

DECISION No 03/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS
of 25 February 2022

on the amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 5(2)(b) and Article 5(6) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(1), Article 5(2)(f) and Article 6(3) thereof,

Having regard to the outcome of the consultation with the respective regulatory authorities and transmission system operators ('TSOs') and the European Network of Transmission System Operators for Electricity ('ENTSO-E'),

Having regard to the outcome of the consultation with ACER's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 26 January 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 312, 28.11.2017, p. 6.

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 ('EB Regulation') lays down a range of requirements for electricity balancing, platforms for the exchange of balancing energy as well as pricing and settlement of balancing energy. In particular, Article 30(1) of the EB Regulation requires all TSOs to develop a proposal for a methodology to determine prices for the balancing energy that results from the activation of balancing energy bids for the frequency restoration process pursuant to Articles 143 and 147 of Commission Regulation (EU) 2017/1485, and the reserve replacement process pursuant to Article 144 and Article 148 of the same Regulation ('pricing methodology'). Pursuant to Article 30(3) of the EB Regulation, the pricing methodology must also include a methodology for pricing of cross-zonal capacity used for exchange of balancing energy or for operating the imbalance netting process.
- (2) In 2019, all TSOs developed a proposal for the pricing methodology, and submitted it to all the regulatory authorities, which, due to a lack of agreement between them, ultimately referred it to ACER for decision. On 24 January 2020, ACER approved the pricing methodology.³
- (3) Pursuant to Article 6(3) in joint reading with Article 5(2)(f) of the EB Regulation, all TSOs may propose amendments to the pricing methodology.
- (4) Since the entry into force of Regulation (EU) 2019/943, in order to streamline the regulatory approval process, Union-wide terms and conditions or methodologies that are developed under the network codes and guidelines (such as the pricing methodology), and any amendments thereof, are now directly submitted to ACER for approval.⁴
- (5) Pursuant to Article 30(2) of the EB Regulation, in case TSOs identify that technical price limits are needed for efficient functioning of the market, they may jointly develop, as part of the proposal for the pricing methodology, a proposal for harmonised maximum and minimum balancing energy prices, including bidding and clearing prices, to be applied in all scheduling areas.
- (6) Accordingly, on 26 August 2021, ENTSO-E, on behalf of all TSOs, submitted to ACER a proposal for amendment to the pricing methodology ('Proposal').
- (7) This Decision is issued following ACER's review and amendment of the Proposal, and includes the following annexes:

Annex I sets out the amendment to the pricing methodology, as amended and approved by ACER.

³ [Annex I](#) to [ACER Decision 01/2020](#) of 24 January 2020.

⁴ Article 5(2)(b) of Regulation (EU) 2019/942.

- Annex Ia provides a track-changed version of the Proposal, reflecting ACER's amendments, for information.
- Annex II provides a summary of responses to ACER's public consultation on the Proposal, for information.

2. PROCEDURE

- (8) On 26 August 2021, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval.
- (9) Between 13 October and 10 November 2021, ACER publicly consulted on the Proposal (see section 5.1).
- (10) Between 16 September 2021 and 22 November 2021, ACER engaged in discussions with the TSOs and regulatory authorities. These discussions concerned ACER's assessment described in section 6 and involved numerous conference calls and exchanges of documents, allowing ACER to gather information and form its preliminary position on the Proposal.
- (11) Between 22 November and 6 December 2021, ACER consulted all TSOs, ENTSO-E and the regulatory authorities on its preliminary position, by sharing an updated version of the Proposal setting out its suggested amendments and reasoning for these amendments. The consulted parties provided written comments which are summarised in section 5.2. ACER also held oral hearings with CRE and CREG on 1 and 2 December 2021.
- (12) ACER has considered all the written and oral comments on its preliminary position. Following this process, ACER has introduced further amendments to the Proposal to take into account some issues raised by the consulted parties.
- (13) The AEWG was consulted between 14 December 2021 and 3 January 2022, and provided its advice on 27 December 2021 (see section 5.3).
- (14) On 26 January 2022, ACER's BoR issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (15) Pursuant to Article 5(2)(b) of Regulation (EU) 2019/942, ACER shall approve proposals for common terms and conditions or methodologies for the implementation of those network codes and guidelines adopted before 4 July 2019 and which require the approval of all regulatory authorities.
- (16) Pursuant to Article 5(2)(f) of the EB Regulation, which has been adopted as a guideline before 4 July 2019, the proposal for the pricing methodology, and any amendments thereof, shall be subject to approval by ACER.

- (17) Pursuant to the second sentence of Article 6(3) in joint reading with Article 5(2)(f), TSOs responsible for developing the proposal for the pricing methodology (i.e. all TSOs) may propose amendments to this methodology to ACER.
- (18) ACER, before approving the proposal for amendment to the pricing methodology, shall revise it where necessary, after consulting the respective TSOs and ENTSO-E, in order to ensure that it is in line with the purpose of the EB Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.⁵
- (19) Since ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval, ACER is competent to decide on the Proposal based on Article 5(2)(b) of Regulation (EU) 2019/942 as well as Article 5(2)(f) in joint reading with Article 6(3) of the EB Regulation.

4. SUMMARY OF THE SUBMISSION

- (20) The submission of 26 August 2021 consisted of a letter from ENTSO-E and the following annexes:

Annex I	‘External study’	Justification and Specification of Maximum and Minimum Balancing Energy Prices Report commissioned by ENTSO-E, May 2021
Annex II	‘Explanatory document’	Explanatory document on proposal for amending the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process
Annex III	‘Proposal’	Amendment of methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing
Annex IV		ENTSO-E’s answer to the comments received during the public consultation on all TSOs’ pricing methodology amendment in accordance with Article 30(1) of Commission Regulation (EU)

⁵ Pursuant to Article 5(1) in joint reading with Article 5(2)(f) of the EB Regulation as well as Article 5(6) in joint reading with Article 5(2)(b) of Regulation (EU) 2019/943.

Annex V

2017/2195 of 23 November 2017 establishing a
guideline on electricity balancing, 26 August 2021⁶
List of the TSOs on behalf of which ENTSO-E
submitted the Proposal

(21) The Proposal (Annex III) consists of the following elements:

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|-----------|---|
| Whereas | describes the expected impact of the Proposal on the objectives of the EB Regulation and Regulation (EU) 2019/943 ('Electricity Regulation') ⁷ ; |
| Article 1 | General Principles
outlines the proposed amendments to Article 3 of the pricing methodology setting out general principles for determining the prices for the balancing energy that results from the activation of balancing energy bids for the frequency restoration and the reserve replacement processes; |
| Article 2 | Implementation Timeline
sets out the implementation timeline for the Proposal; |
| Article 3 | Publication of the Amendment
relates to the publication of the Proposal; |
| Article 4 | Language
relates to the language of the Proposal; |

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

⁶ Marked as confidential

⁷ OJ L 158, 14.6.2019, p. 54.

5.1. Public consultation

(22) Annex II to this Decision summarises all comments received in the consultation and provides ACER's responses to these comments. Stakeholders' responses are published on ACER's consultation page.⁸

5.2. Consultation of all TSOs, ENTSO-E and regulatory authorities

(23) ACER worked closely with the TSOs and the regulatory authorities in assessing the merits of the Proposal. In particular, ACER aimed to understand the need for lowering the technical price limit and discussed a number of possible approaches in this respect.

(24) ACER consulted all TSOs, ENTSO-E and the regulatory authorities on its preliminary position, which included the following key amendments proposed by ACER:

(a) No change to adopted technical price limits of 99,999 €/MWh and -99,999 €/MWh pursuant to the ACER decision 01/2020.

