

**DECISION No 09/2024  
OF THE EUROPEAN UNION AGENCY  
FOR THE COOPERATION OF ENERGY REGULATORS**

**of 5 July 2024**

**on the second 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 Regulators<sup>1</sup>, 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 balancing<sup>2</sup>, and, in particular, Article 5(1), Article 5(2)(f), Article 6(3) and Article 30(1) 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 3 July 2024, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

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<sup>1</sup> OJ L 158, 14.6.2019, p. 22.

<sup>2</sup> 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 for approval. The regulatory authorities could not reach an agreement on the proposal and ultimately referred it to ACER for decision. On 24 January 2020, ACER approved the pricing methodology.<sup>3</sup>
- (3) Pursuant to 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.
- (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.<sup>4</sup>
- (5) In 2021, ENTSO-E, on behalf of all TSOs, submitted to ACER a proposal for amendment to the pricing methodology. On 25 February 2022, ACER approved the first amendment to the pricing methodology.<sup>5</sup>
- (6) On 7 February 2024, ENTSO-E, on behalf of all TSOs, submitted to ACER a proposal for a second amendment to the pricing methodology ('Proposal').
- (7) This Decision is issued following ACER's review and amendment of the Proposal. Annex I sets out the amended pricing methodology, as approved by ACER.

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

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

<sup>5</sup> [Annex I](#) to [ACER Decision 03/2022](#) of 24 January 2020.

## **2. PROCEDURE**

- (8) On 7 February 2024, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval.
- (9) Between 26 March and 23 April 2024, ACER publicly consulted on the Proposal (see section 5.1).
- (10) Between 22 March 2023 and 2 May 2024, ACER engaged in discussions with the TSOs and the regulatory authorities. These discussions concerned ACER's assessment described in section 6 and included meetings and exchanges of documents, allowing ACER to gather information and prepare its preliminary position on the Proposal.
- (11) Between 2 May and 2 June 2024, ACER consulted all TSOs, ENTSO-E and the regulatory authorities on its preliminary position, by sharing a revised 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. No oral hearings were requested.
- (12) Based on the comments on its preliminary position, 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 3 and 6 June 2024, and provided its advice on 8 June 2024 (see section 5.3).
- (14) On 3 July 2024, 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, proposals for common terms and conditions or methodologies developed under the network codes and guidelines adopted before 4 July 2019 which require the approval of all regulatory authorities, shall be submitted to ACER for revision and approval.
- (16) Pursuant to Article 5(1) and Article 5(2)(f) of the EB Regulation, as initially adopted, namely as a guideline before 4 July 2019, the proposal for the pricing methodology, and any amendments thereof, was subject to approval by all regulatory authorities. Following the amendment of these provisions by Commission Implementing Regulation (EU) 2021/2808, the proposal for the pricing methodology and any amendments thereof have been explicitly subjected to approval by ACER.
- (17) Pursuant to the second sentence of Article 6(3) as well as Articles 5(2)(f) and 30(1) of the EB Regulation, TSOs responsible for developing the proposal for the pricing methodology (in this case, all TSOs) may propose amendments to this methodology to ACER.

- (18) Pursuant to Article 5(6) of Regulation (EU) 2019/942 and Article 5(1) of the EB Regulation, 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
- (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 Articles 5(1) and 5(2)(f) in joint reading with Article 6(3) of the EB Regulation.

#### **4. SUMMARY OF THE SUBMISSION**

- (20) The submission of 2 February 2024 consisted of a letter from ENTSO-E on behalf of all TSOs including the following annexes:

Attachment I	‘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.
Attachment 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.
Attachment III		For information, a track changes version of 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 (integrating the proposed amendments).
Attachment 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) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, 26 August 2021.

(21) On 7 February 2024, ENTSO-E, on behalf of all TSOs, completed their submission with the list of TSOs on behalf of which the Proposal was submitted (Attachment V).

(22) The Proposal (Attachment I) consists of the following elements:

‘Whereas’ describes the expected impact of the Proposal on the objectives of the EB Regulation and Regulation (EU) 2019/943 (‘Electricity Regulation’)<sup>6</sup>;

Article 1 General Principles on maximum and minimum balancing energy prices outlines the proposed amendments to paragraph 3 of Article 3 of the pricing methodology which defines the technical limits for prices of the balancing energy that results from the activation of balancing energy bids for the frequency restoration and the reserve replacement processes;

Article 2 General Principles on aFRR CBMP formation outlines the proposed amendments to paragraphs 2 to 5 of Article 7 which describe the formation of the cross-border marginal price (CBMP) for standard balancing energy product bids for frequency restoration reserve with automatic activation (aFRR);

Article 3 Transitory maximum and minimum prices for balancing energy outlines the proposed amendments to Article 9 concerning the implementation timeline of the pricing methodology in order to specify the transitional price limits;

Article 4 Implementation Timeline sets out the estimated timeline for the implementation of the proposed amendments;

Article 5 Publication of the Amendment relates to the publication of the proposed amendments, once approved by ACER;

Article 6 Language relates to the language of the Proposal;

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<sup>6</sup> OJ L 158, 14.6.2019, p. 54.

## **5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER**

### **5.1. Public consultation**

- (23) On 26 March 2024, ACER launched a public consultation on the Proposal,<sup>7</sup> inviting all market participants to submit their comments by 23 April 2024. On 8 April 2024, ACER also organised a public workshop to present the Proposal and discuss the consultation document.
- (24) In particular, ACER asked stakeholders to provide views on (i) the technical price limits, (ii) the transitional price limits, and (iii) the alternative way to compute the aFRR cross-border marginal price. ACER received 22 responses on the pricing methodology. The summary and evaluation of these responses are presented in Annex III to this Decision.

### **5.2. Consultation on ACER's preliminary position**

- (25) On 3 May 2024, ACER shared its preliminary position with ENTSO-E, all TSOs and all regulatory authorities, inviting them to provide their views on the revisions proposed by ACER. These views are briefly summarised below, and discussed in detail in section 6.
- (26) The TSOs' comments related to various aspects of the adjustment mechanism for the harmonised maximum and minimum balancing energy prices (HMMBEP). The TSOs also commented on the value of the transitional upper and lower price limits.
- (27) ACER also received comments from five regulatory authorities. ILR, EV and CREG commented on the clarity of the definition of the HMMBEP. BNetzA and CREG also commented on the adjustment mechanism for the HMMBEP. CREG commented on the initial value of the HMMBEP, and ACM proposed editorial changes.

