

ACER consultation on the amendment of the EU electricity balancing pricing methodology



EFET response – 10 November 2021

The European Federation of Energy Traders (EFET¹) welcomes the opportunity to provide our comments to the ACER consultation regarding the compliance of the proposal for the amendment of the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process (the 'Amendment Proposal') with Commission Regulation (EU) 2017/2195 (the 'EB Regulation').

We believe the amendment proposal should be rejected by ACER².

Our key points are:

- We oppose price limits, other than purely technical, and call for great care in the consideration of any such limitations to price formation.
- In our view, the TSOs' proposal described an economic, not a technical price limit.
- We question the purpose and legality of the TSOs proposal, especially insofar as it seems mainly designed to address a non-evidenced fear of market abuse for which they have no competence.
- The TSOs proposal seems to obliterate the consequences that capping balancing energy prices may have on the imbalance price, and the effect this may have on market participants' ability to contribute to security of supply and system security.
- The TSOs proposal gives the illusion to be a short-term transitory measure. If it goes ahead, we insist there should be a precise deadline and detailed criteria for assessing the continuation/amendment of the measure.

You can find below our detailed answers to the consultation questions.

Question 1a)

In your view, could a reduction of the balancing technical price limits as proposed by the TSOs be justified on the grounds of a more efficient functioning of the market?

Yes

No

Partially

Question 1b)

Please provide an explanation for your answer.

In our view, the first question that ACER ought to have posed is whether the TSO's proposal can be considered as a **technical** price limit according to existing European rules.

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at www.efet.org

² See also our [EFET response to ENTSOE consultation on balancing price limits](#)

1. *Technical vs. economic price limit*

According to Art. 10 (1), sentences 1 and 2 of Regulation (EU) 2019/943 of 05 June 2019, there is "neither a maximum nor a minimum limit" for electricity prices, including balancing energy. The development of balancing energy prices follows the principle of the free formation of prices, i.e. their level is determined by competition according to supply and demand. Only technical price limits within the meaning of Art. 10 (1) sentence 2 Regulation (EU) 2019/943 are legally acceptable, if they are systemically necessary to enable the submission of electronic bids and processing of results (clearing), without limiting the formation of balancing energy prices in accordance with the aforementioned rules.

Art. 30 (2) of the Commission Regulation (EU) 2017/2195 also restricts the introduction of price limits to technical reasons; there is no room for price limits based on other justifications. Even though technical price limits are not defined by the EBGL, it can be assumed that technical price limits only refer to the "mathematic maximum for the algorithm to function without having the purpose of limiting price formation" (see ACER Decision 22/2020 of 5th August 2020 in a different context).

Therefore, the determination of a price limit that is not technical is against the European law, regardless of whether it is applied permanently or for a limited amount of time. This is also in line with ACER's understanding. In Art. 3 (3) of the "ACER Decision on the methodology for pricing balancing: Annex 1" (Annex to ACER Decision No 01/2020 of 24 January 2020), ACER set a technical price limit of +/- 99,999 EUR/MWh for all balancing energy product bids. ACER emphasised correctly that the European Regulations do not allow for any restriction of price formation on the balancing energy markets.

The current TSOs proposal foresees a maximum/minimum price for all balancing energy product bids and a maximum/minimum value of the CBMP of +/- 15,000 EUR/MWh, to be implemented before the go-live of the MARI and PICASSO balancing platforms in July 2022. The TSOs base their proposal based on the following:

Article 10(1) second sentence of Regulation (EU) 2019/943 allows for technical price limits which may be applied in the balancing timeframe. Therefore, all TSOs understand that Regulation (EU) 2019/943 does not restrict the possibility, provided by the Article 30(2) of the EB Regulation, of introducing technical price limits in the balancing timeframe.

EFET fails to understand to what extent the price cap value of +/- 15,000 EUR/MWh can be considered a technical limit, and the TSOs provide no explanation in that regard. We see it as an economic limit. As market outcomes exceeding this value have already been observed in certain Member States, this price limit can already be assessed as hindering the free formation of prices.