(b) An introduction of transitional price limits during the transitory period of 48 months from the implementation date of each of the European balancing platforms in accordance with Articles 19, 20, 21 and 22 of the EB Regulation ('European platforms');

(c) For the first 24-month period of operating the European platforms, transitory price limits were proposed to be introduced at 15,000 €/MWh and -15,000 €/MWh, and for the second 24-month period at 22,940 €/MWh and -22,940 €/MWh;

(d) An introduction of additional reporting requirements during the transitory period.

(25) The following Recitals provide a summary⁹ of the key comments on ACER's preliminary position, submitted by the consulted parties. Section 6.2 discusses these and additional comments in more detail, in the context of ACER's assessment.

(26) ENTSO-E, on behalf of all TSOs, submitted a joint all TSOs' response to ACER's preliminary position. In addition, ACER received written comments from the following regulatory authorities:

(a) DUR (Denmark);

(b) ARERA (Italy);

⁸ PC/2021/E/09, see ACER's consultation page:

https://documents.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2021_E_09.aspx

⁹ This is ACER's summary of key concerns and not to be considered a complete representation of the comments received.

- (c) E-CONTROL (Austria);
 - (d) ILR (Luxembourg);
 - (e) CRE (France);
 - (f) CREG (Belgium);
 - (g) ACM (Netherlands);
 - (h) CNMC (Spain);
 - (i) BNetzA (Germany);
 - (j) NVE-RME (Norway);
 - (k) URSO (Slovakia);
- (27) DUR provided their concerns regarding the existing technical price limit of 99,999 €/MWh and -99,999 €/MWh and proposed to set the new technical price limit to the highest Value of Lost Load ('VoLL') among Member States or slightly higher.
- (28) ARERA also provided their concerns regarding the existing technical price limit of 99,999 €/MWh and -99,999 €/MWh and proposed that each TSO shall be able to express their willingness to pay in the European platforms by allowing elastic demand up to the VoLL. This should in their view be addressed in the Implementation Frameworks of the respective European platforms in accordance with Articles 20 and 21 of the EB Regulation. They support to relate the maximum technical price limit after the transitional period to the maximum VoLL.
- (29) Similar to DUR's and ARERA's response, E-CONTROL raised concern with existing technical price limits of 99,999 €/MWh and -99,999 €/MWh, and proposed to set the lower technical price limits permanently.
- (30) ILR proposed wording improvements to the Proposal.
- (31) During the oral hearing with ACER, CRE suggested to accept all TSOs' proposal for the new technical price limit of 15,000 €/MWh and -15,000 €/MWh and keep it for an indefinite period of time, and only raise it following an increase of the harmonised maximum clearing price for single intraday coupling ('ID limit') in accordance with Article 54(1) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation').¹⁰
- (32) According to CRE, the liquidity of balancing markets is by nature low which provides opportunities for balancing service providers ('BSPs') to bid unreasonably high prices. For this reason, CRE supports a permanent technical price limit which follows the ID limit. In addition to the adjustment mechanism linked to the ID limit, CRE would support

¹⁰ OJ L 197, 25.7.2015, p. 24.

an adjustment mechanism linked to balancing energy market, as long as it is designed in a way that an increase is stopped in case there is a reasonable concern about market manipulation, in order to allow time for an investigation.

- (33) During the oral hearing with ACER, CREG proposed to set the technical price limit to 10,000 €/MWh, which is only slightly above the ID limit, in order to avoid situations where BSPs withhold their capacity from the market with a significantly lower technical price limit (e.g. intraday market) to keep it for the market with a significantly higher technical price limit (e.g. balancing market).
- (34) ACM supported ACER's amendments to the Proposal.
- (35) CNMC objected to ACER's amendments and supported the introduction of a permanent technical price limit, which should be set as close as possible to the maximum and minimum ID limit.
- (36) BNetzA expressed concerns about ACER's proposed level and duration of the transitory technical price limit and proposed to set its level at 15,000 €/MWh until the next amendment of the pricing methodology.
- (37) NVE-RME proposed to keep 15,000 €/MWh as suggested in the Proposal until the TSOs carry out further assessments as to what an efficient technical price limit should be, reflecting a robust calculation of an appropriate VoLL for the common European market.
- (38) URSO supported to set a reasonable technical price limit as an efficient ex-ante mechanism to prevent any potential manipulative and speculative behaviour on the balancing energy markets.
- (39) All TSOs welcomed ACER's amendment allowing for a transitional price limit at the level of the one initially proposed by them and the duration of transitory period. However, the TSOs raised concerns about:
 - (a) proposal to increase this limit after 24 months;
 - (b) rejection of all TSOs' proposal to introduce lower technical price limits;
 - (c) proposed application of an automatic adjustment mechanism linked to the ID limit after 24 months and the symmetrical update of the negative transitory price limit;
 - (d) proposed reporting requirements during the transitory period;

5.3. Consultation of the AEWG

- (40) On 27 December 2021, the AEWG has broadly endorsed the draft ACER Decision advising that:
 - (a) the proposed compromise of a transitional price limit of 15,000 €/MWh for a transitory period of 48 months seem to be acceptable for most of the NRAs. ACER and regulatory authorities should agree in due time on the detailed procedure from

the TSO assessment to the potential amendment of the methodology in order to provide a timely new decision, if needed, to avoid a gap after the transitory period; and

- (b) a clarification on the start of the transitory period related to early implementation should be included.

(41) Seven regulatory authorities provided individual comments during the consultation phase. All comments received advocate for a lower technical price limit than the one in the approved pricing methodology (99,999 €/MWh), specifically after the transitional period of 48 months when a limit of 15,000 €/MWh would apply. Most comments point in the direction of having a permanent lower technical price limit instead of a transitory price limit. The range of the proposed limits includes the actual outcomes of the intraday market (ERO), a value close to the intraday limit (CRE, CNMC), the proposed transitory value (BNetzA) and a value slightly higher than the highest VoLL among Member States (DUR). In addition, few specific aspects were stressed by the regulatory authorities in their comments:

- (a) ARERA highlighted the fact that TSOs are currently forced to buy balancing energy at any price and proposed to introduce the possibility for a more price-elastic TSO demand for balancing energy. This topic might need further discussion as it would impact several methodologies.
- (b) BNetzA requested to clarify that the transitory phase starts with the (early) implementation of the platforms and ends 48 months after the deadline for the implementation of the platforms.
- (c) CRU stated that some markets (with new interconnectors) might join the platforms after the 48 months period without any opportunity for a transitory period.

(42) ACER has considered AEWG's advice and the individual comments in finalising this Decision.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

(43) Pursuant to Article 30(2) of the EB Regulation, in case TSOs identify that technical price limits are needed for efficient functioning of the market, they may jointly develop, as part of the proposal for the pricing methodology, a proposal for harmonised maximum and minimum balancing energy prices, including bidding and clearing prices, to be applied in all scheduling areas. In such a case, harmonised maximum and minimum balancing energy prices take into account the maximum and minimum clearing price for day-ahead and intraday timeframes pursuant to the CACM Regulation.