### **5.3. Consultation of the AEWG**

- (28) Four regulatory authorities provided comments during the AEWG consultation. BNetzA and CNMC commented on the HMMBEP adjustment mechanism, and CRE on the value of the transitional limit. ILR proposed to clarify the terms "transition period" and "transitional period".
- (29) On 8 June 2024, the AEWG has endorsed the draft ACER Decision and invited ACER (1) to consider a longer transition period; (2) to reflect on the benefits from a slightly changed trigger for the price limit adjustments; (3) to clarify the wording related to

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<sup>7</sup> ACER's consultation covered the aFRR IF and the balancing pricing methodology.  
<https://www.acer.europa.eu/documents/public-consultations/pc2024e02>.

“transition/transitional period”; and (4) to monitor the adjustment mechanism and amend it, if required.

## **6. ASSESSMENT OF THE PROPOSAL**

### **6.1. Legal framework**

- (30) Pursuant to Article 30(2) of the EB Regulation, in case TSOs identify that technical price limits are needed for the efficient functioning of the market, they may jointly develop, as part of the proposal for the pricing methodology, a proposal for HMMBEP, including bidding and clearing prices, to be applied in all scheduling areas. In such a case, HMMBEP must take into account the maximum and minimum clearing price for day-ahead and intraday timeframes pursuant to Regulation (EU) 2015/1222 (‘CACM Regulation’).
- (31) 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.
- (32) 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.
- (33) Pursuant to Article 3(a) of the Electricity Regulation, prices must be formed based on demand and supply.
- (34) Pursuant to Article 3(b) of the Electricity Regulation, market rules must encourage free price formation and shall avoid actions which prevent price formation based on demand and supply.
- (35) Pursuant to Article 3(c) of the Electricity Regulation, market rules must facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand.
- (36) 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 by the nominated electricity market operators in accordance with paragraph (2) of that Article.
- (37) In terms of general requirements, all proposals for terms and conditions or methodologies, including proposals for their amendments, such as the present Proposal, must include a proposed timescale for their implementation and a



description of their expected impact on the objectives of the EB Regulation (Article 5(5) of the EB Regulation), and must be subject to a public consultation by the TSOs (Article 6(3) and Article 10 of the EB Regulation).

## **6.2. Assessment of legal requirements**

### **6.2.1. Requirements for the development and content of the Proposal**

- (38) The Proposal complies with the requirements of Articles 6(3) and 5(2)(f) of the EB Regulation, as all TSOs jointly developed the proposal for the amendment to the pricing methodology and submitted it for approval to ACER.
- (39) The TSOs provided regular updates to the regulatory authorities and ACER throughout the process of developing the proposed amendments. The Proposal was publicly consulted by all TSOs between 12 October and 12 December 2023. The TSOs' answer to the comments received during the public consultation has been published on ENTSO-E's website.<sup>8</sup> Therefore, the Proposal meets the requirements set out in Article 6(3) and Article 10 of the EB Regulation.
- (40) The Proposal meets the content requirements set out in Article 5(5) of the EB Regulation. Article 4 of the Proposal includes a proposed timescale for implementing the submitted amendments, and the 'whereas' section of the Proposal describes in detail the expected impact of the proposed amendments on the objectives of the EB Regulation. To prevent confusion, ACER has deleted the 'whereas' section in the final, approved version of the amendments (Annex I to this Decision) as it explains the amendments in the version proposed by the TSOs and does not reflect ACER's subsequent revisions of those amendments.

### **6.2.2. Technical price limits for balancing energy**

- (41) 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.
- (42) Article 30(2) of the EB Regulation explicitly allows the TSOs to propose HMMBEP in case they identify that technical price limits are needed for the efficient functioning of the market. This provision also requires that HMMBEP take into account the maximum and minimum clearing price for day-ahead and intraday timeframes.
- (43) According to Article 1 of the Proposal, the TSOs propose to move the maximum and minimum technical price limits from 99,999 €/MWh and –99,999 €/MWh to 15,000 €/MWh and –15,000 €/MWh, respectively. As outlined in the Explanatory document, the TSOs identified that technical price limits are needed for the efficient functioning

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<sup>8</sup> [https://www.entsoe.eu/network\\_codes/eb/](https://www.entsoe.eu/network_codes/eb/)



of the market, based on their observations of the developments on the EU balancing energy markets. The TSOs justify their proposed new value to the technical price limits by the fact that they should not exceed the value of lost load ('VoLL') which is set at 15,000 €/MWh in the European resource adequacy assessment ('ERAA'). However, TSOs acknowledge the challenge to determine a unique, stable reference value for the VoLL that would be relevant for all European balancing energy markets and therefore note that this value may have to be adjusted in the future. TSOs thus propose to develop an appropriate adjustment mechanism considering the special conditions of the balancing markets and discuss these with relevant stakeholders.

- (44) In general, in an efficient market, prices should be formed based on demand and supply. The legal framework requires that there shall be neither a maximum nor a minimum limit to the wholesale electricity price, including balancing energy and imbalance prices, explicitly exempting from this requirement situations where the TSOs identify that technical price limits are needed for efficient functioning of the market. In this case, the TSOs can propose technical price limits, which also must take into account the maximum and minimum clearing price for day-ahead and intraday timeframes. The current maximum and minimum technical price limits are set at  $\pm 99,999$  €/MWh but, in principle, the TSOs are allowed to propose lower values as long as decreasing the limits is needed for the efficient functioning of the market.
- (45) The assessment whether the proposed decrease of technical price limits to  $\pm 15,000$  €/MWh meets the conditions of Article 30(2) of the EB Regulation, should account for the following considerations. First, the technical price limits must be still high enough to allow prices to be formed based on supply and demand. Second, due to market power risks in the balancing market (see section 6.2.3.2), price limits shall not be unnecessarily high. If the level of price limits allows for price increases driven by market power, this would incentivise market abuse resulting in an inefficient dispatch and leading to unjustified social welfare transfer from consumers to producers. This would be detrimental to the efficient functioning of the market. Third, the new value must take into account the maximum and minimum clearing price in the single intraday coupling ('SIDC') and in the single day-ahead coupling ('SDAC'). These are currently set at 4,000 €/MWh and -500 €/MWh for SDAC, and  $\pm 9,999$  €/MWh for SIDC. To prevent restrictions on price formation and real-time value of energy, ACER considers that HMMBEP must be therefore higher than the SIDC price limits.<sup>9</sup> Finally, the new value must also take into account the currently applicable transitional price limits.
- (46) ACER considers that setting the initial value of the HMMBEP at  $\pm 15,000$  €/MWh, equal to the VoLL in ERAA and above the SIDC price limits, is a reasonable starting

