

**DECISION No 01/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 10 January 2023

**on the Nominated Electricity Market Operators proposal for the
harmonised maximum and minimum clearing price methodology for the
single day-ahead coupling**

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) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Articles 9(5), 9(6)(i) and 9(13) as well as Article 41 thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and nominated transmission operators,

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 6 January 2023, 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 197, 25.7.2015, p. 24

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the ‘CACM Regulation’) laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements also include specific provisions for the single day-ahead coupling (‘SDAC’) in accordance with Chapter 5 of the CACM Regulation and, particularly, for setting the harmonised maximum and minimum clearing prices in accordance with Article 41 of the CACM Regulation.
- (2) On 14 November 2017, ACER issued its Decision No 04/2017 on the nominated electricity market operators’ (‘NEMOs’) proposal for harmonised maximum and minimum clearing prices (‘HMMCP’) for SDAC according to Article 41 of the CACM Regulation (the ‘HMMCP for SDAC methodology’).³
- (3) The present Decision follows from the NEMOs’ proposal to amend the HMMCP for SDAC methodology as approved by Decision No 04/2017. Annex I to this Decision sets out the amended HMMCP for SDAC, pursuant to Article 41(1) of the CACM Regulation, as approved by ACER.

2. PROCEDURE

- (4) On 24 May 2022, the All NEMO committee, on behalf of the NEMOs, launched a public consultation on a reassessment of the HMMCP for SDAC methodology. The consultation lasted until 15 July 2022.
- (5) By email of 15 September 2022, the All NEMO committee submitted, on behalf of all designated NEMOs, a proposal for amendments to the HMMCP for SDAC methodology in accordance with Article 41(1) of the CACM Regulation (the ‘Proposal for amendment’).
- (6) On 15 September, a teleconference with the NEMOs and the regulatory authorities was organised for NEMOs to present the Proposal for amendment.
- (7) On 19 September 2022, ACER launched a public consultation on the Proposal for amendment, inviting all market participants to submit their comments by 9 October 2022. The consultation documents focused on the Proposal for amendment with additional questions aiming at defining the stakeholders’ views on potential evolutions of the

³ Decision No 04/2017 of 14 November 2017 on the NEMOs’ proposal for harmonised maximum and minimum clearing prices for single day-ahead coupling
https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2004-2017%20on%20NEMOs%20HMMCP%20for%20single%20day-ahead%20coupling.pdf

Proposal for amendment. The summary and evaluation of the responses received are presented in Annex II to this Decision.

- (8) By email of 20 September 2022, the All NEMO committee specified its Proposal for amendment and clarified the proposed textual changes. The specified Proposal for amendment documents were uploaded to the ACER public consultation.⁴
- (9) Between 21 September 2022 and 31 October 2022, ACER cooperated closely with the NEMOs and the regulatory authorities and consulted them on various amendments suggested by ACER during teleconferences and via email communication. In particular, the following procedural steps were taken:
- 21 September: discussion with the regulatory authorities during the CACM Task Force meeting⁵;
 - 21 September: discussion with the regulatory authorities at the meeting of the Board of Regulators;
 - 27 September: discussion with the NEMOs, Transmission System Operators ('TSOs') and regulatory authorities during the CACM pentilateral coordination group meeting⁶;
 - 3 October: public workshop presenting the Proposal for amendment to the stakeholders and providing them with clarifications;
 - 5 October: discussion with the regulatory authorities during the AEWG⁷;
 - 6 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team⁸;
 - 13 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;
 - 20 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;
 - 24 October: discussion with the NEMOs and regulatory authorities during a dedicated meeting;

⁴ Having as objective to conduct the procedure in an expedited manner, ACER decided not to wait for the documents submitted by the NEMOs on 20 September to open its public consultation. Those documents bringing only specifications and minor content changes to the Proposal for amendment submitted on 15 September 2022, ACER considers that this approach did not affect the quality of the public consultation.

⁵ ACER's platform for discussing all issues connected to the CACM Regulation with the regulatory authorities.

⁶ Joint platform between ACER, NEMOs, TSOs, the European Commission and regulatory authorities for discussing issues connected to the CACM Regulation.

⁷ ACER's high level platform for discussing all issues connected to all network codes and guidelines

⁸ Subgroup of the CACM TF involving regulatory authorities experts on algorithm and market coupling operation topics such as the HMMCP for SDAC

- 27 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;
 - 9 November: discussion with the regulatory authorities during the CACM Task Force meeting;
- (10) On 31 October 2022, ACER shared its preliminary position on the Proposal for amendment with the NEMOs and the regulatory authorities and invited them to submit their written observations and any requests for an oral hearing by 11 November 2022.
- (11) Between 16 November and 24 November, ACER consulted the AEWG, including a discussion during the 22 November AEWG meeting. The AEWG provided its advice on the draft decision on 25 November 2022 (see Section 5.3).
- (12) On 14 December 2022, upon the proposal of several regulatory authorities, the Board of Regulators submitted an amendment for the draft decision concerning Article 4(3) of the Proposal for amendment. The Director rejected this amendment on the grounds set out in recitals (62) to (66) below.
- (13) On 6 January 2023, the Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942 on the draft decision.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL FOR AMENDMENT

- (14) According to Article 5(2)(b) of Regulation (EU) 2019/942, ACER shall revise and approve proposals for terms and conditions or methodologies, based on network codes and guidelines adopted before 4 July 2019, which require the approval of all regulatory authorities.
- (15) According to Articles 9(5) and 9(6)(i) of the CACM Regulation, as initially adopted, namely as a guideline before 4 July 2019, the proposal for the HMMCP for SDAC in accordance with Article 41(1) of the same Regulation 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 HMMCP for SDAC and any amendments thereof have been explicitly subjected to approval by ACER.
- (16) According to the second sentence of Article 9(13) in joint reading with Articles 9(1), 9(6)(i) and 41(1) of the CACM Regulation, NEMOs responsible for developing the proposal to the HMMCP for SDAC (i.e. all NEMOs) may propose amendments to this methodology and submit them to ACER for approval.
- (17) According to Article 5(6) of Regulation (EU) 2019/942 and Article 9(5) of the CACM Regulation, ACER, before approving the proposal for amendment, shall revise it where necessary, after consulting the respective NEMOs, in order to ensure that the methodology is in line with the purpose of the CACM Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.

- (18) The Proposal for amendment has been submitted by the NEMO committee, on behalf of all NEMOs, to ACER for approval. It aims to amend the HMMCP for SDAC, under Article 41 of the CACM Regulation, as approved by Decision No 04/2017 of 14 November 2017.
- (19) Therefore, based on Article 5(2)(b) of Regulation (EU) 2019/942 as well as Articles 9(5), 9(6)(i) and 9(13) of the CACM Regulation, ACER is competent to decide on the Proposal for amendment.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (20) The Proposal for amendment includes the following elements:
- a) a ‘Whereas’ section;
 - b) general provisions, including on the scope of application and on harmonised definitions, in Title 1;
 - c) provisions on the maximum and minimum prices, including the values of the harmonised maximum and minimum clearing prices for SDAC, criteria and process for establishing and amending maximum and minimum price for SDAC , in Title 2;
 - d) final provisions on the timeline for implementation and language disclaimer, in Title 3;
- (21) The Proposal for amendment, therefore, consists of the complete HMMCP for SDAC as contained in Annex I to ACER’s Decision No 04/2017, subject to the following NEMOs’ amendments:
- a) Whereas:
 - i. addition of a clarification that the document includes a mechanism for amending both the maximum and minimum clearing price;
 - ii. addition of one paragraph to the recitals that describes that the document considers the context leading to an increase of the harmonised maximum price in SDAC in May 2022 and the outcomes of the public consultation that all NEMOs organized;
 - iii. addition of one paragraph describing that the proposed conditions to decrease the harmonised maximum clearing price for SDAC “while still having in mind the Value of Lost Load (‘VoLL’) principle (sic)”;
 - iv. modification of the description of the transition period;

- v. removal of the outdated reference to former SDAC regions (MRC and 4MMC);

b) Article 4:

- i. modification of the conditions for triggering an increase of the harmonised maximum clearing price for SDAC towards conditions that are much stricter (i.e. that would lead to much less increases);
- ii. clarification of the bidding zones to which the conditions to trigger an increase of the harmonised maximum clearing price for SDAC would apply;
- iii. reduction of the duration of the transition period;
- iv. addition of a specific condition to the transition period, during which the harmonised maximum clearing price for SDAC would not be further modified;
- v. addition of additional specific conditions to trigger an increase of the harmonised maximum clearing price for SDAC;
- vi. addition of a paragraph replicating the automatic increase of the harmonised maximum clearing price limit for SDAC to the reduction of the harmonised minimum clearing price limit for SDAC with different values for the decrease steps;
- vii. addition of a paragraph describing a possibility for the harmonised maximum clearing price limit to decrease or for the harmonised minimum clearing price limit to increase back to specific values in case the clearing prices stay within a specific price interval during a year; and
- viii. modification of the NEMOs' obligation to announce the new harmonised maximum or minimum clearing prices for SDAC in line with the modification of the transition period.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation one the Proposal

- (22) Responses to ACER's public consultation are summarised in Annex II to this Decision.

5.2. Consultation on ACER's preliminary position

- (23) ACER's preliminary position contained two major changes to the Proposal for amendment:

- a) easier-to-reach triggering conditions (Article 4(1)(a) and 4(2)(a) of the Proposal for amendment) to initiate adjustments of the harmonised maximum and minimum clearing prices; and
 - b) an adaptive transition period (Article 4(1)(b) and 4(2)(b) of the Proposal for amendment), with a duration of 28 days in case an adjustment of the harmonised maximum or minimum clearing price had not taken place recently and 90 days otherwise.
- (24) The following paragraphs provide a summary of the views which ACER received on its preliminary position during the hearing phase between 31 October and 16 November 2022. Written comments were submitted by the all NEMO committee on behalf of all NEMOs, by EPEX SPOT as well as by the following regulatory authorities: Energie Control Austria ('E-Control'), Bundesnetzagentur ('BNetzA'), Commission de Régulation de l'Énergie ('CRE'), Institut Luxembourgeois de Régulation ('ILR'), Autorità di Regolazione per Energia Reti e Ambiente ('ARERA'), Regulatory Authority for Energy ('RAE'), Public Utilities Commission ('PUC'), National Energy Regulatory Council ('NERC'), Energimarknadsinspektionen ('Ei') and Comisión Nacional de los Mercados y la Competencia ('CNMC'). No party requested an oral hearing.
- (25) On behalf of the NEMOs, the NEMO committee stated that:
- a) NEMOs cannot confirm, at the time of the submission of their input, that an immediate implementation as described in Article 5(2) of ACER's preliminary position is possible; and
 - b) NEMOs provided an updated list of NEMOs subject to the approved requirements for the HMMCP for SDAC.
- (26) EPEX SPOT's comment only contained a legal review of the HMMCP for SDAC and no comment regarding the content as EPEX SPOT's content view was represented by the all NEMO committee's comment. This legal review contained minor wording corrections.
- (27) E-Control stated the following:
- a) adjustments of the harmonised maximum and minimum clearing price for SDAC described in Articles 4(1)(a) and 4(2)(a) shall be triggered with stricter conditions:
 - i. addition of criteria on the amount of traded volumes compared to the total SDAC volumes;
 - ii. triggering conditions of the Proposal for amendment;
 - b) addition of a sentence in Articles 4(1)(d) and 4(2)(d) of ACER's preliminary position to only trigger an adjustment of the harmonised maximum or minimum clearing price for SDAC due to events occurring outside a transition period;

- c) addition of a clarification in Articles 4(1)(b) and 4(2)(b) regarding the start of the transition period;
 - d) addition of a remark regarding the treatment of events which could occur between ACER's decision and the entry into force;
 - e) addition of a remark stating a support of a lowering of the harmonised maximum price limit in case of steady prices over a certain duration;
 - f) addition of a question regarding the treatment of the virtual bidding zones and their exclusion from the triggering conditions to adjust the harmonised maximum or minimum price limits; and
 - g) wording suggestions with no content changes.
- (28) CRE stated the following:
- a) Article 4(e) of ACER preliminary position excludes events of fall backs applied by TSOs which should not be excluded considering the potential heavy impact on zones;
 - b) implementing the HMMCP for SDAC methodology during the winter 2022-2023, considering the unprecedented crisis, could create an unnecessary risk;
 - c) ACER's proposal of adaptive transition periods is the only solution to avoid a "snowball effect" of the harmonised maximum clearing price for SDAC adjustments and must therefore be preserved; and
 - d) a stricter approach for defining the triggering conditions of the adjustments of the harmonised maximum and minimum clearing prices for SDAC should be followed and the most appropriate ways to do so are:
 - i. decrease the increments to 500 €/MWh; and
 - ii. increase to 3 the number of different days in which high prices take place as described in Article 4(1)(a) of the Proposal for amendment;
- (29) ILR stated the following:
- a) ACER's preliminary position introduces a transition period of 90 days which is potentially not consistent with Article 10 of the Electricity Regulation although the willingness to reduce the number of increases of the maximum limit within a year is understandable;
 - b) the harmonised maximum clearing price for SDAC is a technical limit and not a political one even though it can impact the liquidity of market participants via collaterals when prices increase;

- c) the wording “capped” in Articles 4(1)(d) and 4(2)(d) of ACER’s preliminary position should be replaced by “limited” as it is a technical limit and not a political “cap”;
- d) the NEMOs’ assessment of the HMMCP for SDAC methodology described in Article 4(4) of the Proposal for amendment could be discussed with ACER and the regulatory authorities; and
- e) following the events of 17 August 2022 (i.e. clearing prices for SDAC reaching 4000/MWh in the Estonian, Latvian and Lithuanian bidding zones), the harmonised maximum clearing price for SDAC should have been set at 5000€/MWh according to ACER’s Decision No 04/2017 and the current HMMCP for SDAC methodology, and the current procedure does not suspend the application of the methodology.

(30) BNetzA stated the following:

- a) the HMMCP for SDAC methodology is defining technical price limits and not price caps/emergency measures which are decided upon by the EU-legislator, also, Articles 3(b) and 7(2) of the Electricity Regulation limit the broad interpretation of Article 10(2) of that Regulation, which should be considered when defining the different parameters leading to adjustments of the harmonised maximum or minimum price limits;
- b) the transition period should therefore be as short as possible and limited to a period that covers the technical needs of the implementation;
- c) to cover from snowballing effects, smaller increase steps for adjusting the harmonised maximum or minimum price should be introduced which would be better representing the requirements of Article 10(2) of the Electricity Regulation;
- d) the deletion of the paragraph describing the lowering of the maximum price limit in ACER’s preliminary position is not supported and could be justified by arguing a legal gap in Article 10(2) of the Electricity Regulation;
- e) the word “capped” in ACER’s preliminary position should be replaced by “limited” as it is a technical limit and not a political “cap”;
- f) Articles 4(1)(d) and 4(2)(d) of the Proposal for amendment should be clarified to only trigger an adjustment of the harmonised maximum or minimum clearing price for SDAC due to events occurring outside a transition period;
- g) the second sentence of Article 4(4) of ACER’s preliminary position should be removed as it is redundant according to Article 6(1) and 13(2) of the CACM Regulation; and
- h) the word “and” should be added in Article 3(3) of ACER’s preliminary position.

(31) ARERA stated the following:

- a) a distinction should be made between the technical price limits and a cap to market prices; therefore, the root cause of the technical price limit should be clarified, i.e. the existence of instances under which the market coupling algorithm would not be able to find a clearing price if a price limit were not specified; other considerations related to the issue of high average market prices should be kept out of the scope of the HMMCP for SDAC methodology and addressed by means of other appropriate mechanisms pursuing affordability;
- b) being in an energy-only market, price spikes are fundamental for peak plants to recover their fixed costs and, therefore, capping clearing prices can put system adequacy in danger;
- c) a longer freeze period as introduced in ACER's preliminary position is not legally justifiable and could be detrimental to the system;
- d) a lowering of the increments of the harmonised maximum clearing price limits adjustments to 500€/MWh is preferred; and,
- e) similarly, a lowering of the harmonised maximum clearing price limits in case no high prices occur for a certain durations is preferred.

