

ACER 

European Union Agency for the Cooperation
of Energy Regulators

ACER update to the ECRB

Covering BoRs 102 - 103

Dennis Hesseling, ACER representative to the ECRB

30 November 2021, Athens

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1. Updates

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3. General

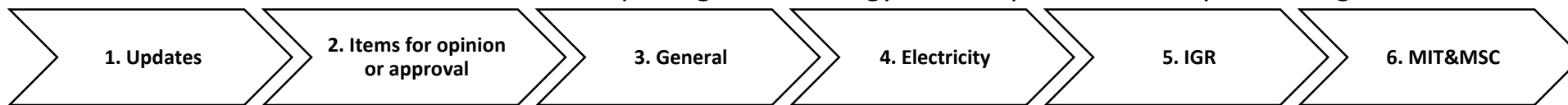
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Main publications:

- **17/11:** ACER reports on implementation of the Inter-Transmission System Operator Compensation mechanism in 2020
- **15/11:** [ACER submits to the EC its preliminary assessment of Europe's high energy prices and the current wholesale electricity market design](#)
- **15/11:** ACER decides on the long-term capacity calculation methodology in 13 EU Member States
- **11/11:** Implementation of the Grid Connection Network Codes: further actions needed to ensure full compliance
- **10/11:** [ACER and Energy Community Secretariat call for regional action to improve access to gas transmission capacity at EU-Energy Community borders and within the Energy Community](#)
- **9/11:** Energy Retail Markets Monitoring in 2020: smart meter roll out continues to vary across the EU
- **4/11:** Electricity Wholesale Markets Monitoring in 2020: further action needed on the binding 70% target, barriers, market coupling and security of supply
- **3/11:** Trans-European Energy Infrastructure: selection of Projects of Common Interest moving towards decarbonisation targets
- **28/10:** ACER to request further information to reinforce the monitoring of the European single intraday coupling market
- **27/10:** ACER welcomes new members and alternates of its Board of Appeal
- **22/10:** ACER and ENTSO-E investigate the 24 July 2021 electricity system separation in Spain, Portugal and parts of France
- **18/10:** ACER withdraws its decision defining the system operation regions
- **13/10:** ACER consults on the amendment of the EU electricity balancing pricing methodology
- **13/10:** Europe's high energy prices: ACER looks at the drivers, outlook and policy considerations
- **7/10:** ACER approves principles for sharing costs of ensuring firmness and remuneration of long-term transmission rights in the EU
- **16/9:** ACER to decide on the amendment of the common pricing methodology for European electricity balancing markets



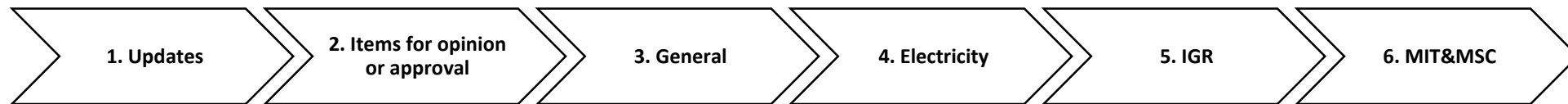
2. Items for opinion, endorsement, agreement or approval

Appointment of the AGWG Vice Chairs

According to the rules of procedure of ACER Working Groups, the Director and the BoR jointly appoint one or more Vice-Chairpersons of an ACER Working Group after consulting the Chairperson.

Mr Tom Maes (CREG) and Mr Benoît Esnault (CRE) expressed an interest in the position.

Following consultation of the AGWG Chair, the BoR and the Director agreed on their appointment as AGWG Vice-Chairs on 22 September.



2. Items for opinion, endorsement, agreement or approval

ACER Decision on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights

Background

Pursuant to Article 4(1) and (6)(g) and Article 61(3) of Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (the FCA Regulation), all transmission system operators were required to jointly develop a methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights (FRC methodology).