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<sup>9</sup> The maximum and minimum clearing prices in SIDC are always higher than or at least equal to those in SDAC, so it is sufficient to consider the SIDC limits only.

point.<sup>10</sup> However, it requires further adjustments which would address the above considerations, namely:

- a) The adjustment mechanism for HMMBEP, discussed in section 6.2.3, aims to balance the first two considerations on the appropriate level of the HMMBEP;
- b) Consistency of the HMMBEP with the maximum and minimum clearing prices in SIDC is discussed in section 6.2.5.
- c) Regarding the last consideration on the transitional price limits, the initial value of the current upper/lower transitional limits is set at  $\pm 15,000$  €/MWh, and has not been amended by the present Decision (see section 6.2.4).<sup>11</sup> Transitional limits can be adjusted upwards/downwards during the period of their application. Therefore, to prevent restricting free price formation with the introduction of the HMMBEP, their initial value should not be lower (resp. higher) than the final value of the transitional limits at the end of the period defined in Article 11(2) of the pricing methodology.

- (47) At the same time, the present maximum/minimum technical price limits of  $\pm 99,999$  €/MWh also have a purpose. These are absolute (i.e. fixed) values, with no adjustment mechanism, introduced by ACER Decision 01/2020 to guarantee the efficient operation of the algorithm and for this reason, they should also remain in place, in ACER's view.
- (48) Article 10(1) of the Electricity Regulation and Article 30(2) of the EB Regulation do not specify the exact scope of the technical price limits or the numbers in which they may be set. Starting from the TSOs' proposal, ACER has therefore developed a framework based on two technical price limits in the positive (resp. negative) direction. This framework is set out in Articles 9 and 10 of the pricing methodology.
- (49) First, ACER has retained the current technical price limits at  $\pm 99,999$  €/MWh, which remain an absolute limit, i.e. with no adjustment mechanism.
- (50) Second, ACER has introduced a harmonised maximum/minimum balancing energy price, which is an adjustable limit. The initial value of the HMMBEP is set at the maximum/minimum between  $\pm 15,000$  €/MWh and the value of the upper/lower transitional price limit at the end of the period defined in Article 11(2) of the pricing

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<sup>10</sup> ACER has also simulated the adjustment mechanism (described in section 6.2.3) on 2023 data and observed that the conditions verifying whether the limits were expected to be reached would have never been triggered. This means that, for that year, a price limit set at  $\pm 15,000$  €/MWh was not restricting free price formation. This supports the idea that there is no need to start with higher initial values for the HMMBEP.

<sup>11</sup> While starting at the same value, the purpose and nature of the HMMBEP is different from the transitional price limits. The transitional price limits are interim measures addressing the temporary risks linked to TSOs' joining the balancing platforms and market parties adapting to the new market model, while the HMMBEP are needed for the overall efficiency of market functioning in the long term.

methodology (see para. (46) point (c)), and can be adjusted. The adjustment mechanism is described in section 6.2.3.

- (51) In their response to ACER's preliminary position, EV and ILR asked to clarify the relationship between the definition of the (existing) maximum/minimum technical price limits and the newly introduced HMMBEP. The joint application of the two limits was also not clear to CREG. CREG asked ACER to clarify that the harmonised maximum/minimum prices are equal to the technical price limits and serve the same purpose as the maximum and minimum price for balancing energy product bids. According to CREG, the limit of  $\pm 99.999$  €/MWh is then to be considered as a price constraint when applying the adjustment mechanism.
- (52) ACER agrees with CREG's understanding of the  $\pm 99.999$  €/MWh limit. While theoretically, the HMMBEP may, through adjustments, exceed the absolute value of  $\pm 99.999$  €/MWh, only the absolute limit would be effective in such case. This means that under this framework, the market is, in practice, subject to only one technical price limit at any point in time, in either direction. Effectively, this framework sets therefore a limit for the positive direction as well as for the negative direction, each of which has an adjustable boundary until it reaches an absolute boundary.
- (53) To reflect the above understanding in the provisions of the pricing methodology, ACER has specified in Article 9 that the technical price limits function in an absolute and an in adjustable way, and that the price for all balancing energy product bids as well as the CBMP value must respect both limits, in that they may not exceed (in the positive direction) or fall below (in the negative direction) either of the two limits. To further clarify the relationship between the two limits, ACER has improved the structure of Article 9 and deleted the content of Article 3(3) of the pricing methodology related to the existing limits of  $\pm 99.999$  €/MWh. Finally, to address any remaining potential for confusion, ACER has renamed the first type of limit of  $\pm 99.999$  €/MWh to 'absolute maximum/minimum price', highlighting that these are fixed values, while retaining the reference to the second, adjustable, limit as the 'harmonised maximum/minimum balancing energy prices' (i.e. HMMBEP) in line with Article 30(2) of the EB Regulation.
- (54) CREG also asked ACER to align the initial values of the HMMBEP with the harmonised max/min clearing prices for SIDC (currently set at  $\pm 9.999$  €/MWh). CREG was concerned that a 5,000 €/MWh difference between intraday and balancing price limits would incentivise BSPs to shift liquidity from intraday to balancing, or to withhold energy from trading in the intraday market (with a lower price limit) and perform reactive balancing (with a higher price limit).
- (55) ACER considers that if there was a risk of withholding, aligning only the initial values of the price limits would not be sufficient to mitigate it. The limits would rather need to be aligned permanently which would mean having a common adjustment mechanism for the price limits in all timeframes. This would lead to situations whereby the lack of short-term flexibility triggering an adjustment of the harmonised maximum balancing energy price would also trigger an adjustment of the harmonised maximum clearing price for SDAC (currently set at 4,000 €/MWh). The SDAC limit

is set at rather moderate level to minimise the risks and costs associated with collaterals when trading in these markets. Increasing the SDAC limit just because the harmonised maximum balancing energy price is increased would negatively affect the day-ahead market, because it would increase collaterals with no valid reason, since the SDAC harmonised maximum clearing price was not expected to be reached. ACER also finds no empirical evidence to support CREG's proposal. The current day-ahead price limits are set lower than those for intraday trading, which, in turn, are lower than the transitional price limits in the balancing market. There have been, however, no reported cases of withholding intentionally employed to profit from different price limits across these markets. Given the above, ACER sees no need for aligning the initial value of the price limits between the intraday and the balancing market.