(32) NERC supported the following:

- a) a lowering of the harmonised maximum clearing price limits in case no high prices occur for a certain duration;
- b) a set-back of the reference harmonised maximum clearing price to 3000€/MWh;
- c) upwards price adjustments of the harmonised maximum clearing price limit of 500€/MWh;
- d) reconsidering the criteria described in ACER's preliminary position in line with the implementation of 15 minutes market time units in 2025;
- e) a transition period of 4 weeks; and
- f) a coordination or agreement with ACER to decide on an increase of the harmonised maximum clearing price for SDAC.

(33) PUC supported the following:

- a) a lowering of the harmonised maximum clearing price limits in case no high prices occur for a certain duration; and

- b) in case the transition period described in ACER's preliminary position is removed, a lowering of the increments of the harmonised maximum clearing price limits adjustments to 500€/MWh.
- (34) RAE supported the following:
- a) ACER's preliminary position triggering conditions, however subject to a review of those conditions in line with the implementation of 15 minutes market time units in 2025;
 - b) ACER's preliminary position transition period;
 - c) a lowering of the increments of the harmonised maximum clearing price limits adjustments to 500€/MWh; and
 - d) a lowering of the harmonised maximum clearing price limits in case no high prices occur for a certain durations.
- (35) Ei stated that the wording "capped" in ACER preliminary position should be replaced by "limited".
- (36) CNMC stated the following:
- a) A shortening of the transition period should be accompanied by a reduction of the increment for the harmonised maximum clearing price for SDAC;
 - b) the Triggering conditions described in Articles 4(1)(a) and 4(2)(a) of the Proposal for amendment are preferred; and
 - c) a lowering of the harmonised maximum clearing price limits in case no high prices occur for a certain duration is preferred.

5.3. Consultation of the AEWG

- (37) The AEWG provided its advice on 25 November 2022 and endorsed the draft Decision.
- (38) In the context of the AEWG's advice, BNetzA repeated and elaborated its comment described in paragraph (30)d) regarding the deletion of Article 4(3) of the Proposal for amendment. In essence, BNetzA argued that ACER's interpretation of Article 10(2) of the Electricity Regulation was only valid if the legislator intended to exclude the possibility to lower the harmonised maximum clearing price for SDAC. In BNetzA's view, the legislator did not clarify such intention in the CACM Regulation or the Electricity Regulation so that the last sentence of Article 10(2) of the Electricity Regulation could also be interpreted as providing an indication on the duration of the application of a new harmonised maximum clearing price and not as a limitation to increases.

5.4. Amendment of the Board of Regulators

- (39) According to the Board of Regulators' amendment, Article 4(3) of the Proposal for amendment should allow to lower the maximum price and to increase the minimum price under certain conditions, whereby the lowest maximum price should be 4.000 €/MWh and the highest minimum price should be minus 500 €/MWh. The proposal for this amendment was justified as follows:

'Setting minimum and maximum clearing prices - and allowing them to be readjusted again - not only aims to "slow down" future price exaggerations (to some extent), but also aims to reflect a reduced VoLL. A diminution mechanism, which was also originally proposed by the NEMOs, could lower the burden on market participants, as in some cases the collaterals they have to place are directly correlated to the maximum price limit.

The Article 10 of the Electricity Regulation only mentions the increase of the technical limit in para. 2 sentence 4 ("higher limits"). Therefore, one could take the view that by only mentioning the increase of the price limit, the article hinders to introduce the opposite mechanism (argumentum e contrario). However, this is only the case if the legislator intended to exclude the opposite (= regulatory gap). If this is not the case, one can even apply the provision by analogy to justify the opposite. Such intention of the legislator could e.g. be indicated in the whereas-section. Looking into the Electricity Regulation and CACM, we did not find any indication of such intention. Furthermore, the rationale behind the last sentence of para. 2 of Article 10 could be a clarification on the duration of the application of a new technical price limit (until the mechanism requires a new adjustment) and not a restriction to increases. This could indeed be the case if the legislation was issued without having in mind a (exceptional) situation which calls for a diminution. Moreover, the teleological interpretation of Article 10 of the Electricity Regulation would lead to the conclusion that the intended effect resides in the consistency of the price caps with the market situation. The provisions clearly stipulate the requirements that a price adjustment mechanism should observe (i.e. limits shall be sufficiently high so as not to unnecessarily restrict trade or set de facto maximum bidding price for electricity, and shall take into account the maximum value of lost load) and such requirements may be conceived as a "conditio sine qua non". Therefore, in case such conditions are fulfilled and, further to this, a downward mechanism is expected to foster the liquidity and the stable operation of the market, a restrictive interpretation of the last sentence of Article 10(2) could be regarded as not aligned with the principles of adequacy and proportionality and the general objectives of the Regulation.

Therefore, [the NRAs] see the possibility to include a diminution mechanism in the methodology on the basis of an analogy of Article 10(2) Electricity Regulation.'

6. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

6.1. Legal framework

- (40) According to Article 10(1) of Regulation (EU) 2019/943 ('the Electricity Regulation'), there shall be neither a maximum nor a minimum limit to the wholesale electricity price.
- (41) According to Article 10(2) of the Electricity Regulation, the harmonised limits on maximum and minimum clearing prices for day-ahead applied by the NEMOs shall be sufficiently high so as not to unnecessarily restrict trade, be harmonised for the internal market and take into account the maximum VoLL. NEMOs shall also implement a transparent mechanism to automatically adjust the technical bidding limits in due time in the event that the set limits are expected to be reached. The adjusted higher limits shall remain applicable until further increases under that mechanism are required.
- (42) Article 41 of the CACM Regulation sets out specific requirements for the HMMCP for SDAC.
- (43) According to Article 41(1), the proposal for HMMCP for SDAC shall be developed by all NEMOs and shall take into account an estimation of the VoLL. It shall be subject to consultation in accordance with Article 12 of the CACM Regulation. Moreover, in accordance with Article 9(13) of the CACM Regulation, the NEMOs' proposals for amendment to the terms and conditions or methodologies shall also be subject to consultation in accordance with Article 12 of the CACM Regulation.
- (44) As a general requirement, Article 9(9) of the CACM Regulation sets out that every proposal for terms and conditions or methodologies includes a proposed timescale for their implementation and a description of their expected impact on the objectives of the CACM Regulation.
- (45) Further, for coherence reasons and as confirmed by Article 9(9) of the CACM Regulation, the proposal for terms and conditions or methodologies must be in line with the objectives of the CACM Regulation defined in its Article 3.

6.2. Assessment of the legal requirements

- (46) The Proposal for amendment includes not only specific amendments to the HMMCP for SDAC approved by ACER Decision No 04/2017, but also the rest of the approved HMMCP for SDAC. To avoid duplication and because ACER does not see the need to reassess the Proposal for amendment in its entirety, ACER will focus on the NEMOs' proposed amendments and the additional amendments made by ACER.

6.2.1. Legal assessment of the conditions for adjusting the harmonised maximum clearing price for SDAC

- (47) In Articles 4(1)(a) and 4(2)(a) of the Proposal for amendment, the NEMOs adapted the conditions that are to be met to trigger an adjustment of the harmonised maximum and minimum clearing prices for SDAC ('the Triggering conditions'). Those conditions have been made more difficult to reach due to the following set of changes:

- a) the value, in percentage of the harmonised maximum clearing price, which a clearing price has to meet has been changed from 60 to 70 percent ('the Price spike definition'),
 - b) the number of hours during which the value of the clearing price has to be above the aforementioned value has been modified from one market time unit to 5 hours ('the Threshold'), and
 - c) a specific number of days (3 days) during which the aforementioned number of hours has to be spread has been introduced.
- (48) Articles 4(1)(b) and 4(2)(b) of the Proposal for amendment also introduce updated conditions for the transition period, during which no increases to the harmonised maximum clearing price shall be initiated.
- (49) ACER considers that the updated conditions for triggering an increase of the harmonised maximum clearing price for SDAC of the Proposal for amendment can have negative impacts on the efficient functioning of the SDAC market in two distinct types of situations.
- (50) First, in situations where repeated high prices, which are confined by the harmonised maximum price limit of SDAC, would occur frequently but on a not frequent enough basis to meet the Triggering conditions. In those circumstances, the harmonised maximum price limit for SDAC would not increase and would therefore restrict trade. In ACER's view, this restriction of trade would be unnecessary because, due to the set of Triggering conditions defined in the Proposal for amendment, it would restrict an orderly and free price formation, which is in principle to be pursued according to Article 3(b) of the Electricity Regulation and Article 3(h) of the CACM Regulation. Furthermore, by limiting the harmonised maximum clearing price to its current levels, it would restrict investment incentives for generation and demand response which are to be achieved according to Article 3(h) of the Electricity Regulation. The harmonised maximum price limit for SDAC would therefore not be sufficiently high so as not to unnecessarily restrict trade. In that regard, it would not comply with the second sentence of Article 10(2) of the Electricity Regulation: *'Those limits shall be sufficiently high so as not to unnecessarily restrict trade [...]'*.
- (51) Second, in situations where clearing prices would reach the harmonised maximum price limit in a repeated manner and over a duration of several months. In these situations, the Triggering conditions would be met multiple times over a limited duration which would lead to several increases of the harmonised maximum clearing price for SDAC. In ACER's view, this is a situation in which the frequent increase of harmonised maximum clearing price has a potentially detrimental impact on the market. Indeed, those frequent increases would allow for rapidly increasing clearing prices to be formed but to which the market would most likely not be able to react properly due to the short time between the increases of the harmonised maximum clearing price. After the first high prices and a first increase of the harmonised maximum clearing price, this situation would therefore most probably not lead to more demand reduction, demand-response or to the

commissioning of new generation units within the short transition period. Those increases would therefore lead to a social welfare transfer from consumers to producers with little or no more trade being accommodated which can be detrimental to the objective of contributing to the efficient development of the electricity sector in the Union according to Article 3(g) of CACM Regulation.

- (52) After many interactions with the involved parties, ACER eventually decided to correct those two detrimental effects of the Triggering conditions by adjusting Articles 4(1) and 4(2) of the Proposal for amendment in the following way:
- (i) by setting Triggering conditions for increasing the harmonised maximum price limit for SDAC that can be met more easily, combined with
 - (ii) a lower increment for the increases of the harmonised maximum clearing price for SDAC.
- (53) The Triggering conditions introduced by ACER ensure that the requirement under the third sentence of Article 10(2) of the Electricity Regulation is met: *‘NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.’* Those Triggering conditions are defined as the minimum conditions that lead to an expectation of the harmonised maximum clearing price to be reached. Indeed, single events that can occur due to a specific, circumstantial set of conditions should not be considered as events leading to an expectation of the harmonised maximum clearing price to be reached and should therefore be excluded from the Triggering conditions. All events including a higher occurrence of price spikes according to the Price spike definition of the Triggering conditions, however, are to be considered. Therefore, the Threshold of the Triggering conditions is defined as at least two market time units spread of two days over a rolling period of 30 days.
- (54) The reduced increment by which the harmonised maximum clearing price for SDAC shall be increased, introduced by ACER, ensures that the situations described in recital (51) are limited. The increment of 500€/MWh introduced by ACER is aligned with the observations⁹ received from CRE, BNetzA, ARERA, NERC, PUC and RAE. This change is also underpinned by the third sentence of Article 10(2) of the Electricity Regulation: *‘NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.’* One might suspect that this reduction of the increment could lead to unnecessary restrictions of trade due to a lower increase of the harmonised maximum clearing price for SDAC in case of repeated events of price spikes reaching the harmonised maximum clearing price. However, such view falls short of the necessity to limit the situations described in recital (51), which requires to limit the intensity of the increases. In ACER’s view, this reduction of the increment is the best way, in line with

⁹ described in recitals (25) to (36)

the principle of proportionality, to mitigate the detrimental situations described in recital (51) while limiting the impact on free price formation and not deviating from the legal requirements set out in Article 10(2) of the Electricity Regulation.

- (55) ACER considers that the change of the transition period in the Proposal for amendment from 5 weeks to 4 weeks is supported by the third sentence of Article 10(2) of the Electricity Regulation: *‘NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.’* In the current circumstances, any further shortening of this transition period would endanger operational security due to the short duration for implementing the change in SDAC which would go against Article 3(c) of the CACM Regulation: *‘This Regulation aims at [...] ensuring operational security [...]’*. Compared to ACER’s preliminary position described in recital (23) that included a longer transition period, this transition period of 28 days was supported by ILR, BNetzA, ARERA and NERC in their hearing inputs.
- (56) The Proposal for amendment also contains new conditions for the transition period, described in Articles 4(1)(c) and 4(2)(c), during which the harmonised maximum and minimum clearing prices are limited to their current values and during which no further adjustments are triggered. Following a similar reasoning than the one detailed in recital (54), ACER considers that this provision is necessary to prevent the situations having detrimental effects on the market described in recital (51). No party objected to this proposal neither during the public consultation nor during the hearing phase. ACER only introduced a change in Articles 4(1)(c) and 4(2)(c) to differentiate the transition periods linked to an increase of the harmonised maximum clearing price from the transition periods linked to a decrease of the harmonised minimum clearing price which should be separate. Indeed, operational security should not be compromised by the possibility to have in parallel two transition periods, one pertaining to an increase of the harmonised maximum clearing price and one pertaining to a decrease of the harmonised minimum clearing price.
- (57) ACER adjusted Article 4(1)(e) of the Proposal for amendment to improve its clarity by removing the undefined and unclear references to *‘capacity related fall backs having been applied by Transmission System Operators’*.
- (58) These changes are compatible with the requirement to take into account the Value of Lost Load (‘VoLL’) according to the second sentence of Article 10(2) of the Electricity Regulation (*‘Those limits [...] shall take into account the maximum value of lost load.’*). Indeed, the ever-increasing price limits should ensure that the harmonised maximum clearing price for SDAC is always above the clearing price that would occur in the absence of price limits or in the case of price limits equal to VoLL as described in recital (26) of ACER Decision 04/2017.
- (59) ACER adjusted the durations in Article 4 of the Proposal for amendment from weeks to days to improve the precision of this Article.

- (60) ACER supports the introduction in the Proposal for amendment of an exclusion of virtual bidding zones (i.e. in which no demand or supply bids are submitted)
- (61) ACER deleted Article 4(3) of the Proposal for amendment. The deletion was necessary as this paragraph provided for a lowering of the maximum price limit, which goes directly against the requirement that applies to higher limits according to the fourth sentence of Article 10(2) of the Electricity Regulation (*'The adjusted higher limits shall remain applicable until further increases under that mechanism are required.'*). ACER considers that the higher limits referred to in this Article are the harmonised maximum and minimum clearing prices and that, therefore, any lowering of the harmonised maximum clearing price or any increasing of the harmonised minimum clearing price would be in direct contradiction with this requirement.
- (62) More specifically, and in particular with regard to the Board of Regulators' amendment, it is to note that reliance on an 'analogy' of Article 10(2) of Electricity Regulation seems not appropriate. Applying a legal rule by analogy typically means to extend an adopted legal rule to cases which the legislature had not foreseen. Here, however, the NEMOs and the Board of Regulators propose a rule, i.e. lowering the maximum price limit, which is not an adopted legal rule, in particular not under Article 10(2) of the Electricity Regulation (the latter being explicit about increasing the increased price limits). The proposed rule on lowering the maximum price limit is therefore a new rule. Accordingly, it cannot be argued that Article 10(2) of the Electricity Regulation can be applied by analogy to achieve a lowering of the maximum price limit.
- (63) Moreover, the lowering of the maximum price limit is not evidenced by the legislature's intention. The fact that the legislature did not explicitly exclude the lowering of the price could, but does not necessarily mean that such lowering is permissible. The purposive and teleological interpretation finds its limits in the clear meaning of the legal text. Here, the last sentence of Article 10(2) of the Electricity Regulation states: *'The adjusted higher limits shall remain applicable until further increases under that mechanism are required.'* This requirement will be violated once an increased price is lowered. Thus, except for the case where the maximum price is lowered before any increase adjustment occurs (which however will not be possible under the Board of Regulators' amendment because it provides for that *'the lowest maximum price shall be 4.000 €/MWh'*, while according to Article 3(1) of the Proposal for amendment as amended by ACER this value is the initial (reference) maximum price from which the adjustment mechanism starts), the proposed amendment will result in immediately violating the legal text of the last sentence of Article 10(2) of the Electricity Regulation. One cannot argue such violation as being intended by the legislature.
- (64) Furthermore, Article 3(b) of the Electricity Regulation requires that *'market rules shall encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply'*. Free price formation with regard to the maximum price limit under Article 10(2) of the Electricity Regulation is promoted by increasing instead of decreasing the maximum price limit.

