

## **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
<b>Question 1:</b> 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.
<b>Question 2:</b> 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
<p><b>Question 3:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 2.</p>
Respondents' views	ACER's views
<p><b>Question 4:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 2.</p>

Respondents' views	ACER's views
<p><b>Question 5:</b> 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)</p>	
<p>Strongly agree: 2                      Agree: 11                      Neutral: 5                      Disagree: 7                      Strongly disagree: 0                      No opinion: 2</p>	<p>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.</p>

Respondents' views	ACER's views
<p><b>Question 6:</b> 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)</p>	
<p>Strongly agree: 2                      Agree: 11                      Neutral: 6                      Disagree: 8                      Strongly disagree: 0                      No opinion: 0</p>	<p>See ACER's view to Question 6.</p>

Respondents' views	ACER's views
<p><b>Question 7:</b> 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)</p>	
<p>Strongly agree: 2                      Agree: 14                      Neutral: 5                      Disagree: 0                      Strongly disagree: 1                      No opinion: 5</p>	<p>See ACER's view to Question 6.</p>

Respondents' views	ACER's views
<p><b>Question 8:</b> Do you agree with the proposed triggering event of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)</p>	
<p>Strongly agree: 2                      Agree: 10                      Neutral: 4                      Disagree: 10                      Strongly disagree: 1                      No opinion: 0</p>	<p>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.</p>

Respondents' views	ACER's views
<p><b>Question 9:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 8. ACER considers that the triggering conditions should be looser than the proposed level by the NEMOs.</p>

Respondents' views	ACER's views
<p><b>Question 10:</b> 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)</p>	
<p>Strongly agree: 1                      Agree: 4                      Neutral: 2                      Disagree: 3                      Strongly disagree: 8                      No opinion: 9</p>	<p>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.</p>

Respondents' views	ACER's views
<p><b>Question 11:</b> 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)</p>	
<p>Strongly agree: 4                      Agree: 2                      Neutral: 2                      Disagree: 6                      Strongly disagree: 5                      No opinion: 8</p>	<p>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.</p>

Respondents' views	ACER's views
<p><b>Question 12:</b> 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)</p>	
<p>Strongly agree: 3                      Agree: 8                      Neutral: 4                      Disagree: 8                      Strongly disagree: 3                      No opinion: 1</p>	<p>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.</p>

Respondents' views	ACER's views
<p><b>Question 13:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 12.</p>

Respondents' views	ACER's views
<p><b>Question 14:</b> 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)</p>	
<p>Strongly agree: 5                      Agree: 9                      Neutral: 5                      Disagree: 5                      Strongly disagree: 0                      No opinion: 3</p>	<p>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.</p>



Respondents' views	ACER's views
<p><b>Question 15:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 14.</p>
Respondents' views	ACER's views
<p><b>Question 16:</b> Do you agree with the proposed interim period of the NEMOs' amendment proposal? (single choice: strongly agree/agree/neutral/disagree/strongly disagree/no opinion)</p>	
<p>Strongly agree: 1                      Agree: 10                      Neutral: 4                      Disagree: 8                      Strongly disagree: 4                      No opinion:0</p>	<p>ACER agrees with the proposed duration of the transition period of the Proposal for amendment. See recital 55 of ACER Decision for detailed explanations.</p>

Respondents' views	ACER's views
<p><b>Question 17:</b> 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)</p>	
<p>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</p>	<p>See ACER's view to Question 16.</p>
Respondents' views	ACER's views
<p><b>Question 18:</b> 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)</p>	
<p>Strongly agree: 3            Agree: 14            Neutral: 5            Disagree: 2            Strongly disagree: 1            No opinion: 2</p>	<p>ACER agrees with the proposed treatment of the transition period of the Proposal for amendment. See recital 55 of ACER Decision for detailed explanations.</p>

