

Eurelectric response to All TSOs Proposal for Amendments on aFRR IF (Art. 21 of EB Regulation) and Pricing Methodology (Art. 30(1) of EB Regulation)

A Eurelectric response paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

Dépôt légal: D/2023/12.105/47

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December 2023

Eurelectric's key messages on balancing high price mitigation measures proposed by All TSOs:

- Eurelectric has in the past expressed concerns on the ability of TSOs to use elastic aFRR energy needs. Those concerns were driven by the impact they may have on the use of specific products and their ability to enforce a de-facto price cap. At the same time, Eurelectric takes note of the ability of elastic demand to allay some of the perceived issues that TSOs are currently observing on the aFRR platform. Eurelectric therefore proposes that if TSOs are to use elastic aFRR energy needs in the PICASSO platform, this would be accompanied by strict limitations and conditions, and be subject to a regular reassessment of the continued need of its use.
- More comprehensive discussion on final price cap is necessary and should be at least up to the highest VoLL in a Member State. We believe that the assessment and potential implementation of a new transitional price cap are premature as the market is not yet fully developed, and a limited number of TSOs have accessed the platform.
- Eurelectric advocates for using REMIT guidelines as the most efficient solution to address the root causes of market abuse by (strategic) bidding, rather than placing the responsibility on TSOs to anticipate or qualify market manipulation. We therefore repeat our firm position that any breach of the REMIT framework should be investigated by the competent authorities.
- Eurelectric would also like to refer to the ACER 2023 Market Monitoring Report, where the occurrence of price spikes on the PICASSO platform is analysed in a case study [[ACER Market Monitoring Report on 70% MACZT](#); page 35]. The conclusion in paragraph 107 reads “[...] the Austrian bidding zone would have benefited from accessing the neighbouring bidding zones. This could have been achieved by optimising the availability and use of physical transmission capacity at the time of the incident to increase the amount of cross-border capacity for balancing purposes.”. Moreover, in ACER's analysis it is also showed that high prices incidents generally repeat themselves for lasting periods of time, we thus also endorse the main recommendation made in the report of “Studying the use of slower reserves such as mFRR following aFRR activations to manage price incidents effectively”. We therefore encourage TSOs to further explore the possible applications of ACER's recommendations.
- In any case, Eurelectric considers that these measures cannot be a precondition for TSOs to comply with the legal deadline to join the PICASSO platform. This would set a harmful precedent, detrimental to the stability of the regulatory framework and therefore to the market participant's ability to anticipate future incomes as BSPs or costs as BRPs.

1. Feedback on the proposed amendments to the aFRR IF (Article 21 of EB Regulation)

As Eurelectric has reiterated in previous consultations regarding balancing products, TSOs should not interfere with market outcomes. Eurelectric acknowledges the objective put forward by TSOs to implement elastic aFRR energy needs to avoid activations at all costs beyond the amounts necessary for quality requirements. At the same time, the current governance framework is ill-equipped to ensure future compliance with this stated objective. The eventual use of elastic aFRR energy needs for objectives other than the stated ones are therefore difficult to monitor or enforce, which is a cause of concern for Eurelectric.

We are also concerned about the impact that the introduction of elastic demand will have on the creation of new specific products by TSOs and more intensive use of the existing ones. Specific products should not be used as a complementary tool for ensuring reserves are available if aFRR elastic demand cannot be satisfied.

Eurelectric therefore considers that if elastic aFRR energy needs are to be integrated in the aFRR IF and used by TSOs, it should be accompanied by a clear and enforceable governance to ensure that its implementation and use are kept within the allowed framework. This framework should have limitations regarding the ability of elastic aFRR energy needs to act as price caps, the necessary up-front transparency on its definition and use, and the avoidance that its use would lead to additional specific products or additional use of specific products.

Eurelectric also requests that the use of elastic aFRR energy needs for the aFRR process is reassessed on a regular basis. This reassessment should cover both the compliance of the use with the stated objective, and the continued use of the elastic imbalance need.

Moreover, we have further identified missing elements related to the changes proposed to the aFRR IF:

- 1) Art.3.4(c): elastic demand shall not act as a price cap. However, without a clear description of what this entails, the paragraph lacks a clear limitation on TSOs. Therefore, TSOs should clearly describe how it is ensured that the elastic demand does not act as a price cap. We would have appreciated, in the explanatory document, having an example/use case describing a situation where the elastic aFRR could be used “in such a way that it imposes a cap on balancing energy prices for any LFC areas or bidding zones”.
- 2) Art.3.5: we do not agree with the idea behind this paragraph:
 - curves should be published in any case, and not only if (TSOs deem that) they are not sufficiently described;
 - it should not be a possibility that TSOs do not describe the rules sufficiently. This is a prerequisite clearly listed in art.3.4(d).
- 3) It would be useful to include a paragraph on the timeline and roadmap for any possible implementation of elastic demand provisions. As it stands, it is unclear when this will be available once ACER approves this revision.
- 4) We find it necessary to amend Art. 11 (especially paragraphs 11.3 and 11.4(b)) to describe the different treatment of inelastic and elastic demands.