6.2.3. Adjustment mechanism for the HMMBEP

- (56) The TSOs propose to amend Article 9 of the pricing methodology<sup>12</sup> on the implementation timeline, by introducing, in paragraph (7), a commitment to develop an appropriate adjustment mechanism for the HMMBEP at least 42 months after the implementation deadline of the European balancing platforms, and taking into account the maximum and minimum clearing prices in SDAC and SIDC.
- (57) In ACER's view, devising an adjustment mechanism already in this amendment is beneficial for two main reasons. First, it enhances transparency and predictability for market participants, who can prepare themselves for the coming changes. Second, it allows the TSOs to simulate the functioning of the adjustment mechanism, enabling them to gain practical experience. This experience will help the TSOs to assess whether (and what kind of) amendments are still needed before the mechanism's entry into force in July 2026. For these reasons, ACER has introduced an adjustment mechanism for the HMMBEP already through this amendment, in Article 10 of the pricing methodology.
- (58) In their response to ACER's preliminary position, the TSOs noted that it is necessary for them to further assess the adjustment mechanism after ACER's decision and to propose amendments, if required. For the TSOs, the issue is too complex to appropriately assess it within the timeframe of ACER's decision-making procedure.
- (59) ACER recognises the complexity of the issue and agrees with the TSOs' approach. With this amendment, ACER only intends to offer the TSOs the initial considerations and a direction in approaching the design of the HMMBEP adjustment mechanism. In this way, the TSOs can already start the required simulations to be able to analyse the behaviour of the mechanism across diverse market scenarios. On that basis, the TSOs can propose improvements they deem necessary before the mechanism is applied in a

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<sup>12</sup> Article 11 in the consolidated version of the pricing methodology in Annex II.

real market setting. In line with AEWG's advice, ACER aims to monitor the adjustment mechanism to see if amendments are required.

- (60) In devising the adjustment mechanism, ACER aimed to balance the two key (and conflicting) considerations on the level of the HMMBEP (see paragraph (45)). This means that there are two design aspects to consider: (1) to establish the conditions as to when the HMMBEP are expected to be reached; and then (2) to explore circumstances where, despite meeting these conditions, the adjustment should not be made because it would not support an efficient functioning of the market.

*6.2.3.1. Conditions as to when the technical limits are expected to be reached*

- (61) Regarding the conditions on whether the HMMBEP are expected to be reached, ACER draws on the experience with implementing similar adjustment mechanisms for SDAC and SIDC.<sup>13</sup> Specifically, ACER sees a priori no reason to change the threshold for the spike definition (70%), the trigger conditions, the transition period (of 28 days) as well as the steps for increase.
- (62) However, in its preliminary position, ACER adapted the way the increased steps are applied to the HMMBEP, to ensure that the HMMBEP remain symmetrical.
- (63) In their response to ACER's preliminary position, the TSOs noted that the incentives for the BRPs to stay balanced should be symmetrical. However, the TSOs stated that this cannot be ensured by symmetrical price limits, since the balancing energy merit-order lists are not identical in the two directions. The TSOs argued that asymmetric price limits may be acceptable and that they do not see any need to deviate from the rules applied in the SIDC.<sup>14</sup>
- (64) In their response to ACER's preliminary position, CREG argued for asymmetric adjustments to HMMBEP. According to CREG, the causes that warrant the adjustment of the harmonised maximum price are not the same as those necessitating the adjustment of the minimum price. It cannot be concluded from an oversupply of energy that the price signal representing a shortage of energy must be reinforced. CREG also argued that since asymmetric adjustments are present in SDAC and SIDC, having them also in the balancing markets would improve consistency between these markets, which is one of the objectives pursued by the EB Regulation.<sup>15</sup>
- (65) ACER agrees with the TSOs that symmetric HMMBEP are not needed for the efficient functioning of balancing energy markets. ACER also agrees with CREG that positive and negative balancing energy are different products and that, for some types of assets, it can be easier to offer one of the two products. This implies that an adjustment of the

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<sup>13</sup> ACER Decisions 04/2017 and 05/2017, amended by ACER Decisions 01/2023 and 02/2023 respectively. See in particular, [ACER Decision 01/2023](#), recitals (47) to (67).

<sup>14</sup> See also IFIEC Europe's response to ACER's public consultation.

<sup>15</sup> Article 3(1)(d) of the EB Regulation.

maximum (resp. minimum) price limit does not as such necessitate the corresponding change of the minimum (resp. maximum) price limit. For these reasons, ACER has revised the adjustment process in Article 10 of the pricing methodology to allow for asymmetric adjustments of the HMMBEP. For the same reasons, ACER has also revised the adjustment mechanism of the transitional upper/lower price limits in Article 11 of the pricing methodology.