Bearing this fundamental criticism about the legality of the TSOs proposal, we criticise below the view of the TSOs that this **economic** price limit could improve market functioning:

2.a Undistorted electricity prices as a vital signal for dispatch and investment

In accordance with Article 3 of Regulation (EU) 2019/943 (the 'Electricity Regulation'), Member States, national regulatory authorities (NRAs), transmission system operators (TSOs), distribution system operators (DSOs), market operators and delegated operators must ensure that electricity market rules encourage free formation of prices and avoid actions which prevent

the formation of prices on the basis of demand and supply.

EFET wholeheartedly welcomed the new provision of the recast Electricity Regulation advocating free price formation. Indeed, only undistorted prices give an accurate signal for bidding and dispatch decisions on the one hand, and can serve as a sound basis for investment and divestment decisions on the other hand.

With an increasing share of intermittent power generation in the European energy mix, precise price signals are needed more than ever to ensure the reactivity of market participants' bidding and dispatch decisions to rapidly changing demand and supply conditions, including balancing mechanisms.

The development of extra peaking generation units, storage solutions (including power to X assets), demand side management, and other types of flexible assets and services may only materialise if electricity prices accurately reflect the true value of energy – including all its fluctuations – and if economic actors do not face undue barriers to enter electricity markets. Accurate price signals will allow market participants to identify the nature and timing of such investments alongside more traditional investment in generation and transmission capacity.

2.b Bidding dynamics in the balancing timeframe

Balancing Service Providers (BSPs) need to take into account business opportunities in concurrent intraday markets when offering bids for the balancing energy market. To compensate for the reduced chance of activation for balancing purposes, BSPs need to adjust the balancing energy price accordingly.

This consideration always becomes relevant if the asset might achieve a positive margin on the electricity market, i.e. if the asset would become “in the money” in the intraday timeframe. In this case, a BSP decision to commit their assets to the balancing timeframe rather than the intraday market translates into a number of uncertainties:

- the price level in intraday and the missed revenues from not participating in the intraday timeframe,
- the chance of being activated or not in the balancing timeframe (as only the activation of a submitted bid gives BSPs the right to remuneration), and
- the price level of balancing energy.

To compensate for the uncertainty on their final revenue position in the balancing timeframe compared to a more secure financial opportunity in the intraday market, BSPs include opportunity costs in their bidding strategy for balancing energy. These opportunity costs result not only from the expected price level in the intraday market, but also from the probability of securing at least this price level with an activated balancing bid. Particularly for aFRR, with very high product requirements and bids in the second half of the merit order having an expected activation duration of a few seconds, letting BSPs set bid prices at the – potentially high – level they deem necessary is crucial to secure enough balancing energy offers to the TSOs. Hence, any limitation to price formation in the balancing timeframe, for instance in the form of price limits, should be approached with utmost care.

2.c Price fluctuations in a context of scarcity and impact on the imbalance price

In order to give market participants the correct incentive to balance their portfolio, it is crucial that the imbalance price, in line with the Electricity Regulation, reflects the real-time value of electricity, taking into account the physical reality of the assets connected to the grid. Market participants are responsible for balancing their sales and purchases of electricity and shall

bear the financial consequences of any imbalance, which is eventually settled with the system operator at the imbalance price. The closer to delivery (real-time), the more volatile imbalance prices may be and the more likely it is for price spikes to arise, as they legitimately reflect imbalances in the electricity system.

A scarcity situation does not mean that the market will not perform its duties. Standard market rules should guarantee the functioning of the electricity market and the contribution of all relevant capacities to security of supply and system security. In fact, a scarcity situation should not be suppressed as long as capacities are available, regardless of the cost of activation. NRAs should ensure that TSOs refrain, as far as possible, from suspending markets, curtailing interconnection or taking any other out-of-market measure. If TSOs have to take such actions and if such actions are likely to affect the market price, NRAs must take measures to avoid or correct the impact of these TSO actions on the electricity price.

As the price of balancing energy constitutes the main component of the imbalance price, measures such as price limits distorting the balancing energy price will hinder the imbalance price from reflecting the true value of electricity in real time. This will be particularly the case in times of scarcity, when balancing energy, and in turn the imbalance price, are expected to rise high. Therefore, balancing energy price limits have a strong potential to hamper appropriate reaction by the market in times where clear signals are vital to guarantee security of supply and system security.