Respondents' views	ACER's views
<b>Question 19:</b> 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
<b>Question 20:</b> 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
<b>Question 21:</b> 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
<b>Question 22:</b> 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
<b>Question 23:</b> 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
<b>Question 24:</b> 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 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
<p><b>Question 25:</b> 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)</p> <p><b>Question 26:</b> Please justify your answer.</p>	
<p><b>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.</b></p>	
<p>Explanations:</p> <p>Strongly agree:</p> <ul style="list-style-type: none"> <li>- 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.</li> </ul> <p>Agree:</p> <ul style="list-style-type: none"> <li>- The price step could be designed as a percentage, however, an increase from 3000 -&gt; 4000 is fundamentally different from 7000 -&gt; 8000. The rationale behind the values chosen for the whole proposal is missing. The implementation period should be shortened to 2 weeks.</li> </ul>	<p>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.</p> <p>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.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>- The current proposal corresponds to overall requirements by the EU Regulation 2019/943.</li> </ul>	<p>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.</p>
<p><b>4 respondents remained neutral</b> on the NEMOs proposal for the technical bidding limits set in the Article 10 of Regulation (EU) 2019/943.</p>	
<p>Explanations:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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).</li> </ul>	

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>- 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”.</li> <li>- 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.</li> <li>- 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</li> </ul>	



Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> </ul>	<p>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>).</p> <p>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).</p>

Respondents' views	ACER's views
<p><b>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.</b></p>	
<p>Explanations:</p> <p>Disagree:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> </ul> <p>Strongly disagree:</p> <ul style="list-style-type: none"> <li>- 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</li> </ul>	<p>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.</p>

Respondents' views	ACER's views
<p>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.</p>	<p>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.</p>
<p><b>14 respondents had no opinion</b> on whether the NEMOs proposal correctly reflected the requirements for the technical bidding limits set in the Article 10 of Regulation (EU) 2019/943.</p>	
<p>Explanations:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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</li> </ul>	<p>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>).</p> <p>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></p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- The mechanism allows for unsustainable prices.</li> </ul>	<p><i>shall be neither a maximum nor a minimum limit to the wholesale electricity price.').</i></p> <p>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.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>- 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).</li> <li>- 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.</li> <li>- 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).</li> <li>- We request that NEMOs publish additional background information regarding the rationale of the proposals made in the draft methodologies.</li> </ul>	<p>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>).</p> <p>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.</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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</li> </ul>	<p>ACER agrees with the proposed duration of the transition period of the Proposal for amendment. See recital 55 of ACER decision for detailed explanations.</p> <p>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.</p> <p>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.</p> <p>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.</p>

Respondents' views	ACER's views
<p>statement coming from ACER. This could set a dangerous precedent for future modifications of marker rules and therefore harms investor confidence further.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> </ul>	<p>ACER considers that its Decision is robust to all market situations.</p> <p>ACER agrees with this statement.</p>

Respondents' views	ACER's views
<b>Question 27:</b> Do you think that other design elements of the automatic mechanism should be considered? Please specify.	
<p>Explanations:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- The capacity mechanism aims at "factoring" in a capacity remuneration for a few hours at energy prices representing the VoLL (i.e. &gt; €20k/MWh). However, prices around the current level of caps (€4000/MWh) are not part</li> </ul>	<p>See ACER's view to Question 26.</p> <p>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>).</p> <p>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></p>



Respondents' views	ACER's views
<p>of this logic. In addition, the logic of covering the means of production eliminates all or part of the excessive remuneration.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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</li> </ul>	<p>See ACER's view to Question 26.</p> <p>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.</p>

Respondents' views	ACER's views
<p>volume across all bidding zones reaches minimum or maximum price or; the spike is caused by planned grid maintenance.</p> <ul style="list-style-type: none"> <li>- 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:                     <ul style="list-style-type: none"> <li>o - 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.</li> <li>o 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).</li> <li>o - 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</li> </ul> </li> </ul>	<p>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.</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>○ Comments on the NEMOs proposal</li> <li>○ 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:             <ul style="list-style-type: none"> <li>○ • 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).</li> <li>○ • EDF welcomes the idea of a decrease mechanism.</li> <li>○ • 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.</li> <li>○ • 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.</li> </ul> </li> <li>○ When it comes to the proposed parameters, EDF would like to highlight following points:</li> </ul>	<p>See ACER's view to Question 26.</p> <p>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.</p> <p>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.</p> <p>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.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>○ • 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?</li> <li>○ • 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.</li> <li>○ • 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.</li> <li>○ • 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.).</li> </ul>	<p>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.</p> <p>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.</p> <p>ACER considers that the adjustments to the harmonised maximum and minimum clearing prices should respect the requirements of Article</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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 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</li> </ul>	<p>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>).</p> <p>See ACER’s view stated earlier to this question.</p> <p>ACER agrees with this statement which is considered and further described in recital 82 of the Decision.</p>