- (65) While the justification underlying the Board of Regulators' amendment seems to aim at the lowering and the '*diminution*' of the maximum price limits, the amendment itself proposes also an increase of the minimum price limit. In that regard, suffice it to note that the principle of Article 3(b) of the Electricity Regulation implies (conversely) promoting free price formation by a decrease rather than an increase of the minimum price limit, and that, accordingly, Article 10(2) of the Electricity Regulation is not meant to disable the free price formation.¹⁰
- (66) Therefore, in ACER's view, Article 4(3) of the Proposal for amendment as well as the related amendment proposed by the Board of Regulators are not in line with the Electricity Regulation. Consequently, the Board of Regulators' amendment had to be rejected.

6.2.2. Legal assessment of the introduction of conditions for adjusting the harmonised minimum clearing price for SDAC

- (67) ACER considers that the introduction in the Proposal for amendment of conditions for adjusting the harmonised minimum clearing price for SDAC is compliant with Article 10(2) of the Electricity Regulation, given that this provisions does not differentiate upper and lower limits, but instead refers to limits in general: '*NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached*'[...]. An automatic mechanism to lower the minimum price limit is therefore supported by the legal framework and supported by the market participants according to the outcome of the public consultation. ACER considers indeed that similar principles for triggering a change of the maximum or minimum price limit should be followed, with a factor of proportionality regarding the amount of the respective increases or decreases steps. ACER therefore adjusted Article 4(2) of the Proposal for amendment following the reasoning of the changes described in section 6.2.1.

6.2.3. Assessment of the requirements in Article 41(1) of the CACM Regulation

- (68) The Proposal for amendment does not affect the finding in ACER's Decision No 04/2017 that the requirements of Article 41(1) of the CACM Regulation are fulfilled, except the amendments introduced in Article 4(3) of the Proposal for amendment which, however, cannot be approved for the reasons explained in section 6.2.1.
- (69) Therefore, the Proposal for amendment, except for those proposed for Article 4(3) of that Proposal, fulfils the requirements of Article 41(1) of the CACM Regulation.

¹⁰ Indeed, when Article 10(2) of the Electricity Regulation was adopted, the approved price adjustment mechanisms in place under Articles 41 and 52 of the CACM Regulation provided for an increase of only the maximum prices, and not of minimum prices.

6.2.4. Assessment of the requirements for consultation

- (70) The NEMOs, through the All NEMO committee, consulted the public on the reassessment of the HMMCP for SDAC methodology for more than one month, i.e. from 14 May 2022 until 15 July 2022 and published the responses received and summaries thereof.
- (71) In addition, ACER consulted the public on the draft Proposal for amendment from 19 September 2022 until 9 October 2022, thereby complementing the public consultation ran by the NEMOs before submitting their Proposal for amendment.
- (72) Therefore, ACER considers that the Proposal for amendment and its subject matter has been consulted with the public in such a way that stakeholders could present their views effectively and that Article 12 of the CACM Regulation and Article 9(13) of the CACM Regulation can be deemed as satisfied.

6.2.5. Assessment of the requirements in Article 9(9) of the CACM Regulation

- (73) Article 5 of the Proposal for amendment provides that the HMMCP for SDAC shall apply *‘immediately after the MCO function has been implemented in accordance with Article 7(3) of the CACM Regulation’*. ACER amended Article 5 of the Proposal for amendment to correct the implementation date as it referred to outdated events.
- (74) Recitals (7) to (14) of the ‘Whereas’-section in the Proposal for amendment describe the expected impact of the HMMCP for SDAC on the objectives listed in Article 3 of the CACM Regulation and remained unchanged in comparison to the version of the HMMCP for SDAC according to ACER’s Decision No 04/2017.
- (75) Therefore, the Proposal for amendment complies with the requirement of the inclusion of the implementation timescale and of the description of the expected impact on the objectives, in accordance with Article 9(9) of the CACM Regulation.

6.2.6. Assessment of other points of the Proposal for amendment

- (76) ACER adjusted recital (3) of the ‘Whereas’ section of the Proposal for amendment to refer to the public consultation organised by ACER.
- (77) ACER adjusted recital (3) of the ‘Whereas’ section of the Proposal for amendment to remove the reference to the context of the increase of the SDAC harmonised maximum price limit change of May 2022 described in recital (21)a)ii considering that the context of this increase is already included in the public consultations to which references are made in the recital.
- (78) ACER adjusted recital (10) of the ‘Whereas’ section of the Proposal for amendment to remove the reference to the public consultation organised by the NEMOs described in recital (4) considering that the objective of this consultation was not to present the Proposal for amendment.

- (79) ACER amended the ‘Whereas’ section of the Proposal for amendment to rely on the wording used in Article 10(2) of the Electricity Regulation when referring to adjustment of the harmonised maximum or minimum clearing price limits.
- (80) ACER amended Article 1 of the Proposal for amendment to specify the personal scope of application of the HMMCP for SDAC methodology and to introduce an Annex 1, containing a list of all the NEMOs to which this methodology and the HMMCP for SDAC will apply. This amendment is necessary to provide clarity on changes in the group of NEMOs to which the HMMCP for SDAC should apply, making those changes transparent by amendments to the HMMCP for SDAC methodology, namely the list of TSOs in Annex I.
- (81) ACER amended Article 2(2) of the Proposal for amendment to define the term “Transition period” in order to simplify Article 4 of the Proposal for amendment.
- (82) The NEMOs clarified orally, during the meeting of the 24 October described in recital (9), the intention of Articles 3(1) and 3(2) of the Proposal for amendment which was to keep unchanged the values of the harmonised maximum and minimum clearing prices compared to the values currently applied in the SDAC (i.e. 4000 €/MWh for the harmonised maximum clearing price and minus 500 €/MWh for the harmonised minimum clearing price). ACER considered that the Proposal for amendment was unclear in that regard and therefore amended Article 3 of the Proposal for amendment to introduce the terms “reference harmonised maximum and minimum clearing prices” and to clarify the values that such limits should take at the entry into force of the HMMCP for SDAC (i.e. 4000 €/MWh for the harmonised maximum clearing price and minus 500 €/MWh for the harmonised minimum clearing price).
- (83) ACER amended Article 5 of the Proposal for amendment to introduce the publication of the document required according to Article 9(14) of the CACM Regulation.
- (84) ACER amended Article 6 of the Proposal for amendment to correct the reference to Article 9(6)(i) of the CACM Regulation.
- (85) Finally, ACER introduced some necessary editorial changes to improve the readability and the form.

7. CONCLUSION

- (86) For all the above reasons, ACER considers the Proposal for amendment in line with the requirements of the Electricity Regulation and the CACM Regulation, provided that the amendments described in this Decision are integrated in the Proposal for amendment, as presented in Annex I to this Decision. The amendments, which have been consulted with the NEMOs, are necessary to ensure that the Proposal is in line with the purpose of the Electricity Regulation and the CACM Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.

(87) Therefore, ACER approves the Proposal for amendment subject to the necessary amendments. To provide clarity, Annex I to this Decision sets out the Proposal for amendment as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The harmonised maximum and minimum clearing price methodology for single day-ahead coupling pursuant to Article 41 of Regulation (EU) 2015/1222 is amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

EXAA AG

Independent Bulgarian Power Exchange (IBEX)

CROPEX Ltd

OTE a.s.

EPEX SPOT SE

HEnEx SA

HUPX Zrt.

SONI Ltd

EirGrid plc

GME Spa

Towarowa Gięlda Energii S.A.

OPCOM S.A.

OKTE a.s.

BSP Regionalna Energetska Borza d.o.o.

OMIE S.A.

NORD POOL EUROPEAN MARKET COUPLING OPERATOR AS

Nasdaq Spot AB

Done at Ljubljana, on 10 January 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single day-ahead coupling pursuant to Article 41 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

Annex Ia – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single day-ahead coupling pursuant to Article 41 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management in track change compared to the Proposal (for information only)

Annex II - Evaluation of responses to the consultation of regulatory authorities, NEMOs, TSOs and other market participants on the Proposal (for information only)

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

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee(s) 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.

Annex I

Harmonised maximum and minimum clearing prices for single day-ahead coupling

in accordance with Article 41(1) of Commission Regulation (EU)
2015/1222 of 24 July 2015 establishing a guideline on capacity
allocation and congestion management (CACM Regulation)

10 January 2023

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ANNEX I 7

Whereas

- (1) This document sets out the methodology for the harmonised maximum and minimum clearing prices ('HMMCP') for single day-ahead coupling ('SDAC') in accordance with Article 41 of the CACM Regulation which also includes mechanisms for adjusting automatically the maximum and the minimum clearing prices.
- (2) In accordance with Article 41(1) of the CACM Regulation, the HMMCP for SDAC shall take into account an estimation of the value of lost load ('VoLL'). The objective of this requirement is to ensure that the HMMCP for SDAC does not impose barriers on free price formation. This document provides for the adjustment rule of HMMCP for SDAC, which is expected to achieve the same goal, i.e. to minimise the likelihood that HMMCP for SDAC impose barriers on free price formation. The HMMCP for SDAC therefore implicitly takes into account the VoLL as the adjustment rule is expected to gradually increase the HMMCP for SDAC to a level, which represents the VoLL as determined by the market participants' willingness to pay.
- (3) This document takes into account the outcome of the public consultation on HMMCP for SDAC and single intraday coupling ('SIDC') that all nominated electricity market operators ('NEMOs') organized from 24 May to 15 July 2022 and the outcome of the public consultation on HMMCP for SDAC and SIDC organized by ACER from 19 September to 9 October 2022. Based on responses received from stakeholders in the consultation, a triggering mechanism for adjusting the harmonised maximum clearing price with stricter conditions is introduced. The mechanism will therefore lead to a more gradual increase of the HMMCP.
- (4) The adjustment rule for the HMMCP for SDAC includes a transition period over which the clearing price is maintained at the value of the HMMCP for SDAC before the adjustment. During this transition period, and depending on whether the transition period was initiated following an increase of the harmonised maximum clearing price or a decrease of the harmonised minimum clearing price, no further change of that HMMCP should be initiated.
- (5) The HMMCP for SDAC take into account the general objectives of capacity allocation and congestion management cooperation described in Article 3 of the CACM Regulation.
- (6) This document fulfils the objective of 'promoting effective competition in the generation, trading and supply of electricity' as the HMMCP for SDAC have been set at levels that do not restrict effective competition in the generation, consumption, trading or supply in the organised wholesale market..
- (7) This document fulfils the objective of 'ensuring operational security' by harmonising maximum and minimum clearing prices as well as removing barriers for free price formation. This promotes flexibility and thereby contributes to the operational security,

as well as security of supply.

- (8) This document fulfils the objective of ‘optimising the calculation and allocation of cross-zonal capacity’, and also the objective of ‘optimal use of the transmission infrastructure’, by removing the barriers for free price formation which effectively optimises the allocation of cross-zonal capacities and the use of transmission infrastructure.
- (9) This document fulfils, or rather is deemed to have no negative impact on, the objective of ‘ensuring fair and non-discriminatory treatment of TSOs, NEMOs, the Agency, regulatory authorities and market participants’.
- (10) This document achieves the objective of ‘ensuring and enhancing the transparency and reliability of information’ as the HMMCP for SDAC have been publicly consulted by the Agency. The final document will also be published.
- (11) This document fulfils the objective of ‘contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union’ as the HMMCP for SDAC have been set at levels that allow full provision of supply and demand orders in the SDAC and therefore SDAC results can contribute to the provision of efficient price signals for forward (long term) price formation that can enable efficient signals for investment in generation and demand side response.
- (12) This document fulfils the objectives of ‘respecting the need for a fair and orderly market and fair and orderly price formation’ and ‘providing non-discriminatory access to cross-zonal capacity’ by harmonising the HMMCP across the bidding zones which participate in SDAC and among all NEMOs active within the given bidding zones.
- (13) This document fulfils the objective of ‘creating a level playing field for NEMOs’ as the HMMCP applied will always be identical for multiple NEMOs active within one individual bidding zone as well as single NEMOs active in more bidding zones.

TITLE 1

GENERAL PROVISIONS

Article 1: Subject matter and scope

- 1. This HMMCP for SDAC methodology and the HMMCP shall be applied in all bidding zones which participate in SDAC pursuant to Article 41 of the CACM Regulation.
- 2. This HMMCP for SDAC methodology shall apply to the NEMOs listed in Annex 1.

Article 2: Definitions and interpretation

1. Terms used in this document shall have the meaning of the definitions included in Article 2 of the CACM Regulation and the Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council.
2. In addition, in this document the following terms shall apply:
 - a) 'Harmonised maximum clearing price for SDAC' means the maximum clearing price value which is applied in all bidding zones which participate in SDAC;
 - b) 'Harmonised minimum clearing price for SDAC' means the minimum clearing price value which is applied in all bidding zones which participate in SDAC; and
 - c) 'Transition period' refers to the duration between the day during which the triggering conditions to adjust the harmonised maximum or the harmonised minimum clearing price described in Article 4(1)(a) and 4(2)(a) have been met and the day of the application of the adjusted harmonised maximum or the harmonised minimum clearing price in all coupled bidding zones which participate in SDAC.
3. In this document, unless the context requires otherwise:
 - c) the singular indicates the plural and vice versa;
 - d) the table of contents, headings and examples are inserted for convenience only and do not affect the interpretation of this document; and
 - e) any reference to legislation, regulations, directives, decisions, orders, instruments, codes or any other enactment shall include any modification, extension or re-enactment of it then in force.

TITLE 2

MAXIMUM AND MINIMUM PRICES

Article 3: Harmonised maximum and minimum clearing prices for SDAC

1. The reference harmonised maximum clearing price for SDAC shall be +4000 EUR/MWh.
2. The reference harmonised minimum clearing price for SDAC shall be -500 EUR/MWh.
3. The reference harmonised maximum and minimum clearing prices for SDAC determined in paragraphs (1) and (2) of this Article shall set the initial value of the harmonised maximum and minimum clearing prices. Thereafter, the harmonised maximum and minimum clearing prices shall be adjusted in accordance with Article 4.