In conclusion, we believe that the TSOs proposal does not have a legal basis, nor that it would improve market functioning. Competitive markets can deliver the most efficient outcome when it comes to bidding, dispatch, investment and divestment decisions. This should also be the case for balancing mechanisms that become more integrated, competitive and liquid thanks to the EU balancing platforms. The TSOs proposal, by hindering market functioning, would have the effect of changing the fundamentals of price formation, and hence making the market less efficient. We call on ACER to reject it.

Question 2.1a)

Do you consider that the lower price limit during the implementation of the integrated European balancing platforms until more TSOs connect to the European platforms would provide a safeguard for secure implementation?

Yes

No

Partially

Question 2.1b)

Please provide an explanation for your answer.

We disagree with the TSOs and ACER to lower the price limits until more TSOs and balancing service providers connect to MARI and PICASSO. We miss a detailed analysis by the TSOs on the transitory risk associated with changes to cross-border and local balancing energy market designs, and adaptation needs by all market participants. If transitory risks exist, we would expect a full explanation of the risks and they can be mitigated. To date, TSOs have not presented such detailed analysis.

Generally, we are concerned about the apparent lack of confidence by TSOs in the target model. Fundamental market design elements such as cross-border marginal pricing and ISP-sized product durations are identified as root cause for requiring mitigation measures. We do not share these concerns, which are once again unsubstantiated by the TSOs.

The balancing target model has been under development for the last 9 years, starting with the framework guidelines in 2012. In our opinion, this entire process has been extremely slow, and there has been ample time for TSOs to sustain their claims. It is now time to implement the target model, not to overhaul it again.

Question 2.2a)

How long in your view shall the lower technical price limit remain in place after the start of the operation of European platforms (foreseen for July 2022)?

Lower technical price limit shall not be in place at all

6 months

1 year

2 years (until the expiration of all the derogations in accordance with Article 62(2)(a) of the EB Regulation)

Longer

Question 2.2b)

Please provide an explanation for your answer.

As explained in our answers to the previous questions, we see neither a legal basis nor a sound justification for a modification of the existing technical price limit for balancing energy.

If balancing prices limits are purely technical in nature and set at a level that does not interfere with the free formation of prices, there should be no concern about the duration for which such limits would be in place.

Question 2.3a)

At what level in your view shall the lower technical price limit be set?

Lower than 15,000 €/MWh

15,000 €/MWh

At the value of highest VoLL among member states

Higher than the highest VoLL among member states but lower than the existing technical price limit

99,999 €/MWh (existing technical price cap)

Question 2.3b)

Please provide an explanation for your answer.

As explained in our answers to the previous questions, we see neither a legal basis nor a sound justification for a modification of the existing technical price limit for balancing energy.

Leaving aside our criticism of the TSOs' proposal not being technical in nature, we note that current developments in the electricity market with high prices in the day-ahead and intraday market demonstrate that the current price cap of 99,999 EUR/MWh for balancing energy is appropriate. The price in the intraday market reached a couple of thousand Euros per MWh. This confirms that in consideration of the opportunity cost of the power market, the technical price limit for balancing energy should remain at this value.

Would ACER decide to forego EU Regulations and allow an economic price limit to be set on balancing energy prices, then we are unsure whether the VoLL is the appropriate reference to set that limit. Indeed, considering that VoLL calculations only result in estimates of what consumers would be willing to pay for their electricity supply, balancing energy – and in turn imbalance prices – may rise above that level in concrete situations of scarcity. Hence, linking

the VoLL to a balancing energy price limit is questionable, unless that limit is set much higher than even the highest VoLL among EU Member States.

Question 2.4

Do you agree that the technical price limit shall increase once all TSOs have joined the European platforms? If you agree, at what level in your view shall technical price level increase?

We disagree for the reasons mentioned above and the technical price limit should remain at +/- 99,999 EUR/MWh according to ACER Decision No 01/2020. We insist that a technical price limit must not materially interfere with the market, and in particular should not influence the market value of the traded good.