- (44) Pursuant to its Article 3(1)(e), the EB Regulation aims at ensuring that the procurement of balancing services is fair, objective, transparent and market-based, and that it avoids undue barriers to entry for new entrants, fosters the liquidity of balancing markets while preventing undue distortions within the internal market in electricity.
- (45) Pursuant to its Article 3(1)(f), the EB Regulation also aims at facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field and, where necessary, act independently when serving a single demand facility.
- (46) Pursuant to Article 3(a) of the Electricity Regulation, market rules shall ensure that prices shall be formed on the basis of demand and supply.
- (47) Pursuant to Article 3(b) of the Electricity Regulation, market rules shall encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply.
- (48) Pursuant to Article 3(c) of the Electricity Regulation, the market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand.
- (49) Pursuant to Article 10(1) of the Electricity Regulation, there shall be neither a maximum nor a minimum limit to the wholesale electricity price. This provision shall apply, inter alia, to bidding and clearing in all timeframes and shall include balancing energy and imbalance prices, without prejudice to the technical price limits which may be applied in the balancing timeframe and in the day-ahead and intraday timeframes in accordance with paragraph (2) of the same Article.
- (50) As a general requirement, Article 5(5) in conjunction with Article 6(3) of the EB Regulation requires that all proposals, including proposals for amendments, must include a proposed timescale for their implementation.
- (51) Pursuant to the second sentence of Article 6(3) in joint reading with Article 5(2)(f) and Article 30(1) of the EB Regulation, all TSOs may propose amendments to the pricing methodology to ACER. Pursuant to the third sentence of Article 6(3) of the EB Regulation, the proposals for amendments shall be submitted to consultation in accordance with the procedure set out in Article 10 of the EB Regulation, and approved in accordance with Article 4 and Article 5 of the EB Regulation.
- (52) Pursuant to Article 10(1), Article 10(2) and Article 10(3), in joint reading with Article 5(2)(f), Article 6(3) and Article 30(1) of the EB Regulation, all TSOs shall publicly consult with stakeholders, including the relevant authorities of each Member State, at European level for a period of not less than two months.
- (53) Pursuant to Article 10(6) in joint reading with Article 5(2)(f), Article 6(3) and Article 30(1) of the EB Regulation, all TSOs shall duly consider the views of stakeholders resulting from the consultation on the draft Proposal before its submission to ACER. In all cases, a sound justification for including or not including the views resulting from the

consultation shall be provided together with the submission to ACER and published in a timely manner before or simultaneously with the publication of the Proposal.

6.2. Assessment of legal requirements

6.2.1. Expected impact on the objectives of the EB Regulation

(54) The recitals of the Proposal (i.e. the ‘whereas’ section) provide a description of the expected impact of the Proposal on the objectives of the EB Regulation and the principles regarding the operation of electricity markets listed in Article 3 of the Electricity Regulation. Since ACER has substantially revised the amendment initially proposed by the TSOs, the expected impact of the final (i.e. revised and approved) amendment on these objectives and principles has changed. ACER has therefore deleted the recitals referring to the impacts of the initial TSO proposal and considers that the amendment, as revised and approved by ACER, has no negative impact on the objectives of the EB Regulation and the market operation principles laid down in the Electricity Regulation.

6.2.2. The need to introduce technical price limits in the balancing markets

6.2.2.1. Considerations related to the efficient functioning of the market

(55) Pursuant to Article 10(1) of the Electricity Regulation, there shall be neither a maximum nor a minimum limit to the wholesale electricity price including balancing energy and imbalance prices, without prejudice to the technical price limits which may be applied in the balancing timeframe. Pursuant to Article 30(2) of the EB Regulation, in case TSOs identify that technical price limits are needed for efficient functioning of the market, they may jointly develop, as part of the proposal for the pricing methodology, a proposal for harmonised maximum and minimum balancing energy prices, including bidding and clearing prices, to be applied in all scheduling areas. In such a case, harmonised maximum and minimum balancing energy prices shall take into account the maximum and minimum clearing price for day-ahead and intraday timeframes pursuant to Regulation (EU) 2015/1222.

(56) Article 1 of the Proposal suggests to lower the technical price limits from 99,999 €/MWh and -99,999 €/MWh to 15,000 €/MWh and -15,000 €/MWh respectively. As stated in the Explanatory document, the TSOs have identified that technical price limits are needed for efficient functioning of the market, based on their observations of the developments on the EU balancing energy markets. According to the Explanatory document and the External study, the imbalance settlement price shall guarantee a reliable incentive for balance responsible parties (‘BRPs’) to remain balanced by procuring the quantities on the wholesale energy markets to balance their position. Therefore, the imbalance settlement price is intended to reflect the real-time value of energy which requires that balancing energy prices are true scarcity prices. According to the TSOs, the reasons for strong deviations of balancing energy bids from their energy provision costs result from applying marginal pricing principle in the balancing energy market and from the characteristics of balancing energy markets. As stated by the TSOs in the Explanatory document, the heterogeneous structures of the balancing energy markets bring the fact that the BSPs with market power are present which brings the risk of market abuse and

may lead to exaggeratedly high balancing energy bids to be submitted and activated in the European platforms as well. Balancing energy prices that exaggerate the real-time value of energy distort price signals and incentives to market participants. TSOs claim that this may lead to disruptive imbalance settlement prices, not reflecting the real-time value of energy anymore. According to the TSOs, BRPs and customers would be exposed to these prices under the current EU target design for balancing energy markets to an unacceptable extent. The TSOs are concerned that BRPs might be driven into bankruptcy through no fault of their own which does not represent an efficient functioning of the market. Thus, the TSOs are suggesting to lower the technical price limits in order to limit the exposure of BRPs to exaggeratedly high imbalance prices.

- (57) Based on the reasoning presented by the TSOs, ACER understands that the technical price limit is proposed by the TSOs as a risk mitigation measure, by capping the balancing energy prices which the TSOs expect to be high due to the market design elements analysed in the External study. ACER considers that the design elements referred to in the External study as the reasons for the alleged inefficient functioning of the market (and the reason for the expected high prices) are either elements from the national markets, which do not apply to the market design of the European platforms, or are inherent to all electricity markets.
- (58) More specifically, regarding the elements of the national energy markets that would not apply to the European platforms, ACER notes the following:
- (a) In section 4.1, the External study further describes the belief-dependent aspect of bids and refers to a study of a national balancing energy market with the pay-as-bid principle, while concluding that by analogy, similarly high bids would be observed in the European platforms, where the principle of marginal pricing will be applied. ACER considers that the incentives for BSPs under the pay-as-bid principle and the marginal pricing principle are considerably different. The principle of marginal pricing incentivises truthful bidding based on the BSPs own marginal cost (including opportunity costs), so ACER does not see how the example provided for in the External study could apply to the European platforms.
 - (b) Section 2 of the External study describes the set up for the theoretical analysis that follows. In section 2.1 of the External study, the framework for the determination of the balancing energy prices is described, and among others it is stated: *‘A possible design element is the release of non-awarded energy bids for energy bids belonging to bids awarded in the balancing capacity auction. If this design element is used, it creates incentives to increase the energy bids for BSPs with infra-marginal generation units that have the opportunity to sell their energy on, e.g., the intraday market’*. ACER understands that, in this exemplary national balancing energy market, there is a longer window to release the balancing energy bids to participate in the intraday markets. This long window might indeed provide an incentive to submit higher balancing energy bids reflecting the opportunity cost of not trading in the intraday market up to several hours. However, such a long window will not exist in the European platforms as the gate closure time will be set 25 minutes before the real-time and the release

of balancing energy bids will be only allowed for the bids not forwarded to the platforms after the balancing energy gate closure time and subject to an impact assessment by all TSOs pursuant to Article 29(11) of the EB Regulation.