- (66) In the new Article 10 of the pricing methodology, ACER has also defined balancing-specific triggering prices for the adjustment mechanism, which are different from the prices used in the SDAC and SIDC adjustment mechanisms. The latter mechanisms take the price of the corresponding auctions as the reference price. This single price does not exist for the balancing adjustment mechanism because of the specific characteristics of the balancing market:
- (a) First, unlike in day-ahead and intraday,<sup>16</sup> the trade in the balancing market is done at different prices and granularities. The aFRR BSPs, BSPs of manual FRR (mFRR) and BRPs may face different prices and these price granularities can be 4 seconds for aFRR BSPs or 15 minutes for mFRR BSPs or BRPs. The fact that CBMP reaches a certain level during a 4-second period does not mean that a BRP was ready to pay that price because the BRP has not been exposed to that 4-second CBMP (and had no possibility to trade at that granularity) but to an imbalance price settled at a 15-minute granularity. Due to this, ACER considers that for mFRR, the trigger for adjustment should be a CBMP above/below the threshold, while for aFRR, the trigger should be the weighted average of the CBMPs during the imbalance settlement period above/below the threshold. This weighted average of the aFRR CBMPs is also the value of the boundary condition defined in Articles 55(4) and 55(5) of EB Regulation (if only aFRR is activated).
  - (b) Second, unlike in day-ahead and intraday,<sup>17</sup> supply in the balancing market consists of two different products (aFRR and mFRR), so two platforms are running independently at the same time (aFRR platform and mFRR platform respectively). This can lead to a situation where high CBMPs are in one balancing platform while low bids are still available in another balancing platform. In this situation, it would not make sense to increase the HMMBEP because there is still cheap supply available in one of the platforms. Given this specificity, ACER considers that for the adjustment of the HMMBEP, there should be a price trigger for a given bidding zone both in the aFRR and in the mFRR platforms, for the same 15 minutes period or imbalance settlement period.
- (67) In their response to ACER's preliminary position, the TSOs asked to include a possibility of decreasing the HMMBEP again after a certain time. The TSOs argued

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<sup>16</sup> In day-ahead and intraday, if a certain clearing price is reached, it means that a supplier was ready to sell at that price and that a buyer was ready to pay that price. Both suppliers and demanders can trade at the same granularity and price.

<sup>17</sup> Where there is only one market running at a time.



that having such an option would mitigate the risks of high imbalance settlement prices for the BRPs, if no underlying fundamental high prices can be observed across day-ahead, intraday, and balancing markets. A decrease in the price limits may also help correcting an “overshoot” in the adjustment, in case new investments or technologies enter the market at a marginal cost lower than the applicable price limit.

- (68) There is no legal provision which provides explicitly a possibility or even a requirement to decrease price limits in the balancing market. In addition, a function of decreasing the balancing price limits has still a restrictive effect on free price formation and, as a general principle, such measures should be exceptional and require a justification. In that regard, ACER notes that the TSOs did not appropriately justify why the possibility of reducing the HMMBEP would be required for the efficient functioning of the balancing market. Such analysis should specifically account for the unique characteristics that distinguish the balancing market from the day-ahead and intraday markets, where decreasing price limits has not been allowed under Article 10(2) of the Electricity Regulation. While the TSOs mentioned potential benefits of having the option to decrease HMMBEP, such as BRPs’ risk mitigation or helping to correct the adjustment mechanism, ACER considers that these potential benefits have not been sufficiently explored by the TSOs and presented as being necessary for the efficient functioning of the balancing market.
- (69) In their response to ACER’s preliminary position, the TSOs were concerned that the length of the transition period (28 day) may not be suitable for balancing. The TSOs argued that 28 days would only enable existing BSPs to submit higher volumes of bids but not enable the entry of new technologies/additional BSP volumes as such entry would take more time due to the necessary BSP qualification and service prequalification procedures. The same issue was raised by BNetzA in their response to ACER’s preliminary position as well as in the AEWG consultation. BNetzA pointed to Article 16 of the EB Regulation which requires prequalification before submitting any balancing bid (including non-contracted bids). Unlike in day-ahead and intraday, there is no direct access to the balancing market so, according to BNetzA, a longer transition period is warranted, otherwise numerous price limit increases could occur before any new market participant manages to enter the market. Based on BNetzA’s concerns, AEWG invited ACER to consider a longer transition period.
- (70) ACER notes that even if prequalification may delay BSPs’ participation in the market, market participants still have the possibility in real time, as BRPs, to be balanced or help the power system to be balanced, as specified in Article 17(1) of the EB Regulation. Also, in ACER’s understanding, the TSOs are currently not legally required to have a prequalification test because the TSOs can rely on ex-post verification. It is therefore also possible for the TSOs to provide BSPs with faster access to market, without having to wait for the prequalification test. ACER notes that the length of prequalification is one of the aspects discussed in the context of the



proposed network code on demand response.<sup>18</sup> For the time being, ACER considers that the 28 days transition period is sufficient to carry out the prequalification process and has decided not to extend it. If the new network code does not shorten the prequalification period as much as currently expected, the TSOs may propose amendments to the pricing methodology to account for the revised length of the prequalification period.

- (71) In its preliminary position, ACER proposed to introduce a similar requirement to the one which currently applies in day-ahead and intraday, namely, that the TSOs shall publicly announce the update of the HMMBEP within 7 days following the second triggering event. In their response, the TSOs raised concerns that 7 days may not be enough to handle all manual checks necessary regarding the application of any specific condition. The TSOs stressed that robust processes and additional checks must be performed to avoid erroneous adjustments, and unless the 28 days transition period is extended, the TSOs asked to extend the timeline for the public announcement from 7 to 21 days following the second triggering event.
- (72) ACER has strived to devise an adjustment mechanism that is sufficiently simple to verify and transparent for the market participants. In ACER's understanding, there is nothing preventing the TSOs from automatically verifying the different triggering conditions. The TSOs have sufficient time (until July 2026) to develop such an automated process. ACER also understands that the TSOs already have an automated process to treat most of these data for the purpose of reporting when the prices reach 50% of the transitional price limits.<sup>19</sup> For these reasons, ACER considers that seven days is enough for the TSOs to perform the required verifications.

#### *6.2.3.2. On the circumstances for not adjusting the HMMBEP*

- (73) ACER considers that in some circumstances, it might not be efficient to adjust the HMMBEP even if they are expected to be reached, namely, if there is a risk that reaching the HMMBEP is due to the exercise of market power.
- (74) In the Explanatory document, TSOs state that balancing markets are more prone to BSPs exercising market power than day-ahead and intraday markets. Firstly, TSOs argue that price formation is different in balancing markets compared to day-ahead and intraday markets. In day-ahead and intraday, both supply and demand can determine their energy prices and quantities they are willing to bid. In balancing, BSPs are on the supply side, and they can determine their prices and quantities, while the TSOs are on the demand side, and a large part of their demand is inelastic, i.e. they cannot determine their willingness to pay for it. This increases the potential benefit of economic withholding from BSPs. Secondly, the TSOs note that balancing markets

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<sup>18</sup> The draft network code was submitted to ACER on 8 May 2024 and is currently under ACER's review.