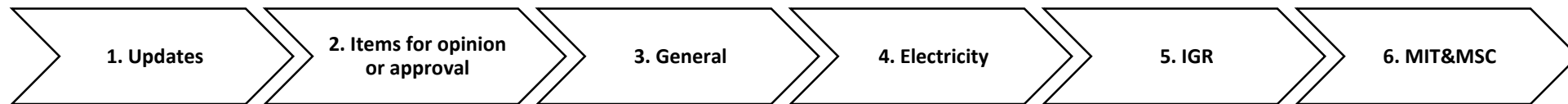
By Decision No 25/2020 of 23 October 2020 on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights, ACER approved the FRC methodology proposed by all TSOs pursuant to Article 5(2) of Regulation (EU) 2019/942, with some amendments.

Decision No 25/2020 was subsequently appealed to the ACER Board of Appeal (BoA), and the latter remitted the case to the ACER Director by Decision A-009-2020 of 19 April 2021. The BoA found that if the flow-based approach for capacity allocation is used, the decision does not guarantee consistency with the congestion income distribution methodology, as required by the FCA Regulation.

The Decision

The present Decision replaces Decision 25/2020 and addresses the consistency point. The AEWG advice was circulated along with the draft Decision.

No proposal for amendment/comment was received by the deadline of 15 September and the BoR issued a favourable opinion on 22 September.



2. Items for opinion, endorsement, agreement or approval

Withdrawal of ACER Decision on the definition of System Operation Regions

Background

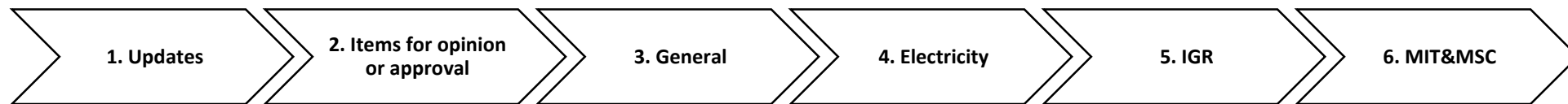
On 4 June 2020, ENTSO-E introduced an appeal before the Board of Appeal against ACER Decision 10/2020 of 6 April 2020 on the definition of system operation regions (SOR). In September 2020, the Board of Appeal decided to remit the case to the Director due to insufficient reasoning.

Decision 08/2021 of 29 June 2021 replaced Decision 10/2020, explaining the reasoning behind ACER changes regarding the proposed South West Europe (SWE) and Greece-Italy (GRIT) SORs, further detailing the application of Article 36(1) requirements, and setting out additional reasoning regarding the analysis of different elements of grid topology and changes resulting from the EU-UK Trade Cooperation Agreement. This Decision 08/2021 was in turn appealed (case A-012-2021).

The Decision

The decision to withdraw Decision 08/2021 (Withdrawal Decision) follows the finding by ACER that the principles of good administration (access to the file) were not sufficiently respected during the administrative procedure.

Given the urgency, the BoR agreed to issue its opinion on the Withdrawal Decision by way of electronic procedure (EP). The draft Withdrawal Decision and the AEWG advice were circulated. The BoR EP was conducted in two rounds ending 13 October 2021. **During the first round, no proposal for amendments/comments was received. The BoR issued a favourable opinion in the second round.**



2. Items for opinion, endorsement, agreement or approval

ACER opinions on draft PCI lists (electricity & gas)

Background

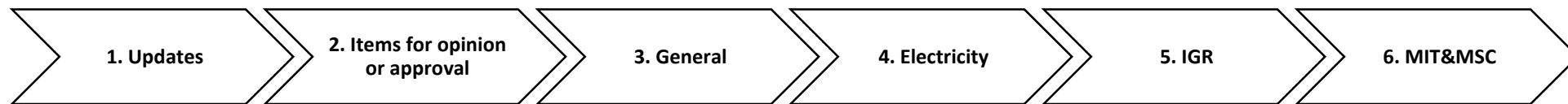
According to Article 3 of Regulation 347/2013, a Union list of Projects of Common Interest (PCIs) shall be established every two years, on the basis of the regional lists adopted by the decision-making bodies of the Regional Groups and submitted to ACER six months prior. According to Annex III.2.7 of the same, the NRAs and if necessary, ACER shall check the consistent application of the criteria and cost-benefit analysis (CBA) methodology and evaluate the cross-border relevance of the PCIs.

On 29 July 2021, the European Commission submitted the draft regional lists of proposed electricity and gas PCIs for opinion to be issued within 3 months (i.e. by 29 October).