- (59) The External study also refers to elements which are inherent to all electricity markets, such as the repetitive nature of electricity auctions or the multi-part bids. ACER notes that these elements alone do not justify high prices, and that the concerns raised by the TSOs are rather linked to BSP market power and potential market abuse¹¹. ACER understands these concerns, but notes that there are appropriate legal frameworks in place to effectively address them, namely competition law and the Regulation (EU) 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency ('REMIT'). If the issues related to market power and market abuse are not appropriately addressed, they might still cause high balancing energy prices, even though their impact would be reduced due to the lower technical price limit in place. In addition, contrary to the TSOs' view, ACER considers that the European target model for the balancing market includes design aspects – such as shorter products, closer to real-time gate closure time, shorter imbalance settlement period, single imbalance price linked to the balancing energy price – that will mitigate the concerns raised by TSOs once properly implemented.
- (60) Finally, ACER considers that the heterogeneity of market structures raised by the TSOs as creating a risk of market abuse, is not a risk in itself or a reason for high prices. Heterogeneity, understood as referring to varied or diverse market structures, is exactly the reason why there is an added value in integrating the balancing markets, as this would allow to increasingly benefit from the different qualities each national market possesses. The proposed target model design for balancing energy actually gives each party, large or small, diversified or not, the possibility to participate on equal terms in balancing energy markets.
- (61) In general, ACER understands that efficient market functioning is based on free price formation on the basis of demand and supply. Article 10(1) of the Electricity Regulation explicitly states that there shall be no maximum nor minimum limit to the wholesale electricity price including balancing energy and imbalance prices, except for technical price limits if they are needed for the efficient functioning of the market.¹² This reflects some of the key market operation principles, according to which market rules shall be formed on the basis of demand and supply, encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply (Articles 3(a) and (b) of the Electricity Regulation). In accordance with these provisions, efficient price formation occurs when bid prices are allowed to reflect underlying costs of the

¹¹ The TSOs stated that *'the BSPs with market power are present which brings the risk of market abuse'*. For clarification, market power does not necessarily lead to market abuse under the REMIT Regulation and vice versa. REMIT prohibits market manipulation under Article 5, competition law prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States. A company does not need to engage in agreements on the sale or purchase of wholesale energy prohibited by competition law to be in breach of Article 5 of REMIT.

¹² Article 10(1) of the Electricity Regulation in joint reading with Article 30(2) of the EB Regulation.

supply and the willingness to pay of demand and an optimal outcome is achieved when market prices are allowed to reflect marginal costs of electricity provision, including opportunity costs. In balancing markets this is ensured through the application of the marginal pricing principle and a clear separation between procurement of balancing capacity and balancing energy. The balancing energy prices should have a signalling effect that incentivises both BSPs and BRPs to adjust their behaviours as a response to market conditions. This is reflected in the balancing settlement principles. In particular, pursuant to Article 44(1)(c) of the EB Regulation, the imbalance settlement shall provide incentives to BRPs to be in balance or help the system to restore its balance. The optionality ('or') in this provision reflects the national choice between the EU target model of a single imbalance pricing or the allowed option of the dual imbalance pricing when implementing the methodology for the harmonisation of the main features of imbalance settlement pursuant to Article 52(2) of the EB Regulation¹³. An incentive for BRPs to help the system to restore its balance applies in case all BRP imbalances are settled against a single imbalance price, as BRPs are then incentivised to have an imbalance opposite to the direction of the total system imbalances and as such reduce the BRPs overall payment for imbalances or even get paid by the TSO. An incentive for BRPs to be in balance, meaning having a zero BRP imbalance, only applies in case both positive and negative imbalances of each BRP are payable to the TSO and, according to Table 2 of the EB Regulation, for this they need to be settled against different imbalance prices, which is the dual imbalance price system. Moreover, Article 44(1)(f) and Article 44(1)(h) of the EB Regulation require that incentives are provided to BSPs to offer and deliver balancing services to TSOs and that distortive incentives to BSPs and BRPs should be avoided. If the costs are not allowed to be correctly reflected in the market price, then the prices do not reflect the real-time value of energy, and incentivise behaviour that does not lead to the most efficient use of the resources and the most efficient development of the electricity sector. Furthermore, pursuant to its Article 3(f), the EB Regulation aims at facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field. Similarly, in accordance with the principles of the electricity market operation, and in particular Article 3(c) of the Electricity Regulation, market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand. In order to facilitate the development and investment in these new technologies, it is important that prices are not restricted and that there are no undue barriers to entry for new entrants as required by Article 3(e) of the EB Regulation. Thus, and in accordance with the above-mentioned provisions of the EB Regulation and Electricity Regulation, the correct incentives for efficient functioning of the market are ensured both in short and long term if there are no technical price limits or if technical price limits are sufficiently high so that they cannot be reached. The level of 15,000 €/MWh as suggested by the TSOs, as the new technical price limit, would restrict the free price formation and would as such not result in efficient functioning of the market. Given the above, in its preliminary position ACER argued that

¹³ [Annex I](#) of ACER Decision 18/2020 of 15 July 2020

the justification provided by the TSOs has not demonstrated that the introduction of a technical price limit other than the one set out in the current pricing methodology¹⁴ is needed for the efficient functioning of the market (explained in Recitals (57) to (59)). However, ACER has proposed to address any concerns linked to the first years of the operation of the platforms through transitional arrangements as described in section 6.2.2.2.

- (62) In its response to ACER's preliminary position (see section 5.2), BNetzA raised concerns that the protection of BRPs against high prices is essential for the efficient functioning of the market. The regulatory authority claimed that the market is not limited to the balancing energy market but rather reflects the efficiency of the entire energy market. According to BNetzA, BRPs will pass on high imbalance settlement prices to their customers or, in case that this is not possible, will go bankrupt. This particularly affects BRPs with a volatile portfolio, which by nature cannot be forecasted as accurately as conventional portfolios. If these BRPs were not protected from excessively high imbalance settlement prices, there would be a risk of substantially increasing the cost of renewable energy, which would impede the efforts of the EU to promote renewable energy sources. In addition, as argued by BNetzA, not all BRPs in all Member States are also BSPs. BRPs which are not BSPs are therefore exposed to high risks without being able to benefit from high balancing energy prices at the same time. In its response to ACER's preliminary position (see section 5.2), CNMC argued that, in scarcity situations, whether the scarcity is real, forced by BSPs or caused by errors, balancing markets are likely to be inefficient because BRPs are not flexible and cannot participate in the price formation, which is determined solely by the bids of BSPs. In these circumstances, BSPs are not given the incentive to submit cost-efficient bids but see the possibility of maximizing their profits.
- (63) ACER understands the above concerns in the context of the ongoing integration of the balancing markets, but notes that the target model for balancing markets as envisaged in the EB Regulation addresses those issues, as it identifies the complementary nature of the balancing energy market and the imbalance settlement. As already explained in Recital (60), providing non-distortive incentives to both BSPs and BRPs is required by Article 44 of the EB Regulation, and ACER considers this essential for the success of the target model. Moreover, Article 18(4)(d) of the EB Regulation stresses the link between BSPs and BRPs requiring that each balancing energy bid from a BSP is assigned to one or more BRPs. Additionally, the methodology for the harmonisation of imbalance settlement pursuant to Article 52(2) of the EB Regulation¹⁵ provides the appropriate incentives for BRPs to reduce system imbalance, thus also limiting their exposure to high imbalance prices. Regarding the volatile portfolios, the target model provides the incentives for developing diverse portfolios which would allow BRPs to handle their imbalances. However, ACER understands that the implementation of the target model is

¹⁴ I.e. 99,999 €/MWh and -99,999 €/MWh.

¹⁵ [Annex I](#) of ACER Decision 18/2020 of 15 July 2020

not to be expected in the next couple of years, and this is the reason why ACER has allowed for a transitional period to mitigate the above concerns (see section 6.2.2.2).