Article 4: Criteria and process for adjusting the harmonised maximum and minimum clearing prices for SDAC

1. The harmonised maximum clearing price for SDAC shall be adjusted according to the following rules:
 - a) the harmonised maximum clearing price for SDAC shall be increased by 500 EUR/MWh in the event that the clearing price, in at least one bidding zone, exceeds a value of 70 percent of the harmonised maximum clearing price for SDAC in at least 2 market time units in at least 2 different days within 30 rolling days from the first price spike;
 - b) after the event referred to in subparagraph (a) occurred, the transition period shall be set to 28 days following the completion of the event;
 - c) during the transition period mentioned in subparagraph (b), the clearing price shall be kept at the value of the harmonised maximum clearing price for SDAC before the adjustment and all events referred to in paragraph (a) occurred during the transition period shall be ignored;
 - d) the bidding zones referred to in subparagraph (a) shall be only those bidding zones with cleared buy and sell volumes and those part of the fully coupled SDAC, excluding virtual zones and uncoupled bidding zones.
2. The harmonised minimum clearing price for SDAC, shall be adjusted according to the following rules:
 - a) the harmonised minimum clearing price for SDAC shall be decreased by 100 EUR/MWh in the event that the clearing price, in at least one bidding zone, falls below a value of 70 percent of the harmonised minimum clearing price for SDAC in at least 2 market time units in at least 2 different days within 30 rolling days from the first low price;
 - b) after the event referred to in subparagraph (a) occurred, the transition period shall be set to 28 days following the completion of the event;
 - c) during the transition period mentioned in subparagraph (b), the clearing price shall be kept at the value of the harmonised minimum clearing price for SDAC before the amendment and all events referred to in paragraph (a) occurred during the transition period shall be ignored;
 - d) the bidding zones referred to in subparagraph (a) shall be only those bidding zones with cleared buy and sell volumes and those part of the fully coupled SDAC, excluding virtual zones and uncoupled bidding zones.
3. The NEMOs shall transparently announce and publish the adjusted harmonised maximum and/or minimum clearing price for SDAC at least 21 days before its implementation and application in SDAC.
4. The NEMOs shall, at least every two years, reassess the HMMCP, share this assessment with market participants and consult it in relevant stakeholder forums organised in accordance with Article 11 of the CACM Regulation.

TITLE 3

FINAL PROVISIONS

Article 5: Publication and implementation

1. The NEMOs shall publish the HMMCP for SDAC methodology without undue delay after its approval by the Agency.
2. The NEMOs shall implement the HMMCP for SDAC methodology in all bidding zones participating in the SDAC immediately after its approval.

Article 6: Language disclaimer

The reference language for the HMMCP for SDAC methodology shall be English. For the avoidance of doubt, where NEMOs need to translate this HMMCP for SDAC methodology into the national language(s) of the relevant regulatory authority, in the event of inconsistencies between the English version submitted in accordance with Article 9(6)(i) of the CACM Regulation and any version in another language, the English version prevails. The relevant NEMO(s) shall be obliged to dispel any inconsistencies by providing a revised version of this HMMCP for SDAC methodology to the relevant national regulatory authorities.

ANNEX I

List of NEMOs subject to the approved HMMCP for SDAC methodology:

- BSP Regionalna Energetska Borza d.o.o.
- CROPEX Ltd
- EirGrid plc
- EPEX SPOT SE
- EXAA AG
- GME Spa
- HEnEx SA
- HUPX Zrt.
- Independent Bulgarian Power Exchange (IBEX)
- Nasdaq Spot AB
- NORD POOL EUROPEAN MARKET COUPLING OPERATOR AS
- OKTE a.s.
- OMIE S.A.
- OPCOM S.A.
- OTE a.s.
- SONI Ltd
- Towarowa Gielda Energii S.A.

Annex I a

**Harmonised maximum and minimum
clearing prices for single day-ahead coupling**

in accordance with Article 41(1) of Commission Regulation (EU)
2015/1222 of 24 July 2015 establishing a guideline on capacity
allocation and congestion management (CACM Regulation)

For information only

~~**14 November xx**~~

~~**September**~~

~~**14 December 2022**~~

10 January 2023

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Whereas

(1) This document sets ~~the-out the methodology for the~~ harmonised maximum and minimum clearing prices ('HMMCP') for single day-ahead coupling ('SDAC') in accordance with Article 41 of the CACM Regulation. ~~This document which also includes also a mechanisms for amending adjusting automatically both the maximum and the minimum clearing prices.~~

(1) —

(2) In accordance with Article 41(1) of the CACM Regulation, the HMMCP for SDAC shall take into account an estimation of the value of lost load ('VoLL'). The objective of this requirement is to ensure that the HMMCP for SDAC does not impose barriers on free price formation. This document provides for the ~~amendment adjustment~~ rule of HMMCP for SDAC, which is expected to achieve the same goal, i.e. to minimise the likelihood that HMMCP for SDAC impose barriers on free price formation. The HMMCP for SDAC therefore implicitly takes into account the VoLL as the ~~amendment adjustment~~ rule is expected to gradually increase the HMMCP for SDAC to a level, which represents the VoLL as determined by the market participants' willingness to pay.

— ~~This document takes into account the context leading to the increase of the harmonized maximum price in SDAC performed on the 10th May 2022 and also the outcomes of the public consultation on HMMCP for SDAC and single intraday coupling ('SIDC') that all nominated electricity market operators ('NEMOs') organized from 24th May to 15th July 2022 and the outcome of the public consultation on HMMCP for SDAC and SIDC organized by ACER from 19 September to 9 October 2022. Based on responses received from stakeholders in the consultation, it is introduced a more sophisticated triggering mechanism for adjusting the —maximum— clearing price harmonised maximum clearing price with stricter conditions is introduced. The mechanism will therefore lead to a more gradual increase of the HMMCP increased the requirement for occurrence of the spike and reflecting a more long term perspective (rolling period).~~

(2) — The HMMCP includes also a mechanism for amending the minimum clearing price and the mechanism is mirroring the method for amending the maximum clearing price.—

(3) —

— ~~Therefore following the opinion expressed by stakeholders in the consultation while still having in mind the VoLL principle, this document describes also the conditions for decreasing back the maximum clearing price. The rationale is to allow the decrease if the market situation corresponds, in longer term perspective, to the situation preceding the increase, while having the VoLL principle still secured.~~

~~(3)~~(4) The ~~amendment-adjustment~~ rule for the ~~harmonised maximum and minimum clearing prices~~HMMCP for SDAC includes a transition period over which the clearing price is ~~still capped~~maintained at the value of the ~~harmonised maximum or minimum clearing price~~HMMCP for SDAC before the ~~amendment~~adjustment. During this ~~interim~~transition period, and depending on whether the transition period was initiated following an increase of the harmonised maximum clearing price or a decrease of the harmonised minimum clearing price, no further ~~price limit increase or decrease~~change of that HMMCP ~~should be initiated~~. ~~while the amended value serves as a reference for triggering any further amendments of the harmonised maximum clearing price for SDAC. This transition period aims to give time to market participants to adjust to the amended value of the harmonised maximum clearing price for SDAC, while minimising the impact on free price formation.~~

(4)(5) The HMMCP for SDAC take into account the general objectives of capacity allocation and congestion management cooperation described in Article 3 of the CACM Regulation.

(5)(6) This document fulfils the objective of ‘promoting effective competition in the generation, trading and supply of electricity’ as the HMMCP for SDAC have been set at levels that do not restrict effective competition in the generation, consumption, trading or supply in the organised wholesale market. ~~These limits have been applied since some time in auction-based day-ahead couplings, e.g. MRC and 4MMC covering multiple Bidding Zones, and have proven to be adequate.~~

(6)(7) This document fulfils the objective of ‘ensuring operational security’ by harmonising maximum and minimum clearing prices as well as removing barriers for free price formation. This promotes flexibility and thereby contributes to the operational security, as well as security of supply.

(7)(8) This document fulfils the objective of ‘optimising the calculation and allocation of cross-zonal capacity’, and also the objective of ‘optimal use of the transmission infrastructure’, by removing the barriers for free price formation which effectively optimises the allocation of cross-zonal capacities and the use of transmission infrastructure.

(8)(9) This document fulfils, or rather is deemed to have no negative impact on, the objective of ‘ensuring fair and non-discriminatory treatment of TSOs, NEMOs, the Agency, regulatory authorities and market participants’.

~~(9)~~(10) This document achieves the objective of ‘ensuring and enhancing the transparency and reliability of information’ as the HMMCP for SDAC have been publicly consulted ~~both by all NEMOs as well as~~ by the Agency. The final document will also be published.

~~(10)~~(11) This document fulfils the objective of ‘contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union’ as the HMMCP for SDAC have been set at levels that allow full provision of supply and demand orders in the SDAC and therefore SDAC results can contribute to the provision of efficient price signals for forward (long term) price formation that can enable efficient signals for investment in generation and demand side response.

~~(11)~~(12) This document fulfils the objectives of ‘respecting the need for a fair and orderly market and fair and orderly price formation’ and ‘providing non-discriminatory access to cross-zonal capacity’ by harmonising the HMMCP across the bidding zones which participate in SDAC and among all NEMOs active within the given bidding zones.

(13) This document fulfils the objective of ‘creating a level playing field for NEMOs’ as the ~~limits HMMCP~~ applied will always be identical for multiple NEMOs active within one individual bidding zone as well as single NEMOs active in more bidding zones.

~~(12)~~

TITLE 1

GENERAL PROVISIONS

Article 1: Subject matter and scope

1. ~~The HMMCP~~This HMMCP for SDAC methodology and the HMMCP shall be applied in all bidding zones which participate in SDAC pursuant to Article 41 of the CACM Regulation.
2. ~~This HMMCP for SDAC methodology for SDAC shall apply to the NEMOs listed in Annex 1.~~

Article ~~12~~: Definitions and interpretation

1. Terms used in this document shall have the meaning of the definitions included in Article 2 of the CACM Regulation and the Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council.

2. In addition, in this document the following terms shall apply:
 - a) 'Harmonised maximum clearing price for SDAC' means the maximum clearing price value which is applied in all bidding zones which participate in SDAC; ~~and~~
 - b) 'Harmonised minimum clearing price for SDAC' means the minimum clearing price value which is applied in all bidding zones which participate in SDAC; and
 - c) 'Transition period' refers to the duration between the day during which the triggering conditions to adjust the harmonised maximum or the harmonised minimum clearing price described in Article 4(1)(a) and 4(2)(a) have been met and the day of the application of the adjusted harmonised maximum or the harmonised minimum clearing price in all coupled bidding zones which participate in SDAC.
3. In this document, unless the context requires otherwise:
 - c) the singular indicates the plural and vice versa;
 - d) the table of contents, headings and examples are inserted for convenience only and do not affect the interpretation of this document; and
 - e) any reference to legislation, regulations, directives, decisions, orders, instruments, codes or any other enactment shall include any modification, extension or re-enactment of it then in force.

TITLE 2

MAXIMUM AND MINIMUM PRICES

Article 3: ~~H~~Harmonised maximum and minimum clearing prices for SDAC

1. The reference harmonised maximum clearing price for SDAC shall be +~~43~~000 EUR/MWh.
2. The reference harmonised minimum clearing price for SDAC shall be -500 EUR/MWh.
3. The reference harmonised maximum and minimum clearing prices for SDAC determined in paragraphs (1) and (2) of this Article shall set the initial value of the harmonised maximum and minimum clearing prices. Thereafter, the harmonised maximum and minimum clearing prices shall be adjusted in accordance with Article 4.

2.

Article 4: Criteria and process for adjusting the harmonised ~~establishing and amending~~ maximum and minimum clearing prices for SDAC

1. The harmonised maximum clearing price for SDAC ~~in accordance with Article 3.(1)(0);~~ shall be ~~amended~~adjusted according to the following rules:
 - a) the harmonised maximum clearing price for SDAC shall be increased by ~~51~~,000

EUR/MWh in the event that the clearing price, ~~in an individual bidding zone or in multiple bidding zones~~ at least one bidding zone, exceeds a value of ~~60~~70 percent of the harmonised maximum clearing price for SDAC in ~~at least a number of MTUs representing at least one market time 5 hours two~~2 market time units in at least ~~two~~23 different days within 340 rolling days from the first price spike-unit in a day in an individual bidding zone or in multiple bidding zones;

b) ~~after the event referred to in subparagraph (a) occurred, the transition period shall be set to 28 days following the completion of the event; the increased harmonised maximum clearing price, set according to subparagraph (a), shall apply in all coupled bidding zones which participate in SDAC from five four weeks after the day in which the event referred to therein has taken place;~~

c) ~~d) During this transition period mentioned in letter b) subparagraph (b) above, the clearing price is still shall be capped kept at the value of the harmonised maximum maximum or minimum clearing price for SDAC before the amendment d) justment and all events referred to in paragraph (a) occurred during the transition period shall be ignored and no further price limit increase or decrease shall be initiated.;~~

~~b)~~

e) d) the bidding zones referred to in subparagraphs (a) and (b) ~~are~~ shall be only those bidding zones with cleared buy and sell volumes and those part of the fully coupled SDAC, ~~excluding virtual zones (in which no bids from market participants are received) and uncoupled bidding zones and (, excluding market time units where in which the given bidding zone(s) are uncoupled or has been decoupled). Or in which capacity related fall backs have been applied by Transmission System Operators.~~

2. The harmonised minimum clearing price for SDAC ~~in accordance with Article 3(2), shall be amended~~ adjusted according to the following rules:

a) the harmonised minimum clearing price for SDAC shall be decreased by -100 EUR/MWh in the event that the clearing price, ~~in an individual bidding zone or in multiple bidding zones~~ in at least one bidding zone, ~~subceeds~~ falls below a value of 70 percent of the harmonised minimum clearing price for SDAC in ~~a number of MTUs representing at least 5 hours two~~2 market time units in at least ~~two~~23 different days within 340 rolling days from the first low price;

b) ~~after the event referred to in subparagraph (a) occurred, the transition period shall be set to 28 days following the completion of the event;~~

~~the increased decreased harmonised minimum clearing price, set according to subparagraph (a), shall apply in all coupled bidding zones which participate in SDAC from four weeks after the day in which the event referred to therein has taken place;~~

~~d) During this transition period mentioned in letter b) subparagraph (b) above, the clearing price is still shall be capped kept at the value of the harmonised maximum or minimum clearing price for SDAC before the amendment and all events referred to in paragraph (a) occurred during the transition period shall be ignored and no further price limit increase or decrease shall be initiated.;~~

c) ~~the bidding zones referred to in subparagraphs (a) and (b) are~~ shall be only those bidding

zones with cleared buy and sell volumes and those part of the fully coupled SDAC, excluding virtual zones and uncoupled bidding zones and, excluding market time units in which the given bidding zone(s) has been decoupled Or in which capacity related fall backs have been applied by Transmission System Operators.

d)

After 12 months without reaching a given 70% limit a value of 70 percent of a given limit, the maximum or minimum clearing price will be set back to the lowest maximum clearing price or highest initial price minimum clearing price respectively, limit consistent with the given 70% limit for the maximum and minimum price respectively. The maximum and minimum clearing price cannot be defined in the interval between 500 EUR/MWh and 3.000 EUR/MWh.

3. The NEMOs shall transparently announce and publish the ~~amended~~adjusted harmonised maximum and/or minimum clearing price for SDAC at least ~~four three weeks~~21 days before its implementation and application in SDAC.

4. The NEMOs shall, at least every two years, reassess the HMMCP, share this assessment with market participants and consult it in relevant stakeholder forums organised in accordance with Article 11 of the CACM Regulation.

~~The NEMOs shall, at least every two years, reassess the HMMCP, share this assessment with all market participants and consult it in relevant stakeholder forums organised in accordance with Article 11 of the CACM Regulation. A reassessment may also follow any amendment in accordance with paragraph (1), if the NEMOs deem it appropriate.~~

TITLE 3

FINAL PROVISIONS

Article 5: Publication and implementation

1. The NEMOs shall publish the SDAC-HMMCP for SDAC mMethodology without undue delay after its approval by the Agency.

2. The NEMOs shall implement the HMMCP for SDAC methodology in all bidding zones participating in the SDAC immediately after its approval.