The opinions

The opinions on electricity and gas PCI projects, circulated along with the AWG advices, state that ACER is not able to confirm the consistent application of the criteria in Regulation 347/2013 and the cost-benefit analysis to all candidate projects notably due to transparency and methodology concerns.

No proposal for comment/amendment was submitted by the deadline of 20 October and the BoR issued a favourable opinion on 27 October.



2. Items for opinion, endorsement, agreement or approval

ACER decision on the Core common capacity calculation methodology for long-term timeframes

Background

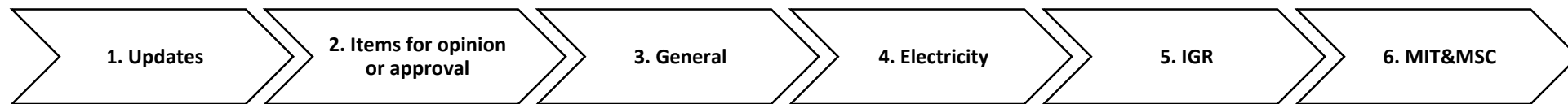
The FCA Regulation sets out requirements for cross-zonal capacity allocation and congestion management in the long-term time frame in electricity. Pursuant to Article 4(1), 4(7)(a) and Article 10 of the FCA Regulation, TSOs of each capacity calculation region (CCR) are required to jointly develop a proposal for a common capacity calculation methodology (CCM) for long-term time frames within their respective region and submit it to the regulatory authorities of their region for approval within six months of receipt.

Failing agreement, all regulatory authorities of the Core CCR requested that ACER adopt a decision on the proposal for the long-term CCM submitted by the TSOs of the Core CCR. The deadline for the decision was 3 November.

The Decision

The draft decision and AEWG advice were circulated and by the deadline of 20 October, 3 proposals for amendments were submitted. While none of them were adopted, given the large support expressed in favour of one of the amendments, the Director decided to submit a revised proposal for BoR favourable opinion by way of an electronic procedure (EP).

The BoR EP was conducted in two rounds ending 3 November 2021. During the first round, no proposal for amendment/comment was received. The BoR issued a favourable opinion in the second round.



2. Items for opinion, endorsement, agreement or approval

ENTSO-E's Summer Outlook 2021

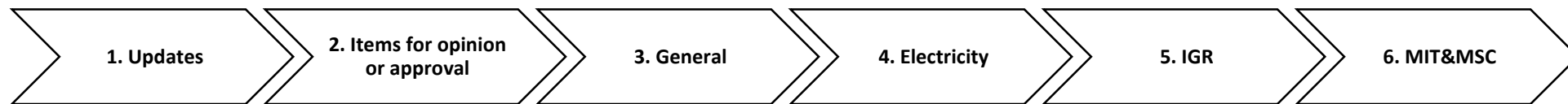
Background

This opinion concerns the seasonal adequacy outlook report for summer 2021 as well as a review of the main events during the 2020/21 winter season published by ENTSO-E on 31 May 2020 and submitted to ACER on 7 June 2021 (the latter on a voluntary basis). The seasonal adequacy assessments are to be carried out in line with the methodology for short-term and seasonal adequacy assessments (the STSAA methodology) and include a winter and a summer adequacy assessment (Article 9(2) of Regulation (EU) 2019/941). ACER may provide opinions on ENTSO-E's seasonal adequacy assessments, taking into account the objectives of non-discrimination, effective competition and efficient and secure functioning of the internal market for electricity (Article 4(3)(b) of Regulation (EU) 2019/943).

The opinion

ACER considered that the documents were broadly consistent with the above objectives. The Summer Outlook 2021 represents an incremental improvement compared to the previous seasonal assessment. However, ENTSO-E failed to implement the STSAA methodology within the required timeframe (by 6 March 2021) and the opinion invites ENTSO-E to duly consider the recommendations set out therein. The AEWG advice was also circulated.

No proposal for comment/amendment was submitted by the deadline of 20 October and the BoR issued a favourable opinion on 27 October.