- (64) In their responses to ACER's preliminary position (see section 5.2), ARERA, CRE, CREG, CNMC, NVE-RME and URSO also raised concerns regarding REMIT stating that the mechanisms under REMIT are rather an ex-post measure than ex-ante and that it could take long time to perform an investigation which might not always result in a breach of REMIT.
- (65) ACER understands that investigations related to market manipulation or attempted market manipulation are ex-post measures. However, the objective of REMIT is not only to detect but also to deter market abuse.¹⁶ Deterrence does work ex-ante via the efficient functioning of all interacting elements of the REMIT framework. It includes advocacy of the REMIT transparency and integrity principles, e.g. via the ACER Guidance on REMIT¹⁷ that puts forward a non-exhaustive list of types of practices that could constitute market manipulation also relevant in the context of the European platforms¹⁸. Another key element is the existence of effective market surveillance directly at the platform level under Article 15 of REMIT by person(s) professionally arranging transactions. Further, market surveillance at ACER can contribute to detect and deter market abuse in balancing energy products subject to transaction data availability under Article 8 of REMIT. Via a proper implementation and application of the legislative framework, REMIT will contribute to maintain that prices set on the European platforms reflect a fair interplay between supply and demand.
- (66) In conclusion, the Proposal is inconsistent with the principles of the electricity market operation pursuant to Article 3(a) and (b) of the Electricity Regulation (explained in Recital (60)) as the TSOs suggest to introduce a technical price limit which could restrict the free price formation. Furthermore, the TSOs have tried to justify that the technical price limits are needed for efficient functioning of the market, as required by Article 30(2) of the EB Regulation, but they provided no evidence which demonstrates it. The design elements used as the reasons for the alleged inefficient functioning of the market have either been part of national design elements or are inherent to all electricity markets (as explained in Recitals (58) and (59)). Lastly, REMIT and the competition law are the appropriate means to deal with the market abuse and market power potential concerns raised by the TSOs, rather than the introduction of technical price limits (as explained in Recitals (57) and (65)). Therefore, ACER amended the Proposal to keep the existing technical price limits in place¹⁹ and introduced other changes to the Proposal as further explained in sections 6.2.2.2 and 6.2.2.3.

¹⁶ market manipulation and insider trading

¹⁷ ACER Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency 6th Edition

¹⁸E.g.: cross-product manipulation, manipulative capacity withholding, abusive squeeze, trash and cash, pump and dump, creating a misperception through specific actions, dissemination of false or misleading information

¹⁹ The technical price limits of 99,999 €/MWh and - 99,999 €/MWh in accordance with ACER Decision 01/2020

6.2.2.2. *Transitional price limits*

- (67) As explained in Recitals (57) and (60) above, ACER is of the view that the TSOs' concerns with respect to market behaviour are linked with the first years of the operation of the European platforms, as they pertain to the market structure, rather than market design per se.
- (68) In particular, all TSOs have raised concerns regarding transitory risks related to the start of operation of the European platforms. On one hand, market participants need time to adjust to the new market rules and to anticipate the new market conditions. On the other hand, the TSOs also need time to become operationally familiar with the new processes to be established. This may lead to transitory effects such as significant mark-ups on bids submitted by BSPs, limited competition on the balancing platforms due to high number of derogations expected to be granted in accordance with Article 62(2)(a) of the EB Regulation, higher risk of IT issues which could result in artificially scarcity situations. Additionally, the TSOs state that there are historically evolved and heterogeneous structures of the energy markets in all EU Member States which makes it very difficult to predict which effects will emerge at the European platform level by introducing an EB Regulation-compliant balancing energy market design in each Member State. Moreover, as stated in the Explanatory document, the TSOs state that the EB Regulation requires that there is a critical mass of BSPs via the connecting TSOs or contracting TSOs on each balancing energy platform for the market to function effectively and efficiently. All TSOs are concerned that this requirement would not be met by the deadline for the implementation of the European platforms. This is due to the expected derogations to be granted to several TSOs based on Article 62(2)(a) of the EB Regulation. The TSOs stated that the technical price limit should be within the range between the maximum ID limit and the highest VoLL among Member States, which, according to the ACER study on the estimation of the value of lost load of electricity supply in Europe²⁰ ('ACER study on VoLL'), was estimated to be 22,940 €/MWh. As an average approach, ENTSO-E considered a VoLL of 15,000 €/MWh as a base case for the European resource adequacy assessment and therefore, all TSOs concluded that a maximum technical price limit of 15,000 €/MWh is appropriate and does not unduly limit the efficient functioning of the market.
- (69) ACER notes that Article 62(2)(a) and Article 62(9) of the EB Regulation indeed provide the possibility for a derogation for up to two years for the TSOs to join the European platforms. However, ACER does not agree that there is a requirement in the EB Regulation for a critical mass of BSPs on the European platforms as there is no threshold set in the EB Regulation on the number of the BSPs or participating TSOs on the European platforms, nor any specific requirement related to that in Article 30 of the EB Regulation for implementing the pricing methodology or the marginal pricing principle. Nevertheless, ACER understands the concerns linked to the start of the operation of the European platforms, and wants to ensure timely and successful connection to the

²⁰ [CEPA](#) study on the estimation of value of lost load of electricity supply in Europe

European platforms. ACER agrees with the TSOs that there are currently heterogeneous structures of the balancing markets in different Member States and understands that the connection of each TSO to the European platforms is a transitory process where market parties need time to adapt to the new market model and conditions.

- (70) However, once the integration and harmonisation of the balancing markets through the European platforms and other implementation steps²¹ are achieved, this historical heterogeneity will fade out. Hence ACER considers that the relevant concerns raised in the Explanatory document and the External study will not be applicable anymore. Furthermore, ACER considers, as also observed by the TSOs in their Explanatory document, that it is not clear what effects, if any, will indeed emerge on the European platforms. For this reason, ACER considers that, once the European platforms are operational, TSOs should closely monitor the European balancing markets and, based on factual data, the TSOs would then be better equipped to assess and identify if technical price limits are indeed needed for efficient functioning of the market.
- (71) While ACER considers that the justifications brought forward by the TSOs do not warrant a change in the technical price limits in accordance with Article 30(2) of the EB Regulation, as explained in Recitals (57) and (60) above, ACER also deems it important to ensure there is safe and timely connection of all TSOs to the European platforms. Therefore, in order to provide a safeguard linked to the first years of the operation of the European platforms, ACER introduced a transitional price limit as a temporary measure for mitigating the risks in this initial phase and allow time for TSOs to gather experience on the functioning of European platforms and perform an analysis of the balancing markets, as explained in the previous Recital.
- (72) According to the latest accession roadmaps for MARI²² and PICASSO²³ platforms²⁴, many TSOs will join these platforms only at the legal deadline of the expiration of these derogations (which is 24 months after the implementation deadline of European platforms). The regulatory authorities were supportive during early discussions of having a longer transitory period in order to provide time to gather real data and gain more operational experience once all TSOs have joined the European platforms. In order to address these concerns, ACER proposed in its preliminary position the duration of the transitional period of up to 48 months in total. ACER considers that the additional 24 months after the expiration of all the derogations should be sufficient for further analysis

²¹ E.g. the imbalance settlement harmonisation methodology pursuant to Article 52(2) of the EB Regulation and the implementation of a single imbalance settlement period of 15 minutes pursuant to Article 53(1) of the EB Regulation.