A technical price limit should be defined independently from the number of participating TSOs in the platforms. Fundamentally, there is no substantial link between the two in our view. Indeed, the TSOs seem to neglect that as additional TSOs join the platform, not only offers increase but demand as well. Hence, the remedy that they seek to a – once again unsubstantiated – fear of price spikes appears to us uncorrelated to the number of TSOs active on the platform.

Question 3a)

Do you agree there shall be a transparent mechanism to adjust automatically the technical price limits if set limits in the balancing timeframe are expected to be reached?

Yes

No

Question 3b)

Please provide an explanation for your answer.

We agree with ACER that a similar principle for adjusting automatically the technical price limit in DA should also apply to the balancing timeframe to allow prices to reflect the true value of energy. An automatic adjustment mechanism ensures that there is no restriction to the free formation of prices.

However, the TSO proposal is for us inappropriate. Using the harmonised maximum clearing price of SIDC to trigger an increase in the technical price limit for balancing would not be consistent with the automatic adjustment mechanism in SDAC – which we have long pleaded to be extended to SIDC as well.

The automatic adjustment mechanism to be established by ACER should use as a starting point the existing technical price limit of 99,999 EUR/MWh in accordance with the ACER decision 01/2020. The technical price limit for balancing energy shall be increased by e.g. 5,000 EUR/MWh in the event that the marginal balancing energy price exceeds a value of 60 percent of the existing technical price limit of 99,999 EUR/MWh in at least one market time unit in a day in at least one individual bidding zone.

The adjustment mechanism should also have immediate effect – i.e. as of the following bidding round – to ensure that the technical price limit does not hinder price formation.

Question 4

If you would like to comment on other topics please indicate clearly the related Article, paragraph of the Amendment Proposal and add a sufficient explanation

Release of bids

The TSOs' conclusion, repeated in ACER observation on Topic 1, that precluding the option of releasing excess bids above the dimensioning volume (EBGL Art. 29(10)) would dampen balancing energy price levels is incomplete. Should that happen, BSPs with a contract for capacity will increase their capacity bid prices to compensate for the opportunity loss they are facing for not being able to be active on the ID market, should their bid be released.

BSPs without a contract for capacity will behave just as before and include the intraday opportunity loss in their balancing energy bids. BSPs with a contract for capacity will then either align to those of non-contracted energy bids (free bids), with the exact same balancing energy auction outcome as before, or the balancing energy market will no longer be able to attract free bids. In either case, the intraday market will suffer from the additional capacity blocked by the TSO.

Having the balancing energy gate closure time at 25 minutes before real-time, is not a reason for precluding the release of excess bids either. Market participants will still make use of the returned flexibility in local intraday markets where they still can enter into bilateral arrangements.

Market facilitation

The TSOs are concerned about insufficient liquidity in the European balancing platforms, particularly in an early phase. A "critical mass" (not defined by the TSOs) of BSPs is deemed to be required for the platforms to be fully effective and efficient. An artificial price limit intended to protect from "exaggeratedly high balancing energy prices", however, will reduce the attractiveness of the market for new and existing participants. The proposed amendment to mitigate the effects of a supposedly low liquidity actually hinder the development of liquid markets.

Also, "increased vulnerability to errors" should not be a reason to introduce price caps. If TSOs are not fully prepared to operate and participate in the platform, the go-live should be postponed. The same holds for BSPs that need to bear full responsibility for the offers sent to the platform. TSOs could consider allowing for erroneous submissions to be flagged as "mistrade" after balancing energy gate closure time, if they want to support BSPs in dealing with their operational risks. A general limitation of bid prices to avoid typos is certainly the wrong approach.

Start of the platforms

In our view, the price limit determined by the "ACER Decision on the methodology for pricing balancing energy: Annex I" should be applied for each TSO participating in one of the European platforms. As stated in Art. 9(1) of the ACER Decision, this applies "once the TSO becomes participating TSO of the respective European balancing platform.", which may happen ahead of July 2022A situation where different national price limits are applied by TSOs participating in the platform is not acceptable as it would damage the playing field between BSPs located in different Member States, even though they take part in a common merit order.