2. Items for opinion, endorsement, agreement or approval

Position Paper on Gas Market Decarbonisation – main messages

Background

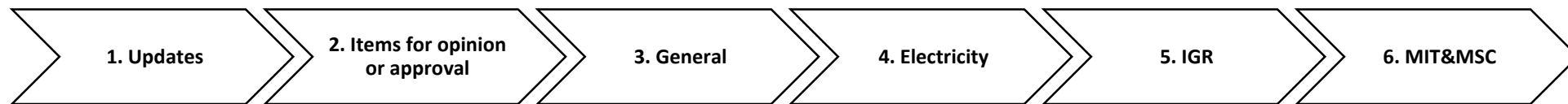
The EC proposal on the hydrogen and decarbonised gas market package is expected in mid-December. It concerns the revision of the Gas Directive 2009/73 and Gas Regulation 715/2009 in line with the Green Deal ambition to decarbonise the EU gas sector and achieve climate neutrality by 2050, building on the Hydrogen and Energy System Integration strategies.

The ACER - CEER position paper considers the core elements of market design for a decarbonised European gas market and members agreed to progress the drafting in two stages: (i) the main messages to be approved at the 103rd BoR, followed by (ii) the approval of the position paper at the 104th BoR.

The main messages revolve around:

- Enabling gradual and flexible regulation for hydrogen
- Ensuring a level playing field in a decarbonised and integrated energy system
- Empowering and protecting consumers for the energy transition

The main messages were endorsed by the BoR by way of an electronic procedure conducted in two rounds ending 5 November 2021.



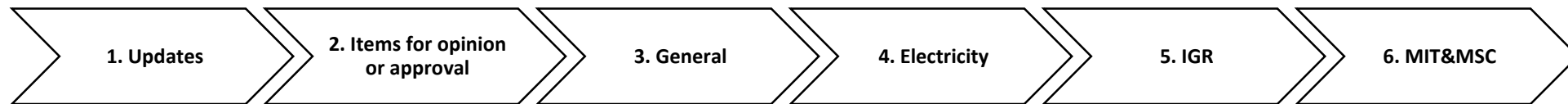
2. Items for opinion, endorsement, agreement or approval

ACER Decision on the harmonised allocation rules

On 25 June 2021, ACER received the all TSOs' proposal to amend the harmonised allocation rules for long-term transmission rights (LTTR). These rules ensure a transparent and non-discriminatory capacity allocation of long-term transmission rights to all market participants.

It was agreed with all TSOs that ACER will issue its decision by the end of November, so as to allow the application of the new rules to the yearly LTTR auctions to take place in December 2021.

To meet the deadline, following discussion at the 103rd BoR, members agreed to the use of the electronic procedure, which was conducted in 2 rounds ending 19 November. No proposal for comment/amendment was received in the first round, and the BoR issued its favourable opinion in the second round.



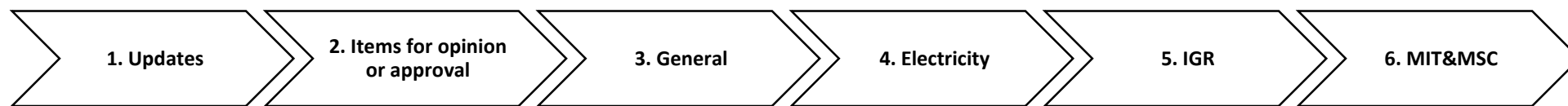
Report on Case C-718/18 Commission v Germany

On 2 September 2021, the European Court handed down its judgment in Case C-718/18 Commission v Germany, available here: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0718>.

Under EU law, NRAs have reserved powers inter alia to define or approve tariffs and their methodologies as well as the power to define or approve the methodologies used to calculate or establish the terms and conditions for connection and access to national networks.

According to the German Energy Act, the Federal Government has the competence to fix transmission and distribution tariffs, and to determine the conditions for balancing services. Additionally, the Federal Government issues detailed sets of instructions addressed to the BundesNetzAgentur on the exercise of its regulatory powers. The Court held that this regime does not comply with the concept of an independent NRA, and that the German legislator had not correctly transposed the relevant provisions of the EU Electricity Directive and the EU Natural Gas Directive.

Members discussed the findings of the Court and the key issue of NRA independence.