²² https://eepublicdownloads.azureedge.net/clean-documents/Network%20codes%20documents/NC%20EB/2021/MARI_Accession_roadmap_October_2021_Update_FV3.pdf

²³ https://eepublicdownloads.entsoe.eu/clean-documents/Network%20codes%20documents/Implementation/picasso/211029_PICASSO_4th_Accession_roadmap.pdf

²⁴ Published by ENTSO-E on 29 October 2021.

of the market with all TSOs being part of the European platforms, and for amending the pricing methodology, in case it is demonstrated that technical price limits are needed for the efficient functioning of the market.

- (73) In its preliminary position, with regards to the level of the transitional price limits, ACER supported the TSOs' proposed limit of 15,000 €/MWh and -15,000 €/MWh for the first 24 months from the deadline for implementing the European platforms, followed by an increased transitional price limit of 22,940 €/MWh and -22,940 €/MWh for the following 24 months. As explained in Recital (68), the TSOs proposed the highest VoLL among Member States as the upper bound of technical price limit, which is in accordance with ACER study on VoLL¹⁶, 22,940 €/MWh.
- (74) In their response to ACER's preliminary position (see section 5.2), ARERA and DUR supported linking the technical price limit to the value of the highest VoLL among the Member States. ARERA considers VoLL as representing the value of the last resource that the TSOs would be willing to activate. In ARERA's view, also expressed during the consultation of the AEWG as described in section 5.3, forcing TSOs to buy balancing energy to cover the TSO demand at a price above VoLL could result in an inefficient market clearing, as a large part of inelastic consumers might be faced with a price higher than their willingness to pay. As setting the reliability standard is the responsibility of each Member State, and the ACER-approved methodology²⁵ allows for the necessary implementation flexibility to better reflect specific national circumstances, ARERA considers that each TSO should be able to express their willingness to pay for balancing energy in the European platforms by allowing elastic demand up to the VoLL level. According to ARERA, the proposed change should be addressed in the Implementation Frameworks of the respective European platforms in accordance with Articles 20 and 21 of the EB Regulation. In the pricing methodology, they support to relate the maximum technical price limit after the transitional period to the maximum VoLL among the Member States, instead of keeping it at the original level of 99,999 €/MWh. In its response to ACER's preliminary position and during the consultation of the AEWG as described in section 5.3, DUR also suggests to set the new technical price limit to the highest VoLL among Member States or slightly higher. In its response to ACER's preliminary position, DUR agreed that the technical price limit of 15,000 €/MWh as proposed by the TSOs has not been justified and needs to be changed. The regulatory authority raised concerns about setting the limit to 99,999 €/MWh after the transitional phase. According to DUR, no demand elasticity would be allowed in the European platforms and the TSOs, who buy electricity on behalf of BRPs, cannot stop buying electricity even if the price hit above their VoLL. For this reason, DUR prefers to have a transitional price limit of 22,940 €/MWh or slightly higher and keep this price limit also after the transitional period. In case a higher VoLL is calculated or the ID price limit goes above 22,940 €/MWh, the upper limit should also be adjusted, in DUR's view.

²⁵ Annex I to ACER Decision no. 23/2020 of 2 October 2020.

- (75) ACER sees merit in ARERA's comment related to forcing TSOs to buy balancing energy to cover the TSO demand at any price with an inelastic demand and that setting a technical price limit above VoLL level could result in an inefficient market clearing, as a large part of inelastic consumers might be faced with an imbalance price higher than their willingness to pay. However, ACER understands that this issue is not only in the scope of this Decision but would also need further discussion under the scope of other methodologies, namely the Implementation Frameworks of the respective mFRR and aFRR platforms in accordance with Articles 20 and 21 of the EB Regulation. For this reason, no changes were made to address ARERA's comment received during the consultation of the AEWG.
- (76) ACER also understands in principle the suggestion by DUR to link the technical price limit to the level of highest VoLL among Member States or slightly higher. However, this suggestion was not accepted by ACER for the following reasons:
- (a) As explained in section 6.2.2.1, for changing the technical price limit, sufficient evidence would need to be provided that the new technical price limits would be needed for the efficient functioning of the market;
 - (b) Numerous concerns were raised by both regulatory authorities and the stakeholders in their response to the public consultation with respect to how the VoLL values are calculated, to the fact that there is no single value of VoLL for the whole EU as VoLL differs per Member States, and to the purpose of the VoLL calculation (i.e. if the VoLL calculated for the purpose of resource adequacy would be fit for the purpose of being used as the technical price limit). Therefore, setting a technical price limit at any of those values (without an adjustment mechanism) would constitute a breach (in principle) of the rule of not having a limit to the price formation.
- (77) In their response to ACER's preliminary position (see section 5.2) and in the consultation of the AEWG (see section 5.3), some regulatory authorities stated that, in their view, the technical price limits as proposed by the TSOs, as close as possible to the ID limit, or at the level of the actual outcome of the intraday market should remain in place for an indeterminate period. In the consultation of the AEWG (see section 5.3), ERO suggested that the price cap on balancing energy could be ideally derived from the actually achieved intraday prices rather than from the price cap on intraday prices. In particular, in their response to ACER's preliminary position, CREG and CNMC considered that the technical price limits should be as close as possible to the ID limit. In the oral hearing, CREG asked ACER to reduce the technical price limit to 10,000 €/MWh and to add, in addition to the proposed increase of technical price limit following the ID limit change²⁶, an automatic increase of the technical price limit in the balancing timeframe if the set ID limit is expected to be reached. BNetzA, E-CONTROL, CRE, and NVE-RME were of the view that the technical price limit of 15,000 €/MWh as proposed by the TSOs should

²⁶ Annex I to ACER Decision no. 5/2017 of 14 November 2017.

be in place permanently or until it is demonstrated by the TSOs that a higher technical price limit is needed.

- (78) In its response to ACER's preliminary position (see section 5.2), CRE mentioned that various balancing energy market designs are compliant with the EB Regulation and that the liquidity of balancing markets is, by nature, low due to dimensioning of the reserves which may require the TSO to activate all or most of the reserves several times a year. The regulatory authority acknowledged that on the European platforms, the bids from other Member States can provide energy at the times of higher demand, however it considered that the availability of cross zonal capacity is not reliable enough especially in times of high demand: when the demand is usually the highest, cross-zonal capacities in the balancing timeframe are the lowest which could provide incentive for market participants to submit bids at unreasonably high prices.
- (79) In its response to ACER's preliminary position (see section 5.2), NVE-RME considered that the possibility of reaching market clearing prices of 99,999€/MWh, which is far beyond the maximum VoLL of any Member State, cannot be justified from an economic point of view given the inelastic demand of TSOs. Reaching a price of 99,999 €/MWh due to a market failure or unforeseen events could have severe implications for the trust in the common European markets and would most likely lead to bankruptcies and market exits of BRPs resulting from the liabilities caused by extreme prices and BRPs not being able to fulfil the TSOs' collateral requirements. NVE-RME agreed with the TSOs' approach for average VoLL and raised concerns regarding linking the technical price limit to the VoLL of a single Member State as there are great discrepancies between Member States as to how VoLL values are calculated and may not always be an entirely correct reflection of the BRPs' willingness to pay. Thus, the regulatory authority considered the TSOs' proposal of using a weighted average of VoLL values in Europe to be more intuitive and robust as a starting point, before further assessments can be conducted.
- (80) As explained in Recital (57), ACER understands that the regulatory authorities have concerns linked to national market design aspects or the market structure, but considers that the elements of the target model implemented in the European platforms will address some of them. With respect to the economic justification of the technical price limit levels, as explained in Recital (60) above, ACER considers that the efficient functioning of the market is ensured by the free price formation, since no inefficiencies have been identified in the target model design. ACER considers that setting the technical price limit to a fixed level, which does not change when it is expected to be reached in the balancing timeframe, restricts the free price formation, as explained in section 6.2.2, and would not be compliant with the principles regarding the operation of the electricity market which require that market rules encourage free price formation and avoid actions which prevent price formation on the basis of demand and supply.
- (81) However, in order to address regulatory authorities' concerns related to the start of the operation of European platforms, ACER has amended its preliminary position by keeping the transitory price limit of 15,000 €/MWh in place for the whole 48-month period from the implementation deadline of the European platforms.