<sup>19</sup> These reports already contain the prices and the market share of the five largest BSPs. The only additional data for the computation of the adjustment mechanisms are the cross-zonal capacities available, which are available at platform level.

are concentrated, with a limited number of BSPs. For the TSOs, these two conditions may lead to BSPs being incentivised to exercise market power by, for example, bidding above their marginal cost, including opportunity cost.

- (75) ACER agrees that the price formation in the balancing market is different from other markets as, for a given market time unit (MTU), the TSO demand is mainly inelastic. However, BRPs can react to the imbalance price in real-time by activating their assets, and by doing so, they influence the TSO demand for the next MTUs and therefore implicitly bring some elasticity to the TSO demand. Nevertheless, this elasticity takes time to appear due to the time needed for BRPs to observe the imbalance and activate their assets to resolve it. These difficulties for BRPs to react in real time imply that it is more difficult for them to express their valuation compared to the demand side in day-ahead and intraday which explicitly submit a price in their bid. These difficulties for BRPs to express their valuation make BRPs more vulnerable to potential abuses of market power by the BSPs on the supply side, when compared to the demand side in day-ahead and intraday. ACER also agrees with the TSOs that balancing markets are not as competitive as day-ahead and intraday markets. In ACER's understanding, this stems from the structurally limited amount of assets that are available to react in real time and the limited amount of cross-zonal capacity available for balancing energy exchanges. ACER considers the high concentration on the supply side of balancing markets, specifically due to the limited amount of assets, to be structural in nature. Considering the above, specific concerns about potential market abuse and/or the exercise of market power in the balancing markets are legitimate.
- (76) ACER considers that it would not be appropriate to adjust HMMBEP if the prices triggering the adjustment are caused by the exercise of market power. Such adjustment would fail to meet its intended objective of allowing free price formation since, in case of market power, there is no free price formation in the first place. It would also increase the risk on BRPs, transferring social welfare from consumers to producers with little or no trade taking place. This would hamper the efficient development of the EU electricity market, going against the objectives of the EB Regulation.<sup>20</sup>
- (77) However, in practice, it is difficult to establish instantly if the price increase (and the resulting adjustment) is triggered due to the exercise of market power. This is mainly due to the asymmetry of information between market participants and the regulatory/competition authorities. There are three possible approaches to managing uncertainty in this respect:
- a) The first approach would be to adjust the HMMBEP in all cases, regardless of the underlying trigger. This approach must be discarded upfront since, if market power is indeed exercised on a regular basis, it would lead to regular price limit

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<sup>20</sup> See Article 3(1)(d) of the EB Regulation. See also ACER Decision 01/2023.

adjustments, leading to consistently higher balancing prices than those occurring in a competitive market, to the detriment of BRPs and consumers.

- b) The second approach would be to revert the adjustment ex-post in cases of REMIT<sup>21</sup> or competition law breach. Although theoretically sound, also this approach must be discarded as not most suitable in practice, given the length of REMIT/competition investigations (including possible appeals) and the ensuing late redress. Indeed, this approach would lead to increases and decreases of the price limits which would need to be reverted months or years later, based on the results of REMIT/competition investigations and related appeals. The uncertainty of such (reversible) adjustments, and the resulting lack of transparency, would be incompatible with several objectives of the EB Regulation.<sup>22</sup>
  - c) The third and the most practical approach is to formulate an additional ex-ante triggering condition, which would allow for adjustment only if there is sufficient competition in the concerned bidding zone. ACER considers this to be a pragmatic and, considering the aforementioned two alternatives, proportionate solution to address potential, unjustified price increases due to market power, striking a balance between accuracy and (implementation) simplicity, and is therefore further explored in the next paragraphs.
- (78) The condition of sufficient competition devised by ACER is based on the level of concentration. A proxy for this is the amount of cross-zonal capacities available in the mFRR platform, as this is the amount of cross-zonal capacities available for the FRR process.<sup>23</sup> For the adjustment of the HMMBEP to take place, the concerned bidding zone would need to have at least enough cross-zonal capacity available in the mFRR platform to replace the sum of the volume offered in the mFRR and aFRR platforms by its largest BSP in the respective direction of the balancing energy activations. This condition is premised on assessing the level of competition in the market through the amount of available cross-zonal capacities, which is consistent with the Electricity Regulation.<sup>24</sup>
- (79) Measuring market concentration through the amount of cross zonal capacities also necessarily means that this condition could in some cases prevent legitimate adjustments to the price limit (i.e. where, despite low cross-zonal capacities, the prices reaching the threshold are not due to the exercise of market power). However, ACER considers that, on balance, the risk of such instances occurring is relatively low and acceptable because:

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<sup>21</sup> Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p.1.

<sup>22</sup> See Article 3(1), points (a), (b) and (g), of the EB Regulation.

<sup>23</sup> The amount of cross-zonal capacities available to the aFRR platform are the leftover cross-zonal capacities from the mFRR platform.

<sup>24</sup> See e.g. Recitals (2) and (32) and Article 1(c) of the Electricity Regulation.

- a) if there was a real need for the HMMBEP adjustment, other triggering conditions would be also met during periods where the market is considered ‘competitive’ resulting in an adjustment at a later time (when all conditions are met). Therefore, applying the condition of sufficient competition would merely delay necessary adjustments but would not prevent them;
- b) during periods when the market is not considered ‘competitive’ (the condition is not met) an adjustment through the intraday adjustment mechanism would still be possible;
- c) the impact of the condition on (preventing) the adjustment would be anyway limited. To confirm this, ACER has computed the percentage of time during which the amount of cross-zonal capacities available is higher than 100, 200 and 500 MW for different bidding zones<sup>25</sup>. Table 1 shows that most of the time, the condition of sufficient competition would be met for most bidding zones.