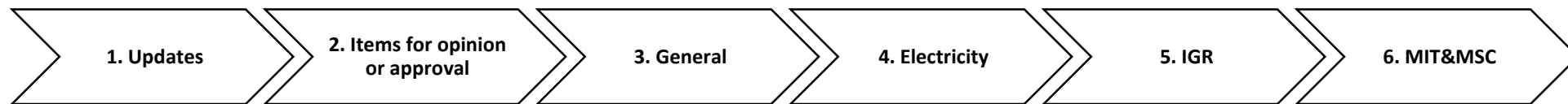
The surge in energy prices

At the 102nd BoR and the Eurogroup meeting of 4 October, ACER presented the drivers of the recent surge in energy prices, the outlook and policy implications (summarised in the ACER note published on 13 October).

On 13 October, the Commission adopted a Communication on Energy Prices, which includes a “toolbox” that the EU and its Member States can use to address the immediate impact of current prices increases, and further strengthen resilience against future shocks. Short-term national measures include emergency income support to households, state aid for companies, and targeted tax reductions. The Commission will also support investments in renewable energy and energy efficiency; examine possible measures on energy storage and purchasing of gas reserves; and assess the current electricity market design. This Communication tasked ACER to:

- assess the benefits and drawbacks of the current wholesale electricity market design, among others its capacity to address situations of extreme price volatility in the gas markets and available measures to reduce such situations, while ensuring a cost effective transition towards a net zero energy system, and to propose recommendations by April 2022, which the Commission will assess for follow-up as appropriate; and
- prepare a preliminary assessment of the situation in the electricity market: this assessment was submitted to the EC on 15 November and complements the note of 13 October with analysis (based on latest data) on: the relatively uneven electricity price impacts across Member States; the impact of the move towards more spot pricing of gas in Europe; the key characteristics of the current electricity market design and alternative market design approaches; and an initial outline of the April assessment.

Members further discussed actions being taken at European and national levels at the 103rd BoR.



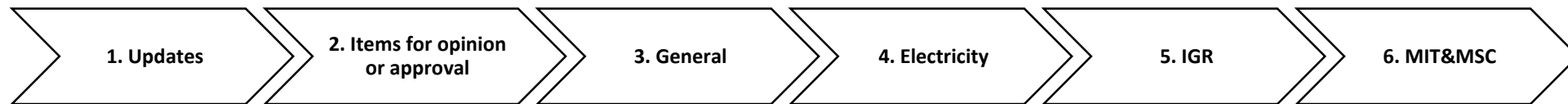
10th Market Monitoring Report –Electricity Wholesale Market volume

The Electricity Wholesale Market Monitoring Report was presented at the 103rd BoR for discussion.

This volume contains novel data on barriers to price formation and entry and participation of new and small market players and a first assessment of interruptibility schemes. It also reiterates recommendations to:

- finalise the implementation of the single day-ahead and single intraday market coupling;
- gradually increase the level of cross-zonal capacity (still far from the 70% binding target);
- remove all types of wholesale price restrictions, reviewing requirements related to prequalification and aggregation and urgently finalise the transposition of the Electricity Directive; and
- establish an appropriate reliability standard, perform sound adequacy assessments at the EU and national levels and only adopt capacity mechanisms where resource adequacy issues are forecasted.

The Electricity Wholesale Market Monitoring Report was also presented at the ACER-CEER webinar of 5 November, and will be presented to the EP ITRE Committee on 6 December.

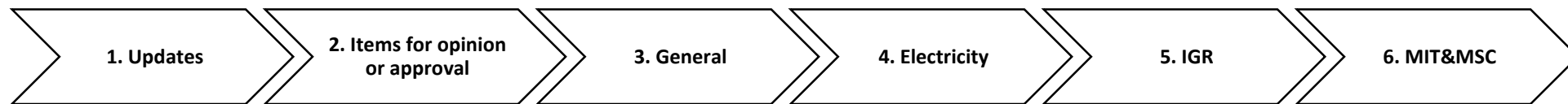


European Resource Adequacy Assessment (ERAA) 2021

The ACER Director and the BoR Chair sent a letter to ENTSO-E in July outlining their concerns in respect of ERAA 2021 and requesting that the minimum expectations be met.