Article 6: Language disclaimer

The reference language for the HMMCP for SDAC methodology shall be English. For the avoidance of doubt, where NEMOs need to translate this HMMCP for SDAC methodology into

the national language(s) of the relevant regulatory authority, in the event of inconsistencies between the English version submitted in accordance with Article 9(6)(i) of the CACM Regulation and any version in another language, the English version prevails. The relevant NEMO(s) shall be obliged to dispel any inconsistencies by providing a revised version of this HMMCP for SDAC methodology to the relevant national regulatory authorities.

ANNEX I

List of NEMOs subject to the approved requirements for the HMMCP for SDAC methodology and the approved HMMCP for SDAC Methodology:

- BSP Regionalna Energetska Borza d.o.o.
- CROPEX Ltd
- EirGrid plc
- EPEX SPOT SE
- EXAA AG
- GME Spa
- HEnEx SA
- HUPX Zrt.
- Independent Bulgarian Power Exchange (IBEX)
- Nasdaq Spot AB
- NORD POOL EUROPEAN MARKET COUPLING OPERATOR AS
- OKTE a.s.
- OMIE S.A.
- OPCOM S.A.
- OTE a.s.
- SONI Ltd
- Towarowa Gielda Energii S.A.

TITLE 3

~~Final provisions Article 5~~

Timeline for implementation

~~The NEMOs shall implement the HMMCP for SDAC in all bidding zones participating in the SDAC immediately after the MCO function has been implemented in accordance with Article 7(3) of the CACM Regulation.~~

~~Article 6 Language disclaimer~~

~~The reference language for the HMMCP for SDAC shall be English. For the avoidance of doubt, where NEMOs need to translate this HMMCP for SDAC into the national language(s) of the relevant regulatory authority, in the event of inconsistencies between the English version submitted in accordance with Article 9(14) of the CACM Regulation and any version in another language, the relevant NEMO(s) shall be obliged to dispel any inconsistencies by providing a revised version of this HMMCP for SDAC to the relevant national regulatory authorities.~~

Annex II to ACER Decision 01/2023 on the Nominated Electricity Market Operators proposal for the harmonised maximum and minimum clearing price methodology for the single day-ahead coupling

For information only

Evaluation of responses to the public consultation on the Nominated Electricity Market Operators' proposal for the maximum and minimum electricity price for the single day-ahead coupling

1 Introduction

On 15 September 2022, the Nominated Electricity Market Operators ('NEMOs') submitted to ACER the following proposal for amendment ('the Proposal for amendment') pursuant to Articles 9(5), 9(6)(i) and 9(13) of Commission Regulation (EU) 2015/1222 ('the CACM Regulation'):

- All NEMOs' proposal for the Harmonised Maximum and Minimum Clearing Price methodology for single day-Ahead coupling (HMMCP for SDAC), pursuant to Article 41 of Commission Regulation (EU) 2015/1222.

Following the NEMOs' proposal, between 19 September and 9 October 2022, ACER held a public consultation on the Proposal for amendments. The consultation documents focused on the Proposal for amendment with additional questions aiming at defining the stakeholders' views on potential evolutions of the Proposal for amendment. ACER received 27 responses from a broad range of stakeholders, representing utilities, suppliers and generators, end-users, financial companies, and transmission network operators. **Section 2** provides a table summarising stakeholders' comments and providing ACER's views in response to these comments. Where applicable and to avoid repetition, references are provided to ACER's views set out in the related sections of the Decision. **Section 3** provides a list of respondents. Part of this information can also be found in the form of a Microsoft PowerBI visualisation publicly available through the following link: [Microsoft Power BI](#).

2 Summary of stakeholders' comments and ACER's views

Questions related to Article 41 of Commission Regulation (EU) 2015/1222: Harmonised Maximum and Minimum Clearing Price methodology for Single Day-Ahead Coupling

Respondents' views	ACER's views
Question 1: Do you agree with the rationale of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 3 Agree: 18 Neutral: 4 Disagree: 1 Strongly disagree: 0 No opinion: 1	ACER agrees with the rationale of the Proposal for amendment, which envisages amendments to Articles 4(1) and 4(2) of the HMMCP which change the mechanism to automatically adjust the harmonised maximum and minimum clearing price so that a less frequent activation of such mechanism occurs in case of high prices.
Respondents' views	ACER's views
Question 2: Do you agree with the proposed initial price limits of the NEMO's amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 3 Agree: 13 Neutral: 5 Disagree: 5 Strongly disagree: 1 No opinion: 0	ACER considers that there is no reason to change the price limits currently in force. ACER introduced the concept of “reference harmonised maximum and minimum clearing price” and assigned values to these parameters equal to the values of the ones currently in force. See recital 82 of ACER Decision 01/2023 (‘ACER Decision’) for detailed explanations.

Respondents' views	ACER's views
Question 3: Do you consider that the initial maximal price limit should be? (single choice: More than +3000€/MWh higher than the proposed level/Less than +3000€/MWh higher than the proposed level/At the proposed level/Less than +1000€/MWh lower than the proposed level/More than +1000€/MWh lower than the proposed level/No opinion)	
More than +3000€/MWh higher than the proposed level: 3 Less than +3000€/MWh higher than the proposed level: 2 At the proposed level: 16 Less than +1000€/MWh lower than the proposed level: 2 More than +1000€/MWh lower than the proposed level: 2 No opinion: 2	See ACER's view to Question 2.
Respondents' views	ACER's views
Question 4: Do you consider that the initial minimal price limit should be? (single choice: More than +1000€/MWh higher than the proposed level/Less than +1000€/MWh higher than the proposed level/At the proposed level/Less than +1000€/MWh lower than the proposed level/More than +1000€/MWh lower than the proposed level/No opinion)	
More than +1000€/MWh higher than the proposed level: 1 Less than +1000€/MWh higher than the proposed level: 1 At the proposed level: 20 Less than +1000€/MWh lower than the proposed level: 1 More than +1000€/MWh lower than the proposed level: 1 No opinion: 3	See ACER's view to Question 2.

Respondents' views	ACER's views
Question 5: Do you agree with the proposed price spike definition of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 2 Agree: 11 Neutral: 5 Disagree: 7 Strongly disagree: 0 No opinion: 2	ACER agrees with the proposed price spike definition defined in Articles 4(1)(a) and 4(1)(e) of the Proposal for amendment to the exception of the unclear reference to '<i>capacity related fall backs having been applied by Transmission System Operators</i>'. See recital 57 of ACER Decision for detailed explanations.
Respondents' views	ACER's views
Question 6: Do you agree with the proposed value for the price threshold of 70% of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 2 Agree: 11 Neutral: 6 Disagree: 8 Strongly disagree: 0 No opinion: 0	See ACER's view to Question 6.

Respondents' views	ACER's views
Question 7: Do you agree with the other elements of the price spike definition (exclusion of fall-back measures days, exclusion of virtual, uncoupled bidding zones and bidding zones with no traded volumes) of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 2 Agree: 14 Neutral: 5 Disagree: 0 Strongly disagree: 1 No opinion: 5	See ACER's view to Question 6.

Respondents' views	ACER's views
Question 8: Do you agree with the proposed triggering event of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 2 Agree: 10 Neutral: 4 Disagree: 10 Strongly disagree: 1 No opinion: 0	ACER disagrees with the proposed triggering event of the Proposal for amendment described in Articles 4(1)(b) and 4(2)(b). ACER considers that such conditions are incompliant with Article 10(2) of the Electricity Regulation (<i>'Those limits shall be sufficiently high so as not to unnecessarily restrict trade'</i>). See recitals 47 to 56 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
Question 9: Do you consider that the triggering event should be? (single choice: Much stricter than the proposed level (meaning that more price spike events should be needed to trigger the automatic mechanism)/Stricter than the proposed level/at the proposed level/looser than the proposed level (meaning that less price spike events should be needed to trigger the automatic mechanism)/much looser than the proposed level)	
Much stricter than the proposed level: 3 Stricter than the proposed level: 8 At the proposed level: 12 Looser than the proposed level: 3 Much looser than the proposed level: 1	See ACER's view to Question 8. ACER considers that the triggering conditions should be looser than the proposed level by the NEMOs.

Respondents' views	ACER's views
Question 10: What is your opinion on the triggering of a maximum price limit increase due to the price spikes on the day-ahead market in the Baltic bidding zones on 17 August 2022? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 1 Agree: 4 Neutral: 2 Disagree: 3 Strongly disagree: 8 No opinion: 9	See ACER's view to Question 8. The triggering conditions defined in ACER Decision do not trigger an adjustment of the harmonised maximum clearing price following the events described in the title of the question.

Respondents' views	ACER's views
Question 11: What is your opinion on the triggering of a maximum price limit increase due to the price spikes on the day-ahead market in the French bidding zone on 4 April 2022? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 4 Agree: 2 Neutral: 2 Disagree: 6 Strongly disagree: 5 No opinion: 8	See ACER's view to Question 8. The triggering conditions defined in ACER Decision do not trigger an adjustment of the harmonised maximum clearing price following the events described in the title of the question.

Respondents' views	ACER's views
Question 12: Do you agree with the maximum price increase of +1000€/MWh as proposed in the NEMOs' amendment? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 3 Agree: 8 Neutral: 4 Disagree: 8 Strongly disagree: 3 No opinion: 1	ACER considers that it is necessary to reduce the proposed increments of +1000€/MWh by which the harmonised maximum clearing price is adjusted to +500€/MWh. In ACER's view, this reduction of the increment is the best way, in line with the principle of proportionality, to mitigate the detrimental situations described in recital 51 of ACER's Decision while limiting the impact on free price formation and not deviating from the legal requirements set out in Article 10(2) of the Electricity Regulation. See recitals 47 to 56 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
Question 13: Do you consider that the proposed maximum price increase should be? (single choice: More than +500€/MWh higher than the proposed level/Less than +500€/MWh higher than the proposed level/At the proposed level/Less than +500€/MWh lower than the proposed level/More than +500€/MWh lower than the proposed level/No opinion)	
More than +500€/MWh higher than the proposed level: 1 Less than +500€/MWh higher than the proposed level: 1 At the proposed level: 11 Less than +500€/MWh lower than the proposed level: 5 More than +500€/MWh lower than the proposed level: 6 No opinion: 3	See ACER's view to Question 12.

Respondents' views	ACER's views
Question 14: Do you agree with the proposed minimum price increase of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 5 Agree: 9 Neutral: 5 Disagree: 5 Strongly disagree: 0 No opinion: 3	ACER agrees with the proposed increases for the harmonised minimum clearing prices of the Proposal for amendment. See recital 67 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
Question 15: Do you consider that the proposed minimum price increase should be? (single choice: More than +50€/MWh higher than the proposed level/Less than+ 50€/MWh higher than the proposed level/At the proposed level/Less than -100€/MWh lower than the proposed level/More than -100€/MWh lower than the proposed level/No opinion)	
More than +50€/MWh higher than the proposed level: 1 Less than+ 50€/MWh higher than the proposed level: 0 At the proposed level: 15 Less than -100€/MWh lower than the proposed level: 2 More than -100€/MWh lower than the proposed level: 1 No opinion: 8	See ACER's view to Question 14.
Respondents' views	ACER's views
Question 16: Do you agree with the proposed interim period of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 1 Agree: 10 Neutral: 4 Disagree: 8 Strongly disagree: 4 No opinion:0	ACER agrees with the proposed duration of the transition period of the Proposal for amendment. See recital 55 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
Question 17: Do you consider that the interim period should be? (single choice: More than 4 weeks longer than the proposed duration/Between 2 and 4 weeks longer than the proposed duration/Less than 2 weeks longer than the proposed duration/At the proposed duration/Less than 2 weeks shorter than the proposed duration/More than 2 weeks shorter than the proposed duration/No opinion)	
More than 4 weeks longer than the proposed duration: 4 Between 2 and 4 weeks longer than the proposed duration: 0 Less than 2 weeks longer than the proposed duration: 1 At the proposed duration: 15 Less than 2 weeks shorter than the proposed duration: 0 More than 2 weeks shorter than the proposed duration: 6 No opinion: 1	See ACER's view to Question 16.
Respondents' views	ACER's views
Question 18: Do you agree with the proposed treatment of the interim period of the NEMOs proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 3 Agree: 14 Neutral: 5 Disagree: 2 Strongly disagree: 1 No opinion: 2	ACER agrees with the proposed treatment of the transition period of the Proposal for amendment. See recital 55 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
Question 19: Do you consider the initiation of further price limit changes during the interim period an option? (single choice: yes/no)	
Yes: 5 No: 22	See ACER's view to Question 18.
Respondents' views	ACER's views
Question 20: Do you agree with the proposed set-back of the limit in case no price spikes occur for a period of 12 months of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	
Strongly agree: 3 Agree: 13 Neutral: 4 Disagree: 5 Strongly disagree: 1 No opinion: 1	ACER disagrees with Article 4(3) of the Proposal for amendment and considers it to be in direct contradiction with Article 10(2) of the Electricity Regulation (<i>'The adjusted higher limits shall remain applicable until further increases under that mechanism are required.'</i>). See recital 61 of ACER Decision for detailed explanations.
Respondents' views	ACER's views
Question 21: Do you consider that there is a need to differentiate through the design of automatic mechanism, price spike events leading to curtailment of demand bids and price spike events that do not lead to curtailment of demand bids? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	

Respondents' views	ACER's views
Strongly agree: 2 Agree: 4 Neutral: 7 Disagree: 5 Strongly disagree: 0 No opinion: 9	ACER considers that there is no need to differentiate, through the design of the automatic mechanism of the harmonised price limits, price spike events leading to curtailment of demand bids and price spike events that do not lead to curtailment of demand bids. The legal framework does not require this distinction and ACER considers that the complexity of a solution making this distinction would not outweigh its benefits.
Respondents' views	ACER's views
Question 22: Do you consider that there is a need to limit the number of price limit changes over a year? (single choice: yes/no)	
Yes: 14 No: 13	ACER considers that the adjustments to the harmonised maximum and minimum clearing prices should respect the requirements of Article 10(2) of the Electricity Regulation (<i>'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.'</i>). ACER considers the harmonised maximum and minimum clearing prices to be technical limits that should not be limited, other than by technical, operational constraints to a certain number of adjustments per year, linked to its implementation in the SDAC.
Respondents' views	ACER's views
Question 23: Do you generally agree with the need to allow for max/min price limits to return to their initial level in case no price spikes occur for a certain duration? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)	

Respondents' views	ACER's views
Strongly agree: 9 Agree: 13 Neutral: 3 Disagree: 1 Strongly disagree: 0 No opinion: 1	See ACER's view to Question 20.
Respondents' views	ACER's views
Question 24: What is the maximum number of price limit changes over a year that you consider would still be beneficial for the market? (single choice: More than 6/6/5/4/3/2/1/Less than 1/No opinion)	
More than 6: 5 6: 0 5: 0 4: 0 3: 2 2: 6 1: 2 Less than 1: 4 No opinion: 8	See ACER's view to Question 22. ACER considers that the number of of price limits changes over a year should depend on the operational and technical constraints linked to the implementation of the adjustment of harmonised maximum or minimum price limit and has therefore no opinion to the question.