- (82) In addition, ACER agrees with the comments related to the need of having an assessment of the functioning of the market before the end of the transitional period, therefore ACER has introduced a requirement for all TSOs to assess the market 36 months after the implementation deadline of the European platforms (which includes at least one year with all TSOs participating in the platforms). This would allow the TSOs to identify if different technical price limits than the ones already approved by ACER Decision 01/2020 are needed for the efficient functioning of the market, and propose an amendment to the pricing methodology accordingly.
- (83) In the consultation of the AEWG (see section 5.3), CRE provided a wording suggestion in paragraph 6 of Article 3 of Annex I that the TSOs perform an assessment of the functioning of the balancing market and, instead of investigating whether different technical price limits are needed for efficient functioning of the market, they investigate whether transitory price limits shall be removed.
- (84) As transitional price limits are only linked to the start of the operation of the European platforms and transitional period following this start of operation, ACER considers that extending the duration of the transitional price limits would not be justified. Rather, ACER considers that, after more operational experience of the European platforms is gathered, the focus of the TSOs' assessment should be on whether different technical price limits than the ones already approved by ACER Decision 01/2020 are needed.
- (85) As explained in section 5.3, ACER received an advice in the consultation of the AEWG to agree with regulatory authorities on the detailed procedure from the TSOs' assessment to the potential amendment of the pricing methodology in order to provide a timely new decision, and if needed, to avoid a gap after the transitory period. ACER defines in this methodology the starting point of the process, being a requirement for TSOs to perform an assessment 36 months after the implementation of the platforms; however, defining the subsequent steps towards the submission of an amendment would pre-empt the outcome of the assessment and/or restrict TSOs' flexibility on timings and process for the submission of a proposal for amending the pricing methodology. In any case, pursuant to Article 6(3) of the EB Regulation, ACER can also request the TSOs to re-submit this Methodology if needed for fulfilling the objectives of the EB Regulation and the Electricity Regulation. This request to submit the new proposal does not need to be limited to the pricing methodology only, but could also include other relevant terms and conditions or methodologies stemming from the EB Regulation (e.g. Implementation Frameworks in accordance with Article 19 to Article 22 of the EB Regulation) in order to address overarching topics, which were also highlighted by some regulatory authorities in their comments, and to ensure that a consistent approach is used across all European platforms.
- (86) In the consultation of the AEWG (see section 5.3), CRU stated that some markets with new interconnectors might join the platforms only after the 48 months period without any opportunity to transition. For example, SEM ('Single Electricity Market' of Ireland) is only expected to physically connect to the rest of Europe once Celtic interconnector becomes operational (this is expected in 2026).

- (87) ACER considers that SEM could benefit from the experience of other TSOs of the rest of Europe gained with the European platforms until the connection of new interconnectors. Furthermore, as explained in recital (82), another re-submission of the proposal is expected before the expiration of the transitional period where ACER can address this issue there if there will be need for it.
- (88) Article 1(1)(d) of the Proposal includes an automatic adjustment mechanism designed in a way that, in case ID limits are increased (and decreased, respectively), the technical price limits in the balancing timeframe would also increase (and decrease, respectively, for minimum technical price limit) by that same amount. For this transitional period, ACER has accepted an automatic adjustment mechanism for the transitional price limit linked to ID limit as the TSOs proposed, for positive balancing energy. As the question of the symmetry of maximum and minimum technical price limits was raised by a stakeholder in the Market European Stakeholder Committee, ACER noted that the second sentence of Article 1(1)(d) of the Proposal referring to the adjustment of the minimum technical price limit linked to ID limit²⁷ is incorrect and inconsistent with the methodology on the harmonised maximum and minimum clearing prices for single intraday coupling,²⁸ which does not envisage any automatic decrease of the minimum clearing price. In general, the price limits define the range of bidding and clearing prices of all balancing energy bids (both positive and negative balancing energy). Therefore, pursuant to Table 1 in Article 46 of the EB Regulation for the payment of balancing energy, the positive price limit provides the maximum payment to a BSP for positive balancing energy, while the negative price limit provides the maximum payment to a BSP for negative balancing energy. relea

6.2.2.3. Reporting on market efficiency and potential distortions during the transitional period

- (89) As explained in the previous section, ACER understands the concerns raised by the TSOs in the Explanatory document related to the implementation of significant changes in the balancing market design. These concerns are based on the high prices that were observed in national balancing markets and in the European platform for the exchange of balancing energy from replacement reserves.²⁹ Since the regulatory authorities have also expressed concerns that these high prices might be seen in other European platforms, ACER has decided to introduce additional quarterly reporting requirements. In particular, ACER has required the TSOs to report on monthly average values of used and available cross zonal capacity, on the percentage of both submitted and activated standard balancing energy bids per product and per direction with prices exceeding the threshold of 50%, 75%, 90%, 95% and 99% of the upper/lower transitional price limits and the volume

²⁷ The second sentence of Article 1(1)(d) of the Proposal reads: *If the harmonised minimum clearing price for single intraday coupling in accordance with Article 54(1) of Commission Regulation (EU) 2015/1222 is decreased by a certain amount below -9 999 €/MWh, the minimum balancing energy price defined in Recital 3 of this Article shall be automatically decreased by this same amount.*

²⁸ [Annex I to ACER Decision 05/2017](#) of 14 November 2017.

²⁹ Established pursuant to Article 19 of the EB Regulation.

weighted average price of the most expensive 5% of the volume of submitted standard balancing energy bids.

- (90) In addition, the TSOs raised concerns in the Explanatory note and the External study with regards to market concentration levels and potential market manipulation.
- (91) ACER considers it very important to also report on performance indicators related to possible inefficiencies and distortions on balancing markets. During weekly discussions with the TSOs and regulatory authorities, ACER asked the TSOs to include in quarterly or yearly reporting requirements the indicators on market concentration levels (e.g RSI index, HHI index), but the TSOs explained that the European balancing platforms only have anonymised bids, so a separate data collection process should be developed by each TSO on each BSP providing balancing energy bids, which could be time-consuming. ACER understands it might be burdensome for the TSOs to report on quarterly basis on these indicators, especially since the TSOs at the beginning of the operation of the platforms would have to allocate resources to ensure successful connection and operation of the European platforms. Considering this, ACER proposed in its preliminary position that the TSOs would only perform such analysis on the basis of the occurrence of an event which would require further investigation ('incident-based reporting'). More specifically, ACER's preliminary position envisaged that the TSOs submit a report to ACER within a month, in case the cross-border marginal price reaches 50% or higher of the upper transitional price limit (or 50% or lower in case of the lower transitional price limit). According to ACER's preliminary position, this report would include an analysis of the occurrence of high prices and indicators on market concentration levels for the balancing energy bids provided by the participating TSOs.
- (92) In their response to ACER's preliminary position, BNetzA suggested to include in the incident-based reporting as explained in Recital (91), in addition to RSI and HHI indices, an indicator on market shares of the 5 largest BSPs for the BSPs for which the participating TSOs have forwarded balancing energy bids. As ACER considers this indicator very relevant to assess market concentration levels, ACER has included it in the TSO report.
- (93) In their response to ACER's preliminary position, the TSOs claimed that monitoring obligations are now centralised pursuant to Article 32(1) of the Electricity Regulation, in that it is ENTSO-E's task, not all TSOs or the individual TSOs, to provide information to ACER. The TSOs claimed that ACER has no competence to put additional reporting obligations directly on the TSOs. The TSOs also consider that ACER has no legal basis to introduce incident-based reporting following the occurrence of price spikes on the platforms. Following the current formulation of Recital 5 in Annex I of ACER's preliminary position, there is a requirement for data calculations on the TSO level as the link must be done between a bid and the corresponding BSP. All TSOs see no legal basis for such an incident-based reporting obligation as proposed by ACER and they claim that all REMIT-related analysis must stay at the national level, within the prerogatives of national authorities.
- (94) ACER notes that there are different reporting and monitoring obligations set by different regulatory frameworks, which do not replace each other. Article 32 of the Electricity