ACER is also concerned about long-term ERAA implementation, notably the process (which lacks transparency and the opportunity for stakeholders to influence it) and the political implications of an ERAA that is not fit for purpose.

At the 102nd and 103rd BoRs meetings, members discussed the way forward for ERAA 2021 and how to ensure oversight of national resource adequacy assessments in line with Article 24(3) of the Electricity Regulation.



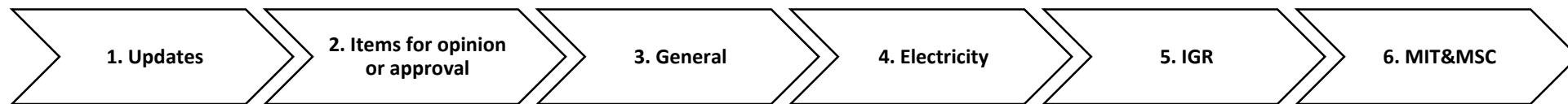
10th Market Monitoring Report –Retail and Consumer Protection volume

The Retail and Consumer Protection volume of the 10th Market Monitoring Report was presented at the 103rd BoR for discussion. The Clean Energy Package places an additional focus on the role of the consumer in the transition and opens up opportunities for the energy consumer, which are examined in this report along with traditional retail market and consumer protection metrics and the impact of Covid-19 on energy consumers.

On average, energy retail prices decreased in 2020; however, there has been a significant rebound in energy demand, which is resulting in significantly higher prices for energy consumers in 2021. 2020 and 2021 are extreme price years, which might teach us some key lessons:

- in extreme situations, extraordinary measures are needed to shield vulnerable parts of the population from unexpected economic impacts;
- careful balance to be struck between protecting vulnerable groups against dramatic price rises whilst enabling price signals to encourage efficient consumption; and
- dynamic price contracts can offer significant benefits for the individual customer and for the wider energy system. On the other hand, they increase consumers' exposure to wholesale price volatility, which needs to be recognised. The balance of risk placed on consumers versus suppliers should be examined.

The Retail and Consumer Protection volume was also presented at the ACER-CEER webinar on 10 November 2021, and will be presented to the EP ITRE Committee on 6 December.



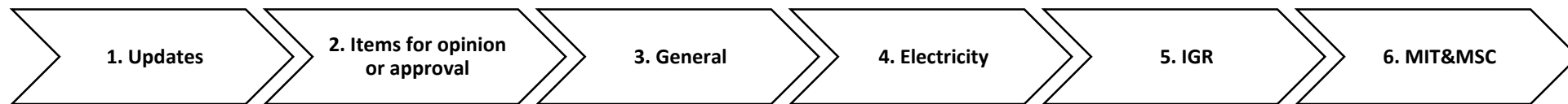
2nd Monitoring Report on Incremental Capacity Projects

The 2nd Monitoring Report on Incremental Capacity Projects contains findings on the second EU-wide incremental-capacity-process cycle that ran from July 2019 to July 2021. Through this report, ACER monitors the process to ensure it allows for greater interconnectivity and a better functioning of the internal gas market without burdening the existing network users.

The analysis showed that, despite that TSOs found significant non-binding interest from the market on gas networks expansion (in about 1/3 of the assessed market borders), the market was not willing to convert such interest into binding contracts that would pay for the capacity increase. As a consequence, no new capacity was developed by the incremental auctions in the latest cycle (2019-2021). This outcome can be explained by:

- the maturity and saturation of the gas transmission capacity's market,
- market players factoring in the European Union's and national climate and energy policies in forecasting the evolution of the gas market, or
- the market finding unattractive the current access conditions to incremental capacity.

ACER stresses the importance of having a network expansion based on robust demand indications to ensure the overall efficiency of the incremental process. This is particularly key in the current gas market, and in view of achieving the European Union's climate and energy policy objectives.



REMIT strategy

The ACER REMIT Committee Co-Chairs presented a strategic update on a number of key REMIT topics:

- Soaring EU energy wholesale market
- Increasing data volume and data quality issues
- New market developments and inflexible framework
- Central Reporting Point with limited regulatory powers and little analytical manpower
- Decentralised enforcement model
- Retaining and recruiting for in-depth expertise