Respondents' views	ACER's views
Question 25: Do you consider that the NEMOs' proposal is correctly reflecting the requirements for the technical bidding limits set in Article 10 of Regulation (EU) 2019/943? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion) Question 26: Please justify your answer.	
2 respondents strongly suggested that the NEMOs proposal correctly reflected the requirements for the technical bidding limits set in Article 10 of Regulation (EU) 2019/943. 4 respondents furthermore agreed with the NEMOs' requirements.	
Explanations: Strongly agree: - TSOs consider the NEMOs' proposal to be a very good basis and comply sufficiently with the requirements set out in the EU Regulation, because it sets out criteria to increase prices when there is real tendency of the market to reach the technical price limits; the lead period is sufficiently limited to not restrict trades; criteria are sufficiently transparent. Regarding the consideration of the VoLL, TSOs are in the opinion that its value can also decrease and that this should also be reflected in the price limits of the market. TSOs strongly believe that the current proposal from the NEMOs will never restrict the free price formation. Agree: - The price step could be designed as a percentage, however, an increase from 3000 -> 4000 is fundamentally different from 7000 -> 8000. The rationale behind the values chosen for the whole proposal is missing. The implementation period should be shortened to 2 weeks.	See ACER's view to previous questions (specifically questions 8 and 20) detailing ACER's considerations for the legal assessment of the Proposal for amendment against Article 10(2) of the Electricity Regulation. ACER considers that the added complexity of a variable increment to the adjustment of the harmonised maximum and minimum clearing price is not required nor better fulfilling the legal requirements defined for those clearing prices in Article 10(2) of the Electricity Regulation.

Respondents' views	ACER's views
- The current proposal corresponds to overall requirements by the EU Regulation 2019/943.	ACER considers that the transition period is defined by operational constraints of the NEMOs and TSOs and cannot be shortened without endangering the security of operations. See recital 55 of ACER decision for detailed explanations.
4 respondents remained neutral on the NEMOs proposal for the technical bidding limits set in the Article 10 of Regulation (EU) 2019/943.	
Explanations: - The rationale is understandable and necessary. Ideally, there would be an impact analysis. The legal justification is somewhat shaky, but sufficiently in order at this point. - First of all, EDF reminds that the current high forward prices partially arise from a high probability of reaching the cap in force on the spot market consistent with high probability of failure. Indeed, this probability valorized to the cap in force in the spot market is included in the anticipation of forward prices. The weight of failure in the level of forward prices is currently significative. Therefore, the choice of initial maximal limit will have a direct impact on prices in the forward market. In the current situation, maintaining the principle of free price formation in all cases with a too high initial cap could be very costly for consumers (several tens of euros per MWh).	

Respondents' views	ACER's views
- We support the free formation of electricity prices, which results from the optimal dispatching of the available assets. Pursuant to Electricity Regulation Article 10, technical limits in the DA and ID timeframe “shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonized for the internal market and shall take into account the maximum value of lost load”. - There are justified reasons to set technical price limits in the DA and ID markets: I. Prices limits are a possible way to avoid outstanding impacts for market participants in case of IT issues, operational errors, or corrupted input data in the EU market coupling algorithms. II. Price limits are limiting the risks / financial impacts related to the management of collaterals requested by power exchanges and / or trading limits. III. Price limits allow avoiding exposure to excessively high prices (as long as market participants have the legal obligation to bid at any price to balance their perimeter – as it is the case in some bidding zones) and to mitigate the associated volume risks. IV. Forward prices are driven by the price cap since market participants include failure risks in their bids (simulating themselves the number of hours they expect the Spot prices may reach this cap). An appropriate price cap is therefore essential to limit the impact of failure expectations on the forward prices, which can become irrationally high in case the uncertainty on price spikes occurrence combines with a disproportionate impact of these events, with a detrimental effect on global welfare. - For many months, we are yet facing anormal market situations, where unprecedented price levels are regularly observed and many TSOs/institutions alert on the risk of regular failure in some bidding	

Respondents' views	ACER's views
zone – such as France. These high prices are detrimental to the whole economy. Beyond the review of the automatic increase mechanism of the HMMPC methodology, we believe that an emergency temporary measure is needed to tackle the acuteness of the problem and avoid uninterrupted price cap increases. Moreover, we note that the decision to review the HMMPC methodology has been taken in order to monitor this risk by trying to slow down the increase of maximum price and avoid an unsustainable escalation of prices. Therefore, we assume the aim of this revision is to address the current issue, not to address issue, which could have occurred in a normal situation. - As it stands, the NEMO's' proposal doesn't prevent maximum price cap increases in case very high prices are regularly reached this winter (which is expected at least in certain bidding zones); it therefore doesn't handle the current emergency situation, which requires, due to the very special circumstances (major inflationist risk with collateral effects on the functioning of the market) to simply freeze the cap at its initial value (3000€/MWh) or even lower given the very specific circumstances (e.g. 1000€/MWh) until the end of the crisis – with a cautious implementation that still gives visibility to market parties and avoids undesirable side effects (e.g. impairment of financial hedges, dispatching issues for DSR...). A cap based on the cost of peak assets, updated regularly, without however being lower than 1000 €/MWh could be envisaged. - The NEMOs' proposal goes in the right direction by tightening the criteria for raising the maximum clearing price, as the current methodology is not adapted to current circumstances. However, this revision does not go far enough.	ACER considers that the adjustments to the harmonised maximum and minimum clearing prices should respect the requirements of Article 10(2) of the Electricity Regulation (<i>'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.'</i>). ACER considers that maintaining the price limits to their current level would effectively “cap” the market and would not respect the requirements set, amongst others, by Article 10(1) of the Electricity Regulation (<i>'There shall be neither a maximum nor a minimum limit to the wholesale electricity price.'</i>). ACER considers that the Proposal for amendment does not sufficiently prevent the harmonised maximum clearing price to be adjusted too frequently to too high levels over a limited period of time (e.g. a winter).

Respondents' views	ACER's views
2 respondents disagreed that the suggested NEMOs proposal correctly reflected the requirements for the technical bidding limits set in the Article 10 of Regulation (EU) 2019/943. 1 respondent furthermore strongly disagreed with the NEMOs proposal.	
Explanations: Disagree: - The more stringent a new rule-based system for the automatic adjustment mechanism gets, the more prices in day-ahead and intraday are likely to be limited for political or economic rather than technical reasons: The definition of price spikes and the trigger for price limit adjustments do not strictly follow article 7(2)c of the Electricity Regulation ("Day-ahead and intraday markets shall provide prices that reflect market fundamentals, including the real time value of energy") and article 10 (setting the rules of the technical price limits). While we understand the political context in which the proposal of the NEMOs is being made, the more stringent the conditions for an increase of the price limits, the more political or economic (rather than technical) these price limits become, and the higher the likelihood of occasions in which the electricity price will be constrained and fail to represent the real time value of energy. - The more stringent conditions for increasing the threshold, the greater the likelihood of occasions in which the electricity price will be constrained and will fail to represent the real time value of energy increases. Strongly disagree: - Any modifications to methodologies and other elements can only be conducted on a sound legal basis. Any deviation of such approach is deemed unacceptable as it opens a Pandora's box and would quickly lead to	ACER considers that harmonised maximum and minimum clearing price adjustments should not be driven by political interventions but only by technical considerations. ACER however considers that the current methodology as well as the Proposal of amendments could lead to too frequent adjustments of the harmonised maximum clearing price which would could have detrimental impacts on the markets. This is further detailed in recitals 47 to 56 of ACER's Decision.

Respondents' views	ACER's views
a decline of legal certainty and thus trust in the overall system, which should be avoided at all cost. In case modifications are deemed necessary, they should go through the normal legal procedure, in order to avoid legal uncertainty in case such modifications would be challenged in court.	ACER's Decision contains a careful assessment of the legal basis of the Proposal for amendment. This analysis can be found in Chapter 6 of ACER's Decision.
14 respondents had no opinion on whether the NEMOs proposal correctly reflected the requirements for the technical bidding limits set in the Article 10 of Regulation (EU) 2019/943.	
Explanations: - ANODE fully supports the need to strengthen the robustness of the methodology for automatically increasing the SDAC price cap, especially in the perspective of the winter 2023-2024. The methodology should be able to send economic signals to market participants while limiting the risk of volatility. Our Union is not really convinced by the methodological change proposed by the NEMOs, which should go further in controlling the increase in the price ceiling, in order to limit runaway effects. The criteria for raising the price ceiling should be more stringent: observe price peaks over a one-month period; limit the occurrence of cap increases: do not increase the cap level within three months after the first increase; the threshold defining the price peak must be a price higher or lower than 80% of the max/min price limit in 1 MTU. - ANODE strongly disagrees with the proposed method of regulating with an automatic mechanism the clearing price in the SDAC market and favors a static price cap, set at the proposed level of €3,000/MWh. We disagree with	ACER considers that the adjustments to the harmonised maximum and minimum clearing prices should respect the requirements of the Article 10(2) of the Electricity Regulation (<i>'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.'</i>). ACER considers that maintaining the price limits to their current level would effectively “cap” the market and would not respect the requirements set by Article 10(1) of the Electricity Regulation (<i>'There</i>

Respondents' views	ACER's views
an automatic increase in ceiling prices, these measures should be much more supervised and motivated. Energy markets are very volatile, it is indeed the European political decisions that will frame the prices on the wholesale markets, we suggest that this be the case for the SDAC and the SIDC. - Considering the proposal to lower the limit in case of no price peaks during a 12-month period and the triggering event leading to the price increase: we consider that there is an asymmetry between the period triggering the increase of the price cap, (5 hours during at least 3 different days within 10 rolling days from the first peak) and the 12-month period considered to lower the cap. If the proposal were to be implemented, it would be preferable to standardize these two periods. We propose to shorten the 12-month period to 6 months and extend the period over which triggering events are observed from 3 different days in 10 rolling days to one month. - In addition, the period considered leading to the increase in the price cap is not based on a structural situation but on a cyclical one. On one hand It is not relevant that a single event or period has such an impact on the coupled bidding with trade volume. On the other hand, this increase in the cap has structural consequences for market players in terms of cost and affects consumers. - ANODE advocates for stable price caps, set at levels compatible with production costs and not disrupting price formation at auctions. We are therefore opposed to the principle of automatic price cap increases, as it is not these markets (SDAC and SIDC) that trigger new investments to address the risk of system failure. These prices reflect a much larger risk premium. NEMOs must take into account existing national mechanisms, such as capacity mechanisms, whose very purpose is to lead to the development of new capacities. - The mechanism allows for unsustainable prices.	<i>shall be neither a maximum nor a minimum limit to the wholesale electricity price.').</i> ACER disagrees with Article 4(3) of the Proposal for amendment and considers it to be in direct contradiction with the Article 10(2) of the Electricity Regulation. See recital 61 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
- We are concerned about the lack of information provided by NEMOs, as well as ACER, in the course of the public consultation. Instead of having an in-depth debate on the technical parameters of the methodology, ACER is now consulting on a proposal that lacks proper justification by the NEMOs. Consequently, some elements are difficult, if not impossible, to assess for market participants. This includes the definition of the price spikes and the trigger of price limit adjustments, as well as the need or not to differentiate between price spike events leading to curtailment of demand bids and price spike events that do not lead to curtailment of demand bids (2 respondents). - As demonstrated recently, no additional supply is coming to the market at prices above 2000 EUR/MWh. Therefore, we generally agree with the overall rationale of the proposal. We do believe, however, that the price should be fixed at the proposed level and should not be increased further, or, at least, the maximum number of price increases/year should be fixed. - Suggested mechanism for the automated price increase is rather strict and does not seem to be removing barriers from free price formation. For instance could increasing the threshold from 60 % to 70 % be sufficient if excluding the overruns of the price limits due to technical faults. We understand the need for freezing the automated price increase in these circumstances, but support the free price formation under "normal" market conditions. Why the decrease of the price limit will be set to the lowest maximum price of 3000 €/MWh? For instance, if the price cap would be 5000 €/MWh and the threshold of 70% is not exceeded in 12 months the cap would lowered by 2000 €/MWh to 3000 €/MWh? Could the decrease be by 1000 €/MWh - or if the price cap will be set at the lowest maximum, the 12 months reference price which is observed should be 2100 €/MWh (0,7*3000). - We request that NEMOs publish additional background information regarding the rationale of the proposals made in the draft methodologies.	ACER considers that maintaining the price limits to their current level would effectively “cap” the market and would not respect the requirements set by Article 10(1) of the Electricity Regulation (<i>‘There shall be neither a maximum nor a minimum limit to the wholesale electricity price.’</i>). ACER disagrees with Article 4(3) of the Proposal for amendment and considers it to be in direct contradiction with the Article 10(2) of the Electricity Regulation. See recital 61 of ACER Decision for detailed explanations.

Respondents' views	ACER's views
This relates in particular to the proposed spike definition, the reasoning for the increased price threshold to 70%, as well as to why NEMOs have chosen a four week period for making changes to the technical price limit effective in contrast to a more speedy adoption of such change. Whether or not the proposal and the considerably slow adjustment of the price limit have the ability to suppress the free price formation is hard to assess, but possible. We agree that the mechanism to adjust the technical price limit needs to be robust and should not be triggered by outliers, ie identify true shortage situations. However, with this methodology neither NEMOs nor ACER should try to correct undesired effects of the wholesale electricity market design that originate elsewhere. - Given that neither NEMOs nor ACER provided further information on alternative price spike definitions that have been studied for this purpose nor a detailed impact analysis of what the proposed definition would have meant under most recent market conditions, we find it hard to give an educated opinion on the proposal. In fact, the price spike definition appears arbitrary without such explanations. - In the absence of such in-depth debate and background information, market participants have limited possibility to provide informed answers to the questions of this consultation. This also relates to the question of which price limit is applied initially. From our perspective, the maximum price levels should stay as they are right now as they will be “adjusted” according to the methodology in either up- or downwards direction over time. This would ensure that the free formation of prices is not unnecessarily harmed. - Furthermore, we would like to use this opportunity to express our concerns regarding the freeze of the automatic adjustment of the maximum price limit which was “implemented” by NEMOs in September 2022. While we welcome the freeze and the underlying discussion, we are concerned that such decision is neither backed by any legal justification nor by any official	ACER agrees with the proposed duration of the transition period of the Proposal for amendment. See recital 55 of ACER decision for detailed explanations. ACER agrees with the proposed price spike definition defined in Articles 4(1)(a) and 4(1)(e) of the Proposal for amendment to the exception of the unclear reference to ‘<i>capacity related fall backs having been applied by Transmission System Operators</i>’. See recital 57 of ACER decision for detailed explanations. ACER assessed the legal basis of the Proposal for amendment based on the information provided by the NEMOs and took its Decision based on this assessment. ACER considers that the Proposal for amendment took into account the recent history of high prices on the electricity markets. ACER observed that NEMOs took the decision to not apply the methodology described in Annex 1 to ACER Decision 04/2017. ACER did not support such decision by the NEMOs.

Respondents' views	ACER's views
statement coming from ACER. This could set a dangerous precedent for future modifications of market rules and therefore harms investor confidence further. - Once again, we would like to highlight that the functioning of the day ahead and intraday markets should be preserved and changes to the methodology should not be driven in order to correct regulatory challenges elsewhere in the market design (in particular liquidity issues of market participants/NEMOs). The price limits applied in intraday and day-ahead markets should remain technical price limits that do not hinder the formation of prices based on demand and supply. Their adjustment should be based on fundamental shortages in the system through a robust mechanism that does not further limit investor confidence. - The price signal of the market should be as undistorted as possible to set the incentives for investments in flexibility, energy-efficient technology, renewable energies, etc.... Price limits should be set at a level where it allows matching of supply and demand. - Under the current exceptional circumstances on the electricity markets, we support the proposed changes on the Harmonised Maximum and Minimum Clearing Price (HMMCP) methodology for Single Day-Ahead Coupling (SDAC) and, the Harmonised Maximum and Minimum Clearing Price (HMMCP) methodology for Single Intraday Coupling (SIDC). The methods and rules should be reviewed at later stage once the exceptional circumstances normalize.	ACER considers that its Decision is robust to all market situations. ACER agrees with this statement.