	<b>Czech Rep.</b>	<b>Austria</b>	<b>Hungary</b>	<b>Spain</b>	<b>Portugal</b>
Export 100 MW	93	83	100	94	96
Export 200 MW	91	79	100	93	95
Export 500 MW	80	70	100	91	93
Import 100 MW	98	93	100	100	87
Import 200 MW	97	93	100	99	86
Import 500 MW	92	87	98	99	82

**Table 1** Percentage of time with ATCs above a given value in a given direction for a given bidding zone in 2023.

- (80) Some respondents to ACER’s public consultation argued that the risk of BSPs exercising market power should not be considered in the adjustment mechanism because, even though BSPs would have incentives to do so, they would be effectively deterred by REMIT and/or competition rules.
- (81) REMIT and competition policies are vital for detecting and deterring market abuse on wholesale energy markets, including balancing markets. Complementing these rules and policies with additional safety mechanism to further combat market abuse is specifically justified in balancing markets given the above explained structure and characteristics. ACER monitors and regularly reports on REMIT breaches taking place in the energy markets,<sup>26</sup> indicating that the risk of market abuse is real, and ignoring it in the adjustment mechanism for the HMMBEP would not provide

<sup>25</sup> These bidding zones were chosen to have a representation of small and larger bidding zone as well as central and peripheral bidding zones.

<sup>26</sup> See, e.g. REMIT Quarterly, [Issue No 32/Q1 2023](#), p. 5, Table 1.

sufficient protection of the BRPs and lead to inefficient market outcomes, thereby compromising the objectives pursued by the EB Regulation.

- (82) The condition of sufficient competition, as described in paragraph (78), was included in ACER's preliminary position. In response, the TSOs and BNetzA raised concerns that this condition itself might not be sufficient to address all the concerns linked to market competition, and proposed additional conditions which would need to be met for the adjustment to take place. BNetzA commented on this aspect in the AEWG consultation and AEWG invited ACER to reflect on the benefits from a slightly changed trigger for the price limit adjustments.
- (a) The condition proposed by both the TSOs and BNetzA is to require that the uncongested area where price exceeds the threshold covers more than one bidding zone<sup>27</sup>.
- (b) Moreover, TSOs proposed to use competition-related KPI(s) (e.g. HHI, RSI, market share of largest BSP, VWAP bid of triggering BSP below threshold etc.) in the triggering bidding zone. BNetzA proposed a similar condition based on a competition-related KPI but proposed that it would be checked at the uncongested area level.
- (c) In addition, the TSOs proposed two other conditions. The first one aims to reflect the insufficient liquidity in the balancing market by requiring that the adjustment is triggered only if there is unsatisfied TSO inelastic demand. The rationale for this condition is that the lack of unsatisfied inelastic demand implies sufficient offer and no need for additional flexibility at a higher cost. The second condition relates to the VoLL which must be greater than the triggering prices ((aFRR volume weighted average price/mFRR CBMP) in the concerned bidding zone.
- (83) The need to use additional competition-related KPIs is not clear for ACER, because the level of competition of the triggering bidding zone is already implicitly included in ACER's condition. This is because the higher the share of the largest BSP, the more available cross-zonal capacities would be required for the condition proposed by ACER to be met. Moreover, using competition-related KPIs on bidding zone level or uncongested area level without accounting for the impact of cross-border competition appears to be incompatible with ACER's condition because it disregards the potentially improved competition thanks to available cross-zonal capacities with other bidding zones (or with bidding zone outside of the uncongested area). ACER's condition, on the other hand, assumes that a bidding zone might not be in itself competitive and that the alleged lack of competition can be resolved by cross-border competition from adjacent bidding zones through available cross-zonal capacities.
- (84) The proposed condition that the uncongested area covers at least two bidding zones essentially serves the same purpose as ACER's condition. Indeed, both conditions aim

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<sup>27</sup> BNetzA reiterated this condition in the AEWG consultation.

to ensure at least a minimum level of competition by requiring that the merit order lists of at least two bidding zones are combined. Furthermore, ACER observes that, most of the time, the condition that the uncongested area covers at least two bidding zones is redundant, if combined with the condition introduced by ACER. To illustrate this on the 2023 data, ACER has calculated the percentage of time when available cross-zonal capacities were lower than a certain threshold<sup>28</sup> while the uncongested area consisted of a single bidding zone. The results in Table 2 suggest that the proposed condition is unnecessary when applied together with ACER's condition.

	<b>Amount of cross-zonal capacities considered for ACER's conditions</b>	<b>Percentage of time in which ACER's condition is not verified when the uncongested area is one bidding zone</b>
AT up	120	93
AT down	98	96
DE up	600	100
DE down	600	100
CZ up	160	95
CZ down	160	90

**Table 2** Percentage of redundancy of the condition requiring that the uncongested area spans at least two bidding zones.

- (85) Moreover, replacing ACER's condition with the proposed condition that the uncongested area covers at least two bidding zones may give unintuitive results. To illustrate this, ACER has compared two cases concerning the Czech bidding zone. In both cases, the volume of the aFRR demand in the Czech Republic is assumed to exceed the bids available nationally by 500 MW (i.e. available bids amount to 350 MW, volume of the aFRR demand amounts to 850 MW).

**Case 1:** The Czech bidding zone has 300 MW of cross-zonal capacities from the Austrian bidding zone. In this case, the demand from the Czech TSO exhausts the Austrian merit order (200 MW of aFRR). Therefore, only 200 MW from the 300 MW of available cross-zonal capacities are used. Austria and the Czech Republic form an uncongested area, meeting the condition of having an uncongested area of at least two bidding zones.

**Case 2:** The Czech bidding zone has 490 MW of cross-zonal capacities from the German bidding zone. In this case, the Czech Republic accesses the German merit order until the 490 MW of cross-zonal capacities are fully used, causing congestion on the border between the Czech Republic and Germany. Since the Czech Republic

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<sup>28</sup> These thresholds were considered as approximation of the capacity that could be provided by the largest BSP.



alone forms an uncongested area, the condition of having an uncongested area of at least two bidding zones is not met.

By applying the proposed condition, Case 1 would be incorrectly perceived as more competitive than Case 2, despite it has less cross-zonal capacity available. In fact, the increased cross-zonal capacity in Case 2 would improve competition in the market, making it a more appropriate case for adjusting the HMMBEP than Case 1.