Furthermore, we have also identified a few typos in the amendment proposal:

- 1) one typo identified in Art. 3.5 where it states, "if not sufficiently described in the publication in accordance to paragraph 4(d)";
- 2) one typo identified in Art. 14.6 which appears to have a reference problem.

2. Feedback on the proposed amendments to the Pricing methodology amendments (Art 30(1) of EB Regulation)

Comments on the price cap principle:

We believe that there is a need for more comprehensive discussion and explanations regarding the maximum and minimum prices in the Balancing energy market, particularly concerning the proposed 10 k€/MWh transitional cap.

The proposed price limits are compelling for all balancing energy standard products even though the recent price incidents were only observed for aFRR on PICASSO. Therefore, it does not seem legitimate to change the market conditions also for mFRR and RR.

We question here the role and responsibility of TSOs in making such a proposal, even if it were only for aFRR. We contend that the setting of a price cap should be underpinned by a robust economic rationale, which does not fall under the responsibility of TSOs. We are opposed to the reasoning behind reducing balancing prices due to market concentration and difficulty in combating market abuse using REMIT. We advocate for the application of REMIT guidelines as the most efficient measure to address the root causes of strategic bidding, rather than placing the burden on TSOs to anticipate or qualify market manipulation. We strongly disagree and resent the many references in the explanatory document to market abuse on which TSOs build their case to lower the price cap, without practical evidence (see the non-exhaustive list below).

Furthermore, we argue that the timing of the assessment appears premature compared to what is required by the pricing methodology. Indeed, Art.9 states that all TSOs should perform an assessment of the functioning of the balancing market 36 months after the implementation deadline. Adjusting this price cap seems too early as the market is not yet fully developed, and not all TSOs have joined the platform. We believe that further maturity and investigations are necessary before implementing such measures.

If a change of the transitional price limit is considered as a risk mitigation measure for the upcoming phase of additional TSOs joining the platform in 2024, we do not see a reason to change the permanent price limit.

Eurelectric reiterates its initial stand that should a lower maximum technical price limit be implemented; it must be ensured that it does not affect the free formation of prices. This implies that imbalance prices need the ability to theoretically reach the Value of Lost Load (VoLL) in all markets. As the VoLL is probably not a single value and can vary from one country to the other and from one industry/type of consumer to the other, the maximum technical price limit should be set at least at the value of the highest VoLL among member states. A second consideration should be that the maximum technical price limit for the clearing of balancing energy should be sufficiently higher compared to the ID price limits.

Finally, we see transparency measures such as the publication of quarterly pricing reports, as positive, but it should not create quarterly discussions on mitigation measures unnecessarily.

Comments on the new transitional price cap:

We believe that setting a price cap at 10k€/MWh without demonstrating market manipulation through formal inquiry makes it challenging to claim that all observed bids above 10k€/MWh are irrational. Therefore, asserting that the choice of a 10k€/MWh price cap will not push units out of the market is questionable. The elastic demand should tackle the issue of price sensitivity well enough.

We recommend that TSOs consider a more nuanced approach for evaluating bid efficiency and not rely solely on SDAC and SIDC for this purpose. Indeed, the emergence of new technology assets in the market has increased and is displacing thermal plants out of the reserve market. They are not always primarily dedicated to balancing services and have different cost structures and energy constraints, which can lead to different balancing energy bidding behavior.

The 10k€/MWh price cap lacks a robust economic rationale and is too restrictive, particularly compared to the SIDC price cap. It may not provide a sufficient incentive for market participants to minimize their imbalances. This goes against the requirements of the Electricity Balancing Guideline, which has clear provisions on the need for incentives for market participants 'in keeping and/or helping to restore the system balance' in preamble (17) and art.44.1(c). The lack of sufficient incentive for BRPs may lead to additional imbalance volumes that TSOs need to tackle, with both cost and security implications.

Comments on CBMP based on LFC activation:

There is no quantitative assessment provided for the effectiveness of this measure. Only with a graphical illustration in the Explanatory Notes, the envisaged effect is highlighted. Therefore, the changes should be accompanied by an evaluation of the efficiency and impact of the measure compared to its objective once the platform has reached a certain level of maturity, i.e. 2 years after all TSOs have joined.

Advantages of the current approach outlined in the Explanatory Document of the Pricing Proposal include "[...] transparency, auditability and robustness of the price determination approach. The price determination is not affected by local behaviour of TSOs or BSPs [...]" and according to stakeholder preference the "simplicity of the approach and consistency with other market time frames, that also determine the prices based on the clearing result." Eurelectric therefore asks that irrespective of the CBMP determination, TSOs enhance their efforts to provide transparency on the CBMP formation.