Respondents' views	ACER's views
<p>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.”</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> </ul>	<p>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.</p> <p>See ACER's view to Question 5-8.</p> <p>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.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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</li> </ul>	<p>ACER agrees with this statement.</p> <p>See ACER's view to Questions 16 to 18.</p> <p>See ACER's view to Questions 22 to 24.</p> <p>See ACER's view to Question 8.</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- Entering with more detail on some specific elements:</li> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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).</li> <li>- 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</li> </ul>	<p>See ACER's view to Question 6.</p> <p>See ACER's view to Question 14.</p> <p>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.</p> <p>See ACER's view to Question 20.</p>



Respondents' views	ACER's views
<p>limits to the minimum, due to the many impacts mentioned above. An increment should only come after a really justified and thorough assessment decision.</p> <ul style="list-style-type: none"> <li>- 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:                     <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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).</li> <li>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).</li> </ul> </li> </ul>	<p>See ACER's view to Question 22.</p> <p>See ACER's view to Question 8.</p> <p>ACER agrees with this proposal. See ACER's view to Question 12.</p> <p>See ACER's view to Question 20.</p> <p>See ACER's view to Question 14.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>○ 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</li> </ul>	<p>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.</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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).</li> <li>- 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.</li> <li>- 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</li> </ul>	<p>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>).</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> <li>- 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</li> </ul>	<p>ACER agrees with EER's assessment that the current harmonised maximum and minimum clearing prices should stay at their current levels.</p> <p>ACER agrees with this statement. See ACER's view to Question 8.</p>

Respondents' views	ACER's views
<p>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 judicially applied, could lead to a similar negative impact on the investment signal.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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</li> </ul>	<p>See ACER's view to Question 20.</p> <p>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>).</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> </ul>	<p>ACER considers that the harmonised maximum and minimum clearing prices should stay at their current levels for SDAC and SIDC.</p> <p>ACER agrees with this statement and considered it in recitals 47 to 56 of ACER Decision.</p>

Respondents' views	ACER's views
<p>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.</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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:             <ul style="list-style-type: none"> <li>• 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</li> </ul> </li> </ul>	<p>See ACER's view to Question 20 regarding the lowering of the harmonised maximum clearing price.</p> <p>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.</p> <p>See ACER's view to Question 8.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>• UFE welcomes the expansion of the exception cases in the price spike definition for not increasing price limits according to the automatic increase rule</li> <li>• UFE welcomes the idea of having a decrease mechanism</li> </ul> <p>When it comes to the proposed parameters, UFE would like to highlight following points:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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:             <ul style="list-style-type: none"> <li>o Introduce a triggering event definition stricter than the one proposed in the NEMOs' amendment proposal</li> <li>o Increase the triggering threshold beyond 70%</li> <li>o Reduce the maximum price increase below the +1000€ proposed by the NEMOs</li> <li>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)</li> </ul> </li> </ul>	<p>See ACER's view to Question 5.</p> <p>See ACER's view to Question 20.</p> <p>See ACER's view to Question 12.</p> <p>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></p>



Respondents' views	ACER's views
<p>by participants, decoupling, partial decoupling, flow-based fall back) preventing a proper functioning of SDAC</p> <ul style="list-style-type: none"> <li>o Limit the number of price limit changes to one over a year</li> <li>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</li> </ul>	<p><i>bidding limits in due time in the event that the set limits are expected to be reached.</i> '). See also ACER's view to Question 8.</p> <p>See ACER's view to Question 22.</p>

### 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.