- (86) On the condition of unsatisfied inelastic demand, ACER generally agrees with the TSOs reasoning that it would not support efficient market functioning to have an adjustment of the HMMBEP if there is no scarcity in the system. However, ACER considers that the condition of unsatisfied inelastic demand is too restrictive since scarcity present in the market (close to inelastic demand being curtailed) would already warrant the adjustment of the HMMBEP. ACER also considers that if the TSOs wish to introduce an additional condition linked to the scarcity in the system, they would need to explain why prices above the threshold in both balancing platforms are in themselves not an appropriate measure of scarcity in balancing markets.
- (87) ACER does not see how the last proposed condition linked to the VoLL can be supported. In the first amendment to the pricing methodology, ACER explained<sup>29</sup> that setting the technical price limit at the VoLL with no adjustment mechanism would infringe the principle of not having a limit to the price formation. For the same reason, ACER cannot accept any condition that would automatically limit the adjustment mechanism to the VoLL.

#### 6.2.4. Transitional price limits

- (88) The first amendment to the pricing methodology<sup>30</sup> introduced transitional price limits until July 2026: a maximum limit at 15,000 €/MWh and a minimum limit at -15,000 €/MWh. These transitional price limits are a safety measure aiming to mitigate potential risks related to the first years of operation of the European platforms, with TSOs gradually accessing the platforms. Both the TSOs gradually accessing the platforms as well as market participants need some time to adapt to the new market model and gather necessary experience with the way the platforms operate.
- (89) The TSOs propose to reduce these transitional price limits, from ±15,000 €/MWh to ±10,000 €/MWh.
- (90) The proposed reduction is not sufficiently justified, in ACER's view. The TSOs provide largely the same justification in the Proposal as was provided in support of the initial transitional price limits of ±15,000 €/MWh.

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<sup>29</sup> Decision 03/2022, recital (76).

<sup>30</sup> Decision 03/2022.



- (91) In their response to ACER's preliminary position, the TSOs also refer to ACER's evaluations of instances with high CBMP (aFRR VWAP, mFRR CBMP) during the operation of the balancing platforms. In their view, ACER's evaluations demonstrate that the TSO concerns on strategic bidding and the resulting CBMP not reflecting underlying costs, are valid.
- (92) ACER notes that its evaluations only demonstrate that extreme prices may occur in one platform, without affecting the other. This does not immediately imply that the BSPs bid strategically. It may simply mean that the merit order is exhausted in one platform but not in the other, which could result from the way the TSOs activate bids rather than from strategic bidding by the BSPs.<sup>31</sup>
- (93) Considering the above, ACER sees no valid reason for the proposed reduction, and has deleted the TSOs' proposed new values for the transitional price limits in Article 11 of the pricing methodology.
- (94) Following ILR's comment, AEWG invited ACER to clarify the wording related to "transition/transitional period". Even though each period has its own specific purpose and function, ACER has made minor wording adjustments to prevent any potential confusion between them.

#### 6.2.5. Consistency with the intraday price limits

- (95) In their Proposal, the TSOs propose to automatically adjust (increase/decrease) their proposed technical price limits of  $\pm 15,000$  €/MWh (i.e. HMMBEP as subsequently revised by ACER) in case the harmonised maximum clearing price for SIDC increases above 9,999 €/MWh. This adjustment does not account for potential adjustments of the minimum clearing price for SIDC, which are also possible.<sup>32</sup> As such, the adjustment proposed by the TSOs based only on the maximum clearing price for the SIDC does not ensure that the HMMBEP of  $-15,000$  €/MWh remains lower than the harmonised minimum clearing price for SIDC.
- (96) To address the above, ACER has deleted the TSOs' proposed adjustment in Article 3(3) of the pricing methodology and specified, in the new Article 10, paragraphs (5) and (6), that the HMMBEP shall be adjusted if the harmonised maximum (resp. minimum) clearing price for single intraday coupling increases (resp. falls below)  $\pm 9,999$  €/MWh. The same observation applies to the transitional price limits, and ACER has also amended Article 11(2) of the pricing methodology accordingly.
- (97) In their response to ACER's preliminary position, EV and ILR proposed to disconnect the adjustment of the HMMBEP from the current value of the SIDC

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<sup>31</sup> The potential interest of activating slower reserve to mitigate price incidents was discussed in the [2023 ACER market monitoring report](#).

<sup>32</sup> Following [ACER Decision 02-2023](#) on the NEMOs proposal for the harmonised maximum and minimum clearing price methodology for the single intraday coupling.

maximum/minimum price limit, by removing the specific reference to  $\pm 9,999$  €/MWh and instead referring to the SIDC maximum/minimum price limit (without specifying its value).

- (98) ACER agrees with this proposal and has replaced the explicit reference to  $\pm 9,999$  €/MWh with the general reference to ‘harmonised maximum (resp. minimum) clearing price for the single intraday coupling in accordance with Article 54(1) of Commission Regulation (EU) 2015/1222’.

**6.2.6. An alternative way to compute the cross-border marginal price**

- (99) All TSOs propose to improve the computation of the CBMP by including the load frequency control (LFC) area balance setpoint for the aFRR activation in the aFRR CBMP determination in Article 7 of the pricing methodology. This amendment aims to prevent that the CBMP is determined by the price of a bid that is not activated by the TSO controller.
- (100) In principle, prices must be based on supply and demand, so it is appropriate to ensure that the CBMP is not set at a price of a bid which does not receive any signal for activation. For this reason, ACER has approved the amendment proposed by the TSOs. However, ACER notes that this discrepancy of having the price set by a bid that is not activated by the TSO controller would not arise if the bids selected by the AOF were perfectly aligned with the bids activated by the TSOs controller, as required by Article 29(6) of EB Regulation.

**7. CONCLUSION**

- (101) ACER considers that the Proposal is in line with the requirements of the EB Regulation, provided that ACER’s amendments described in this Decision are integrated in the Proposal, as set out in Annex I. These amendments, which have been consulted with the TSOs and ENTSO-E, are necessary to ensure that the Proposal 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.
- (102) 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,  
BCAB – Baltic Cable AB  
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 5 July 2024

**- SIGNED -**

*For ACER  
The Director*

C. Zinglensen

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 (as revised and approved by ACER)

*For information only:*

**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 ACER's revisions in track changes).

**Annex II**                      Consolidated version of 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 IIa**                      Consolidated version of 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 the latest amendments in track changes).

**Annex III**                      Evaluation of responses to ACER's public consultation

*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.*