner associations to apply for legal exemptions. The request needs to be made by those actors but it can include DSOs. The sandbox application is assessed by the Netherlands Enterprise Agency (part of the Ministry of Economic Affairs) and the Dutch NRA (ACM).
UK	In 2017, the British NRA (Ofgem) launched its Innovation Sandbox Service as a means of experimenting with ways of enabling innovation which do not readily fit with the rulebook. It plays a role in supporting innovators in launching new low-carbon products and services. The sandbox service is aimed at helping innovators that want to offer something different to energy consumers: this can be a new product, service, business model or way of doing something. It can support innovators in undertaking trials or entering the market.

Table 1 – National examples of regulatory sandboxes and regulatory experiments

CEER notes that in 2021, it is developing a report on dynamic regulation from the NRAs' perspective (tools and processes). This report will give a more in-depth look at many of the issues addressed in a brief and introductory way in this present document.

TOR ANNEX II



Dynamic Regulation Platform online!



CEER fit for innovation through Dynamic Regulation



CEER documents

- CEER Approach to More Dynamic Regulation, C21-RBM-28-04, 08 April
- CEER Status Review Report on Regulatory Frameworks for Innovation in
- CEER Paper on Whole System Approaches, Ref: C19-DS-58-03, 30 June
- The Bridge Beyond 2025 Conclusions Paper, 19 November 2019

- RBM deliverable to set up a DR Platform to:

- ▶ Inform on running DR projects
- ▶ Monitor the progress of running DR projects and up date the report;
- ▶ Exchange with OECD, COM on the DR projects;
- ▶ Involve stakeholders and get their feedback;
- ▶ Pool all the work on this subject from all CEER's WG.