Respondents' views	ACER's views
Question 27: Do you think that other design elements of the automatic mechanism should be considered? Please specify.	
Explanations: - ANODE considers it is essential to prevent any automatic raising of the ceiling. Raising the cap is contrary to the logic of market stability and its rules, which is particularly needed by energy players today. We oppose any automatic increase of the ceiling which would not be motivated, and we believe that the rules for automatic cap raising should be much stronger than what is proposed here. - ANODE considers that price caps must be aligned between all exchange markets (especially day ahead and intraday): having higher price caps on the intraday market (€9 999/MWh today) than on the day ahead puts at major risk market players with financial forward hedges, which will be capped in case of curtailment on the day ahead market. This would expose these players to the risk of having to buy these capped quantities at unreasonable prices. DA and ID caps should therefore be identical. ANODE is in favor of harmonizing the SIDC price cap with that of the SDAC: -3000€/MWh/+3000€/MWh In order to control the cost, this harmonization, if it is implemented, should only be applied downwards, i.e. on the SDAC prices. - ANODE understands that, in the past, this cap may have prevented the fair remuneration of peak resources (missing money). However, today there is a capacity mechanism that effectively addresses these difficulties. This instrument is established in most countries participating in the price coupling mechanism. - The capacity mechanism aims at "factoring" in a capacity remuneration for a few hours at energy prices representing the VoLL (i.e. > €20k/MWh). However, prices around the current level of caps (€4000/MWh) are not part	See ACER's view to Question 26. ACER considers that setting harmonised maximum and minimum price limits shall respect Article 10(2) of the Electricity Regulation (<i>'The adjusted higher limits shall remain applicable until further increases under that mechanism are required.'</i>). ACER considers that setting harmonised maximum and minimum price limits shall respect Article 10(2) of the Electricity Regulation <i>Those limits shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonised for the internal market and shall take into account the maximum value of lost load.'</i>

Respondents' views	ACER's views
of this logic. In addition, the logic of covering the means of production eliminates all or part of the excessive remuneration. - ANODE therefore believe that the capacity mechanism is an effective and sufficient tool to remunerate peak production. Countries that do not yet have one will be able to set one up quickly. To date, all the necessary tools exist and have already been tested. - We principally agree, that there is a need for price adjustment when price increases are fundamentally driven (e.g. gas prices increase). When prices increase due to lack of supply (shortage limited to power market only), exaggerating price increases impose unnecessary high risk for market participants. Prices should in such a case be limited to e.g. 4000 EUR/MWh. Another issue we would like to address is the interdependency between price limits for SDAC and SIDC. If the price limit for SIDC is much higher than for SDAC (as it is the case right now), this imposes high risk in case of e.g. power plant outage (e.g. 400MW gas fired) and might additionally impose misleading incentives. Therefore the price gap should not exceed a given limit (e.g. 1000 EUR/MWh). 6000 EUR/MWh gap is imposing unnecessary high risk for market participants. Example: one single outage 400 MW for 24h costs 57,6 MEUR in the worst case!! Consequently the gap between limits for imbalance price and SIDC should be limited as well. - The actual mechanism is manipulated by large players, which are selling and buying during the same interval. At least during the crisis period, the maximum price limit should be reduced. - The current Nordic bidding zones are far too small and far too sensitive to TSO limitations causing maximum price in the day ahead market. If an automatic adjustment should take place, there should be a defined threshold to disregard events where; only a minor (e.g. 20%) of aggregated total	See ACER's view to Question 26. ACER considers that setting harmonised maximum and minimum price limits shall respect Article 10(2) of the Electricity Regulation (<i>'The adjusted higher limits shall remain applicable until further increases under that mechanism are required.'</i>). Market manipulation falls outside the scope of this Decision.

Respondents' views	ACER's views
volume across all bidding zones reaches minimum or maximum price or; the spike is caused by planned grid maintenance. - We consider that one should distinguish emergency measures from the regular revision of this methodology foreseen by the CACM guideline. It's why EDF proposes to adopt a two-step approach, first to define an emergency temporary measure for preserving market of uninterrupted and detrimental price cap increases and, second, to review the HMMPC methodology to be applied in a more standard market conditions: ○ - Firstly, it is urgent to address the current high prices situation by (i) setting a legal framework to the current freeze, that accounts for the exceptional circumstances – this could for example be embedded in an upcoming European regulation aiming at implementing a price cap on gas for electricity generation, as evoked recently by the EC President – and (ii) eventually by setting more appropriate emergency measures. ○ EDF suggests to simply freeze the cap at its initial value or even lower given the very specific circumstances (e.g. 1000€/MWh) until the end of the crisis. A fix price cap is not the unique way to address the current crisis but it should be considered as one of the political tool at our disposal. Moreover, since forward prices include failure risks, a lower cap will have direct impact on their level. So, in the current situation, the “benefits” of low cap (e.g. decrease of collateral, decrease of forward prices) could be higher than the “negative effects” (Demand curtailment on a prorata basis and not on the willingness to pay basis). ○ - However, a fix price cap cannot be permanently set and could be not compliant with the article 10 of electricity Regulation. The methodology should have to be revised et should not have to hinder the free formation of prices. A price cap methodology	ACER considers that maintaining the maximum and minimum price limits to fixed level would effectively cap the single day-ahead market prices, which falls outside the scope of this Decision.

Respondents' views	ACER's views
review could be set in the HMMPC. This methodology should be approved after justification of the main parameters and an in-depth debate with stakeholders. ○ Comments on the NEMOs proposal ○ In the case of ACER decided to not adopt exceptional measures and to approve NEMOs' proposal, in the absence of an in-depth debate supported by analysis and justification around the parameters, it is complicated for EDF to express an informed view on the parameters proposed by NEMOs. However, EDF would like to share the following high-level points and acknowledge therefore that the NEMO proposal, although insufficient, moves in the good direction: ○ • EDF welcomes the fact that a price cap increase should not be linked to a price spike triggered by capacity calculation problems (such as fallback calculation of XB capacity) or by market coupling issues (full or partial decoupling). ○ • EDF welcomes the idea of a decrease mechanism. ○ • EDF considers that the intraday price cap shall be the same for IDA than and for the XBID (continuous market), and that the intraday price cap shall be at least higher than the DA price cap. ○ • The fundamentals that justify a decrease of the minimum price are different from those justifying an increase of the maximum price. EDF considers that there is no reason to foresee a decrease of the current minimum price, the main driver for reaching this floor being ill-designed RES support schemes. ○ When it comes to the proposed parameters, EDF would like to highlight following points:	See ACER's view to Question 26. ACER agrees with the proposed price spike definition defined in Articles 4(1)(a) and 4(1)(e) of the Proposal for amendment to the exception of the unclear reference to '<i>capacity related fall backs having been applied by Transmission System Operators</i>'. See recital 57 of ACER decision for detailed explanations. ACER disagrees with Article 4(3) of the Proposal for amendment and considers it to be in direct contradiction with the Article 10(2) of the Electricity Regulation. See recital 61 of ACER Decision for detailed explanations. ACER considers that there is no need to differentiate, through the design of automatic mechanism to adjust the harmonised maximum and minimum clearing prices, price spike events leading to curtailment of demand bids and price spike events that do not lead to curtailment of demand bids. The legal framework does not require this distinction.

Respondents' views	ACER's views
○ • The starting level of the new methodology, once it will enter into force should be set at most to 3000€/MWh since this cap would not have been increased if the current NEMOs proposal would have already been applied. Likewise, with the proposed methodology, we observe that there would have not been a cap's increase with an initial maximum limit at 2000 €/MWh and there were only 4 occurrences of prices between 2000 and 3000 €/MWh. So, an initial price cap at 2000 €/MWh will have a significative impact on level of forward prices with limited consequences on free formation of spot prices compared to an initial price cap at 3000 €/MWh. Are we ready to pay several tens of euros per MWh for a cap at 3000 €/MWh rather than 2000 €/MWh without certainty of a decrease in the expectation of failure? ○ • The increase the “inertia” of the price cap increase mechanism is relevant in the current market conditions. While prices should be freely formed by the matching of the demand and supply curve, we must not ignore the impact of the value of the price cap on the formation of forward prices and the subsequent financial requirements. This parameter could be updated during the next revision of methodology. ○ • The choice of the various parameters (increment step (1000€/MWh), numbers of hours (5 in 3 days), number of rolling days (10) etc.) seems arbitrary. Any rationale or justification of this step would be helpful. ○ • We are wondering whether it is pertinent to keep an automatic increase of the cap each time fixed given conditions are fulfilled and believe a price cap should be an adequate trade-off between the free formation of prices, and the collateral effects mentioned above (volumes risks, impact on forward prices etc.).	ACER considers that setting harmonised maximum and minimum price limits shall respect Article 10(2) of the Electricity Regulation (<i>‘The adjusted higher limits shall remain applicable until further increases under that mechanism are required.’</i>). ACER therefore intends to maintain the harmonised maximum and minimum clearing prices to their current levels until adjustments to those limits are triggered. ACER assessed the legal basis of the Proposal for amendment based on the information provided by the NEMOs and took its Decision based on this assessment. ACER considers that the Proposal for amendment took into account the recent history of high prices on the electricity markets. ACER considers that the adjustments to the harmonised maximum and minimum clearing prices should respect the requirements of Article

Respondents' views	ACER's views
- Edison believes that the current SDAC limits +4000/-500 €/MWh should be kept unchanged when the revised methodology will be applied. In our view, the price cap increase that was triggered according to the existing rules should remain applicable, at least until one year after the triggering event (3 April 2023) and then reduced if the threshold of 70% of 4000 €/MWh has not been reached, according to the new article 4.3. Thus, we suggest not going back to the +3000/-500 €/MWh limit as from the start of the implementation of the revised methodology in response to the current volatility level. - Q1: We are concerned about the lack of information provided by NEMOs, as well as ACER, in the course of the public consultation. Instead of having an in-depth debate on the technical parameters of the methodology, ACER is now consulting on a proposal that lacks proper justification by the NEMOs. Consequently, some elements are difficult, if not impossible, to assess for market participants. This includes the definition of the price spikes and the trigger of price limit adjustments, as well as need the need or not to differentiate between price spike events leading to curtailment of demand bids and price spike events that do not lead to curtailment of demand bids. - Q2 and Q3: The technical price limit increase in DA to +4,000 EUR/MWh following the breach of the initial threshold on 4 April 2022 has been approved according to the (still) legally binding methodology. While we are agree to keep the DA technical price limits of -500/+3,000 EUR/MWh as the “reference” limits (less confusing wording than “initial” limits), it should not question the current upper price limit of +4,000 EUR/MWh in DA. Hence, a sentence should be added at the beginning of article 4.3 of the methodology to avoid confusion: “As of the entry into force of this methodology, the upper price limit shall be -500/+4,000 EUR/MWh. After 12 months without reaching a value of 70 percent of a given limit, the maximum or minimum clearing price will be set back to the lowest	10(2) of the Electricity Regulation (<i>‘NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.’</i>). See ACER’s view stated earlier to this question. ACER agrees with this statement which is considered and further described in recital 82 of the Decision.

Respondents' views	ACER's views
maximum clearing price or highest minimum clearing price respectively, consistent with the given limit. The maximum and minimum clearing price cannot be defined in the interval between -500 EUR/MWh and 3.000 EUR/MWh.” - Q4: We are open to discussing downward adjustments of the minimum clearing price limit in day-ahead. Before implementing this, we request an analysis by the NEMOs on negative prices and their fundamentals to fully justify such a reform. - Q5, Q6 and Q8: We believe that the definition of price spikes and the trigger for price limit adjustments do not strictly follow article 7(2)c of the Electricity Regulation (“Day-ahead and intraday markets shall provide prices that reflect market fundamentals, including the real time value of energy”) and article 10 (setting the rules of the technical price limits). While we understand the political context in which the proposal of the NEMOs is being made, the more stringent the conditions for an increase of the price limits, the more political or economic (rather than technical) these price limits become, and the higher the likelihood of occasions in which the electricity price will be constrained and fail to represent the real time value of energy. - Q7: We generally agree with the exclusion criteria. However, attention should be put to ensuring that bidding zones decoupled because they have it the technical price limit (and not the other way around) remain in the scope of the application of the measure. - Q10: While we understand the political reasons behind the decision for the NEMOs not to apply the automatic adjustment following the event of 17 August 2022, this was done in breach of a binding EU legislation, including article 10 of Regulation (EU) 2019/943 and the ACER Decisions on the harmonised methodology. We request a decision of all EU NRAs confirming this NEMO action.	ACER assessed the legal basis of the Proposal for amendment based on the information provided by the NEMOs and took its Decision based on this assessment. ACER considers that the Proposal for amendment took into account the recent history of high prices on the electricity markets. See ACER's view to Question 5-8. ACER observed that NEMOs took the decision to not apply the methodology described in Annex 1 to ACER Decision 04/2017. ACER did not support such decision by the NEMOs.

Respondents' views	ACER's views
- Q11: The technical price limit increase in DA to +4,000 EUR/MWh following the breach of the initial threshold on 4 April 2022 has been approved according to the (still) legally binding methodology. We see no reason to come back on it. See our qualification of Q2 and Q3 above to ensure that this current technical price limit is properly taken into account in the new methodology. - Q16, Q17 and Q18: We request that the interim period be shortened to 2 weeks. From a market perspective, the stricter conditions for the definition of spikes and trigger for a price limit adjustment may already constrain prices strongly. If these strict conditions are met, the technical price limit should be adjusted fast. From a technical perspective, considering that an automatic adjustment will be triggered at the minimum 10 days after the first threshold breach, NEMOs can be on alert (and spread warnings to the market) rather early before the full trigger of the adjustment is confirmed. - Q22 and Q24: We do not see the rationale to set a limit per year to the number of automatic adjustments. There is no technical justification behind this that would comply with article 10 of Regulation (EU) 2019/943. - After some time of real experience of the application of increases in price limits we are now in a better position to reflect on this topic. As a general prerequisite, an increase of price limits should be really limited and duly justified, due to the many negative implications that it triggers, such as very high requirements in terms of margin requirements/collaterals, leading to possible bankruptcies, and having severe impacts on consumers. - We see some improvements in the NEMOs proposal because it tries to focus on more structural and representative events, and we welcome this. However, in our view the methodology should go much deeper and should not be limited to an automatic mechanism. Therefore, we would suggest the following : to have a methodology that defines a triggering event (a starting point could be the NEMOs proposal or even defining a more	ACER agrees with this statement. See ACER's view to Questions 16 to 18. See ACER's view to Questions 22 to 24. See ACER's view to Question 8.

Respondents' views	ACER's views
complex triggering event), and after reaching the triggering event an “Expert Committee” composed by TSOs, NEMOs, ACER, the EC shall analyse the reasons behind these triggering events, also if they are due to design elements, and come up with a decision. In parallel, explanations should be shared with market participants and there should be a consultation. While we believe NEMOs amendments go in the right direction, the proposed methodology would be even more robust, thus allowing to take better-informed decisions, while still keeping elements of a rule-based system. - Entering with more detail on some specific elements: - On the proposed value for the price threshold of 70% in the NEMOs' amendment proposal (Q6), we suggest to increase it to 80%, as it would still be reasonably far from the limit. - On Min Price decrease (Q14): we consider that before making any change in the current rules regarding the lower limit, there should be a thorough analysis of their fundamentals to fully justify this change and possibly a dedicated workshop. We also believe this could be postponed for the next biennial review of the methodology. - On the Interim period: There should be enough time for the Expert Committee (see proposal above) to analyse the event and to run a consultation with market participants. In the case that a decision is taken to increase the limit, market participants would need to have enough time to arrange IT and internal elements as well as possible new collaterals/margin calls. - On setting back the limit: This should be evaluated also by the “Expert Committee” mentioned above, every 6 months (i.e. moving from the 12 months NEMOs proposal for 6 months). - Regarding limiting the number of price limit changes over a year: As mentioned before we would be in favour of reducing the number of price	See ACER's view to Question 6. See ACER's view to Question 14. ACER considers that setting up an Expert Committee deciding on the potential adjustments of the price limits is not respecting the legal requirements of Article 10(2) of the Electricity Regulation (<i>‘NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached’</i>). Indeed, the mechanism would therefore not be automatic in case an Expert committee decides on the adjustments. See ACER's view to Question 20.