Regulation specifies the monitoring obligations of ACER linked with the tasks of ENTSO-E and the implementation of the network codes; however, the reporting obligations set in this methodology are linked to the content of the specific methodology, and the requirement for its compliancy with the EB Regulation and the Electricity Regulation. Pursuant to Article 30(2) of the EB Regulation, a prerequisite, for amending the pricing methodology with respect to the technical price limit, is the assessment of the efficient functioning of the market by the TSOs, in line with the objectives of the EB Regulation and the Electricity Regulation. ACER, as responsible for approving this methodology and for requesting amendments to it when necessary (pursuant to Article 6(3) of the EB Regulation), needs to be provided with the relevant data in the context of this methodology, in order to ensure that it is still compliant with the requirements of the EB Regulation (or to request an amendment if this is not the case). Therefore, the TSOs are responsible to provide this data to ACER, as set by the reporting obligations included in the methodology. With respect to the frequency of reporting obligations, ACER considers it relevant to be informed of the effects of all the aspects of the functioning of the market for the purpose of any potential subsequent requests for re-submission.

- (95) With regards to the reference of the TSOs that REMIT-related analysis shall stay at national level, ACER assumes that they mean the obligation covered by Article 15 of the REMIT Regulation where such ‘incident’ is different than the one introduced by ACER in Recital 5 of Article 3 of Annex I.

6.2.2.4. Reporting proposed by the TSOs

- (96) Article 1(1)(b) and Article 1(1)(c) of the Proposal propose the monitoring and reporting requirements of the TSOs.
- (97) As explained in section 6.2.2.2, ACER has decided to allow for a transitional price limit only during transitory period in parallel to the currently foreseen technical price limit. Thus, ACER, in agreement with the TSOs and the regulatory authorities, has deleted Article 1(1)(b) of the Proposal on the extensive report to be submitted to ACER as the transitory period is clearly determined, and there is no future evolution of the technical price limits, hence there is no need to justify whether the maximum and minimum technical price limits should be maintained or amended.
- (98) Regarding reporting obligation Article 1(1)(c) of the Proposal, ACER further amended it (as explained in section 6.2.2.3) and moved it to the Article on the implementation timeline.

6.2.2.5. Proposed timescale for implementation

- (99) The Proposal meets the requirement Article 5(5) of the EB Regulation, as it provides a timeline for the implementation of the Proposal in its Article 2.
- (100) The implementation deadline as proposed by the TSOs is linked to the publication of the decision by ACER on this Proposal. Since the pricing methodology implementation deadline has been set to the implementation deadlines of the European platforms, ACER removed from Article 2 of Annex I the sentence that the TSOs proposed.

- (101) In the consultation of the AEWG (see section 5.3), BNetzA asked ACER to clarify that the transitional price limit applies from the moment in time a platform is implemented in a Member state, which is understood as the point in time when the TSO(s) of that Member State connect to the platform. In the case that the implementation of the European platforms would happen ahead of the legal implementation deadline, it should be, in BNetzA's view, avoided that it could be read that the transitional price limit only applies from this legal implementation deadline and not earlier than that.
- (102) The current wording of paragraph 1 of Article 9 of the pricing methodology indicates that the TSOs shall implement the methodology when implementing the European platforms. Therefore, ACER would like to clarify that as soon as the TSOs in question have implemented the European platforms, the pricing methodology (including this amendment) is applicable. In case of early implementation, this means that the transitional price limits can be applied as soon as the European platforms are implemented in those specific Member States, which in this case would mean - ahead of the legal implementation deadline. Accordingly, ACER updated paragraph 3 of Article 3 of Annex I to make this explicit.

6.2.2.6. Requirements related to the development of the Proposal

- (103) The Proposal complies with Article 6(3) in joint reading with Article 5(2)(f) and Article 30(1) of the EB Regulation, as all TSOs jointly developed the Proposal and submitted it to ACER for approval.
- (104) In developing this Proposal, all TSOs complied with consultation requirements set out in Article 10 of the EB Regulation. In particular, ENTSO-E, on behalf of all TSOs, publicly consulted on the draft Proposal at the European level for a period of two months, between 2 June and 2 August 2021³⁰. In addition, all regulatory authorities were regularly informed about the development of the Proposal.
- (105) All TSOs considered the views of stakeholders resulting from the consultation on the draft Proposal before its submission to ACER on 26 August 2021. ENTSO-E's responses to the comments received during the public consultation were included in the submission (as Annex IV). In this document, ENTSO-E provides justification for including or not including the views resulting from the public consultation. A non-confidential version of this document was published on ENTSO-E's website on 25 August 2021, after the publication of the Proposal³¹.

7. CONCLUSION

- (106) Considering the above, ACER has revised the Proposal, where necessary, in order to ensure that it is in line with the purpose of the EB Regulation and contribute to market

³⁰ <https://consultations.entsoe.eu/markets/proposal-for-amendment-of-pricing-methodology/>.

³¹ https://eepublicdownloads.entsoe.eu/clean-documents/nc-tasks/210826_Pricing%20methodology_answers%20to%20public%20consultation_public.pdf

integration, non-discrimination, effective competition and the proper functioning of the market.

(107) ACER approves the Proposal subject to the necessary amendments. Annex I to this Decision sets out Proposal, as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs:

50Hertz Transmission GmbH,
Amprion GmbH,
AS Augstspriegumatikls,
Austrian Power Grid AG,
C.N.T.E.E. Transelectrica S.A.,
ČEPS a.s.,
Creos Luxembourg S.A.,
EirGrid plc,
Elektroenergien Systemen Operator EAD,
Elering AS,
ELES, d.o.o.,
Elia System Operator SA/NV,
Energinet,
Fingrid Oyj,
HOPS d.o.o.,
Independent Power Transmission Operator S.A.,
Kraftnät Åland Ab,
Litgrid AB,
MAVIR ZRt,
Polskie Sieci Elektroenergetyczne S.A.,
Red Eléctrica de España S.A.,
Rede Eléctrica Nacional S.A.,
Réseau de Transport d'Electricité S.A.,
Slovenská elektrizačná prenosová sústava, a.s.,
Svenska Kraftnät,
System Operator for Northern Ireland Ltd,

TenneT TSO B.V.,
TenneT TSO GmbH,
Terna Rete Elettrica Nazionale S.p.A.,
TransnetBW GmbH and
VÜEN-Vorarlberger Übertragungsnetz GmbH.

Done at Ljubljana, on 25 February 2022.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

- Annex I Amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing
- Annex Ia Amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing – with track changes - (For information only)
- Annex II Evaluation of responses to the public consultation on the amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing - (For information only)

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.