Respondents' views	ACER's views
limits to the minimum, due to the many impacts mentioned above. An increment should only come after a really justified and thorough assessment decision. - TSOs see the following points as improvement to the current NEMO's proposal in order to ensure robustness and to avoid the necessity of applying exceptional measures like the freeze of the methodology. This will also avoid that the price is increase due to specific issue in one country only: - o The maximum price should be increased if the limit is reached in at least 2 Bidding Zones, in at least 2 different countries. This criteria will avoid that the increase of the maximum price limit will take place in the cases of curtailment in only 1 single country or in case of decoupling. However, we agree that a triggering event should not be e.g. just one MTU, but rather distributed over a period of time – e.g. as per the NEMOs proposal. TSOs see beneficial to have stricter rules to trigger the increase of the prices and therefore limit the number of occurrences per year to its minimal amount. - o TSOs propose steps of 500€ instead of the proposed 1000€ as there is already some new opportunities with 500€ more. This will allow for a steadier increase of the limit prices. - o The price limits as proposed by the NEMOs should also decrease when there is a signal of the markets (when the limits prices are not reached for a long period of time, e.g. one year). - o Concerning the min price decrease, TSOs are rather neutral, but disagreed to question 14. TSOs want the triggering event for max and min price should be coherent. Please see TSOs comments on the max price triggering event as stated above (in at least 2 Bidding Zones, in at least 2 different countries).	See ACER's view to Question 22. See ACER's view to Question 8. ACER agrees with this proposal. See ACER's view to Question 12. See ACER's view to Question 20. See ACER's view to Question 14.

Respondents' views	ACER's views
○ TSOs are convinced that the automatic mechanism should be based on an objective and straightforward rule that is transparent/easily detectable and that does not lead to any discussion on the trigger itself that causes the price increase/decrease. On a longer term and in line with the ENTSO-E vision paper, during limited periods of extreme scarcity situations, when wholesale prices are constantly close to the technical price limits for many consecutive hours (e.g. days), it may be adequate that policymakers and regulators foresee the introduction of a "temporary relief valve mechanism"(as also considered in ACER Final Assessment on Wholesale Electricity Market Design – April 2022). to temporarily limit prices at administrative set level below such technical limits. For instance, in Australia, if the price levels timed for the duration result in revenues equal to three times the Cost Of New Entry (CONE), the price is reduced to a lower administrative level. In this way the investment incentives are kept, while the disruptive effects on the market are limited. This temporary mechanism appears to be an important measure to mitigate the impact on BRPs and consumers, as the probability of physical shortage leading to extreme prices has been increasing recently and may be even higher in the future due to a number of factors such as extreme weather events due to climate change. On the other hand, the design and implementation of this solution would be challenging as the definition of the administrative price limit, of the triggering conditions, and of its duration would need to be carefully defined to avoid excessive distortion of price signals for flexibility sources (including demand response and storage), and energy savings. In any case, such mechanism would need to be complemented by well-defined rules on load-shedding and be applied in a harmonised manner across Europe to avoid distortion of cross-border trade. TSOs would like	ACER considers the measures to tackle scarcity situations mentioned by the stakeholder to fall outside the scope of the application of this document and the linked Decision. ACER however agrees with the first sentence. TSOs have been informally consulted as part of the hearing process of ACER's Decision.

Respondents' views	ACER's views
to remind that in accordance with the CACM Regulation, the development of the Harmonised Maximum and minimum clearing Price methodologies should be done in cooperation with TSOs. Therefore, TSOs expect to be part of the next steps of the process. - EER agrees that market prices should reflect fundamentals. In accordance with EU regulation, prices should not be constrained, and price caps should not constrain price formation. Price caps in themselves should not be seen as a political instrument to lower prices themselves. Freezing the day-ahead price cap in the current context is not the right solution, and could create real systemic risks if there is no harmonised change on the others markets (SIDC, spread). Indeed, on the electricity market, hedging is usually done financially; if the day-ahead price cap is reached, then financial hedging is capped. Therefore, the missing amounts must be acquired on the intraday markets and spreads where prices and caps are very high. Small players, for instance suppliers, will clearly not be able to finance these amounts. - EER understands why some stakeholders may wish to freeze day-ahead price caps, but strict conditions should be met to implement such a price cap freeze: for instance, price caps must be aligned between all exchange markets (day ahead, intraday and spreads). - EER considers that any automatic increase of the cap should be strictly limited. EER agrees with the idea that price caps should not be set automatically, as well as with the need of an in-depth examination of the causes leading to a price peak. In the future, EER could agree with a decrease in the price cap, but it must remain high enough to allow prices to continue to form normally under market conditions. - EER agrees with ACER's proposal to set the SDAC max price at 3000 euros/MWh but this adjustment is not acceptable without a similar adjustment of all exchange markets (day ahead, intraday and spreads). Indeed, EER questions the relevance and legitimacy of having different	ACER considers that artificially maintaining the price limits to their current levels does not respect Article 10(2) of the Electricity Regulation (<i>'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.'</i>).

Respondents' views	ACER's views
price caps on different markets. EER supports an alignment of price caps between all exchange markets (day ahead, intraday and spreads) : the SIDC initial max price should therefore be at 3000 euros/MWh instead of 9 999 euros. If such an adjustment of SIDC is not provided, EER considers that no change should be done. - We believe that the trigger event reached in one bidding zone should not lead to an automatic adjustment of maximum price in all bidding zones. E.g., trigger event which happened in the Baltics in August should not have led to the increase in max price for all BZs – market conditions were different in other BZs, and an increase in max price did not make sense for these. We therefore believe that grouping of BZs and applying the increases on a group level (rather than extrapolating a trigger event reached in one BZ to the entire market) would be beneficial. - IFIEC Europe wants to point out that a price cap at the level of VoLL would by definition lead to a matching between supply and demand curves. IFIEC Europe also wants to point out that the price cap increase mechanism was a compromise to ensure that on the one hand all available flexibility, including all demand side flexibility, even at potentially high activation prices, could participate to the market, while on the other hand limiting the side effects of too high technical limits on certain elements. - IFIEC Europe insists that a higher price cap leads to the possibility for more (voluntary) flexibility to participate to the markets and vice versa. A too low price cap could lead to a situation where not all (voluntary) flexibility would find its way to the markets and could thus trigger an event where supply and demand curves do not cross, which would lead to (unvoluntary) demand curtailment, a situation which should be avoided. - However, IFIEC Europe also understands that the current crisis is stretching the market design to its limits as the very high prices observed in the last months are not the result of security of supply incidents but the effects of	ACER agrees with EER's assessment that the current harmonised maximum and minimum clearing prices should stay at their current levels. ACER agrees with this statement. See ACER's view to Question 8.

Respondents' views	ACER's views
extreme energy input prices due to an external event. This situation should be taken into account in order to avoid undue price increases for consumers. IFIEC Europe nevertheless wants to stress the fundamental inherent difference between the high prices observed recently and price spikes resulting from security of supply concerns, as the latter should be the trigger for investments in additional capacity (as opposed to the former). By modifying the methodology indifferent of the underlying trigger of the price cap increase process, IFIEC Europe is concerned that investment signals will be eroded, which could ultimately lead to, potentially frequent, demand curtailment. For the same reason, IFIEC Europe is very hesitant about a methodology for the decrease of price caps, as these, if not judiciously applied, could lead to a similar negative impact on the investment signal. - TotalEnergies agrees that market prices should reflect fundamentals. In accordance with EU regulation, prices should not be constrained, and price caps should not constrain price formation. Price caps should not be seen as a political instrument to lower prices themselves. Freezing the day-ahead price cap in the current context is not the right solution, and could create real systemic risks if there is no harmonised change on the others markets (SIDC, spread). Indeed, on the electricity market, hedging is usually done financially; if the day-ahead price cap is reached, then financial hedging is curtailed. Therefore, the missing volumes must be acquired on the intraday markets where price caps are currently higher than in Day-Ahead markets, which exposes market participants to significant additional costs . Small players, for instance suppliers, will clearly not be able to finance these amounts. - TotalEnergies understands why some stakeholders may wish to freeze day-ahead price caps, but strict conditions should be met to implement such a price cap freeze: for instance, price caps must be aligned between all maturities (day ahead, intraday). TotalEnergies believes that price caps should not be set automatically, and agrees with the need of an in-depth	See ACER's view to Question 20. ACER considers that maintaining the maximum and minimum price limits to fixed level would effectively cap the single day-ahead market prices, which falls outside the scope of this Decision. ACER considers that artificially maintaining the price limits to their current levels does not respect Article 10(2) of the Electricity Regulation (<i>'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached.'</i>).

Respondents' views	ACER's views
examination of the causes leading to a price peak. TotalEnergies considers that any automatic increase of the cap should be strictly limited and fully motivated . In the future, TotalEnergies could agree with a decrease in the price cap, but it must remain high enough to allow prices to continue to form normally under market conditions. - TotalEnergies agrees with ACER's proposal to set the SDAC max price at 3000 euros/MWh but this adjustment is not acceptable without a similar adjustment of all exchange markets (day ahead, intraday and spreads). Indeed, TotalEnergies questions the relevance and legitimacy of having different price caps on different maturities. TotalEnergies supports an alignment of price caps between all maturities markets towards lower prices (day ahead, intraday) : the SIDC initial max price should therefore be at 3000 euros/MWh instead of 9 999 euros. - Before answering the public consultation, UFE would like to make some general remarks: As it stands, the NEMO's' proposal doesn't prevent maximum price cap increases in case very high prices are regularly reached this winter (which is expected at least in certain bidding zones); it therefore doesn't handle the current emergency situation, which requires, due to the very special circumstances (major inflationist risk with collateral effects on the functioning of the market) to freeze the cap at its initial value or even lower it given the very specific circumstances until the end of the crisis. - This should be done with a cautious implementation that still gives visibility to market parties and avoids undesirable side effects (e.g. impairment of financial hedges, dispatching issues for DSR...). UFE thus warns against potential systemic risks. Indeed, on the electricity market, hedging is usually done financially; if the day-ahead price cap is reached, then financial hedging is capped. Therefore, the missing amounts must be acquired on the intraday markets and spreads where prices and caps are very high. Small players will clearly not be able to finance these amounts.	ACER considers that the harmonised maximum and minimum clearing prices should stay at their current levels for SDAC and SIDC. ACER agrees with this statement and considered it in recitals 47 to 56 of ACER Decision.

Respondents' views	ACER's views
UFE therefore requests that any decrease of the maximum clearing price below the initial level of €3000/MWh be accompanied by measures limiting the opportunistic transfer of capacity from the day-ahead market to the intraday and balancing markets. - Finally, with regard to the current freeze at €4,000/MWh, UFE would like to point out that even if it is a technical measure, in line with the current political context, and whose relevance is not contested, the possibility of such a measure is not foreseen in the HMCCP methodology and creates therefore legal uncertainty. It should not set a precedent for potential further modification of market rules without proper legal background. It is thus essential to put in place the legal basis if, in the future, a similar decision was to be taken. - General comments on the public consultation: UFE notes that the decision to review the HMMPC methodology has been taken in order to monitor this risk by trying to slow down the increase of maximum price and avoid an unsustainable escalation of prices. Therefore, UFE assumes that the aim of this revision is to address the current issue which is expected to last, not to address issue which could be occurred in a normal situation. UFE calls for a further revision of the methodology once the situation is normalized. - Specific comments on the NEMO proposal: UFE considers that the NEMO proposal does not go far enough in the revision of the HMMCP methodology to address the current issue. Nevertheless, UFE would like to emphasize the principles of the NEMO proposal that go in the right direction: • UFE welcomes the fact that the NEMOs' proposal tightens the criteria for raising the maximum clearing price, as the current methodology is not adapted to current circumstances	See ACER's view to Question 20 regarding the lowering of the harmonised maximum clearing price. ACER observed that NEMOs took the decision to not apply the methodology described in Annex 1 to ACER Decision 04/2017. ACER did not support such decision by the NEMOs. See ACER's view to Question 8.

Respondents' views	ACER's views
• UFE welcomes the expansion of the exception cases in the price spike definition for not increasing price limits according to the automatic increase rule • UFE welcomes the idea of having a decrease mechanism When it comes to the proposed parameters, UFE would like to highlight following points: • The starting level of the new methodology should be set to 3000€/MWh at most. UFE requests that this initial price limit be applied directly at the entry into force of the methodology since this cap would not have been increased if the current NEMOs proposal would have already been applied. • Increasing the “inertia” of the price cap increase mechanism is relevant in the current market conditions. While prices should be freely formed by the matching of the demand and supply curve, we must not ignore the impact of the value of the price cap on the formation of forward prices and the subsequent financial requirements. In this context, although the NEMO proposal is a step in the right direction, UFE calls for increasing the inertia of maximum clearing price increases through the following levers: - o Introduce a triggering event definition stricter than the one proposed in the NEMOs' amendment proposal - o Increase the triggering threshold beyond 70% - o Reduce the maximum price increase below the +1000€ proposed by the NEMOs - o Exclude all cases where reaching the triggering threshold is not linked to market fundamentals but to a technical or operational error (IT issues, operational errors, corrupted data, corrupted orders, bidding errors)	See ACER's view to Question 5. See ACER's view to Question 20. See ACER's view to Question 12. ACER disagrees with this statement considering Article 10(2) of the <i>Electricity Regulation</i> (<i>‘Those limits shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonised for the internal market and shall take into account the maximum value of lost load. NEMOs shall implement a transparent mechanism to adjust automatically the technical</i>

Respondents' views	ACER's views
by participants, decoupling, partial decoupling, flow-based fall back) preventing a proper functioning of SDAC - o Limit the number of price limit changes to one over a year - o Shorten the trigger period of the decrease mechanism to 6 months instead of 12 months to limit the impact of the maximum clearing price on forward prices and collateral requirements while maintaining a clear price signal for market participants	<i>bidding limits in due time in the event that the set limits are expected to be reached.'). See also ACER's view to Question 8.</i> See ACER's view to Question 22.

3 List of respondents

Organisation	Country	Type
ANODE (France) - National Association of Energy Retailers	France	Energy supplier (or association)
Anonymous 0142*	Austria	Utility (or association)
Anonymous 5822*	Netherlands	Utility (or association)
Association of Energy Consumer Companies in Romania (ACCER)	Romania	End-user (or association)
BKW Energie AG	Switzerland	Utility (or association)
Bord Gais Energy Limited	Ireland	Energy supplier (or association)
CEZ	Czechia	Utility (or association)
Centrica	Denmark	Trader (or association)
D.Trading B.V.	Croatia	Trader (or association)
E.ON Sverige AB	Sweden	Energy supplier (or association)
EDF	France	Generator (or association)
EFET	Netherlands	Trader (or association)
ENTSO-E	Belgium	Transmission Network Operator (or association)
Edison	Italy	Generator (or association)
European Energy Retailers	Belgium	Energy supplier (or association)
Ezpada AG	Switzerland	Trader (or association)

Organisation	Country	Type
Finnish Energy	Finland	Other market participant
IFIEC Europe	Belgium	End-user (or association)
OMPEX AG	Switzerland	Trader (or association)
RWE Supply & Trading GmbH	Germany	Trader (or association)
The Mobility House GmbH	Germany	Energy supplier (or association)
TotalEnergies Electricité et Gaz France	France	Energy supplier (or association)
UFE (Union Française de l'électricité)	France	Utility (or association)
UPM Energy Oy	Finland	Trader (or association)
Vattenfall AB	Sweden	Utility (or association)
Wind Energy Trading AG	Other	Trader (or association)
enel group	Italy	Utility (or association)

* Respondents who wanted to remain anonymous.