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Detailed comments on the amendments to the Articles:

- Art. 2: the definition of LFC output is missing;
- Article 7.3 insufficiently specific. An aFRR bid can receive an activation signal after going out of the merit order. The proposed text implies that any bid could fix the price. The notion of activated bid could be introduced. Or maybe it would be simpler to phrase it like "equal, in the same uncongested area, to the highest price of all positive standard aFRR balancing energy product bids selected by the local frequency controllers, limited by the highest price of

all positive standard aFRR balancing energy product bids selected by the AOF in the same uncongested area."

- Articles 3.3 & 9.2: we question the new transitional price limits at +/- 10 000€/MWh and oppose it as we consider it too restrictive. It may not provide a sufficient incentive for market participants to minimize their imbalances. The current difference in price cap between the day-ahead market and intraday market could be a good basis to assess an appropriate difference in the price cap between the intraday and imbalance market.

A non-exhaustive list of such accusations of market abuse or statements without practical evidence in the explanatory document:

- 1.2.4.1: "To be efficient, this market needs to be sufficiently deep to allow TSOs to cover their demand for balancing energy, and sufficiently diversified to ensure competition between suppliers. Such competition is essential to ensure a price formation that reflects the true value of balancing energy (i.e., the marginal cost of the marginal asset providing balancing energy). In principle, this can be achieved with prices well below the Value of Lost Load (VoLL). If price stays below that level, such a market will be more efficient than an inelastic market with even a perfectly optimal level of adequacy."
- The link between a deep market, an efficient market and suppressed prices is unclear and no causal link is shown.
- 1.2.4.2, second bullet point: "Only a limited number of BSPs are present in the local balancing energy markets to be integrated via the balancing platforms potentially leading to high local market concentration. "
- The statement is made without a substantiation on what a limited number is according to TSOs. It is also not clear why there is a reference to local balancing markets when discussing a European platform.
- 1.2.4.2, last paragraph: "It is important to note that in real-world markets, these conditions are rarely met perfectly. However, the closer a market comes to meeting these conditions, the more likely marginal pricing will lead to competitive prices and efficient market results. The Balancing Energy market according to EB Regulation hardly fulfils any of the conditions. Therefore, measures are necessary to avoid market distortions and to increase the efficiency of the balancing energy market."
- This is stated without any clarification on which conditions are unfulfilled or any substantiation of why this is the case.
- 1.2.4.3: "In scarcity situations, whether the scarcity is real, forced by BSPs or caused by errors, balancing energy markets are likely to be inefficient because BRPs are not flexible and cannot participate in the price formation, which is determined solely by the bids of BSPs. In these circumstances, BSPs are not given the incentive to submit balancing energy bids representing their marginal costs but see the possibility of maximising their profits by submitting strategically motivated bids."
- The balancing market is there to provide pricing signals to BRPs to minimize their imbalances and this is exactly what BRPs can change.
- The existence of strategically motivated bids is stated without substantiation.
- It is also questionable whether TSOs have any role/competency to evaluate the 'strategic' nature of bids.
- 1.2.4.3, first bullet point: "A maximum price for balancing energy protects consumers from excessively high prices for balancing energy. Without such regulation, uncontrolled bidding

might drive up prices to unsustainable levels, leading to increased costs for consumers and potential affordability issues.”

As previously indicated, the balancing market is there to provide price signals to BRPs. Suppressing them is a stopgap solution that may eventually endanger the market/system by suppressing supply of flexibility.

TSOs mention excessive and unsustainable prices without substantiation.

- 1.2.4.3, fourth bullet point: “the proposed harmonised maximum and minimum balancing energy prices limits consequences of failures observed caused by humans or algorithms. For example, all TSOs' proposal limits the consequences of a "fat finger error", what may otherwise have dramatic consequences but also provide erroneous price signals to the market and possibly result in inadequate market reactions and thus inefficient market outcomes.”

A market-wide price cap seems excessive for the rare occurrence of such an error, that could be solved by intelligent interface design. TSOs also do not provide examples of the occurrence of such errors.

- 1.2.4.4: “At the same time, the justified requirements for this indispensable "insurance service" also lead to a smaller group of participants than in the regular energy market. Therefore, the supply side of the balancing energy market can be considered oligopolistic.”
- The balancing market in terms of volume is much smaller than the regular energy market. Describing the balancing market as oligopolistic based on that observation is very blunt.

- 1.3.1: “This prevents dominant players from excessively raising prices. Strategic bidding, where participants exaggerate their bids to influence prices, becomes less effective as the price cannot exceed the cap. This reduces the potential impact of anticompetitive behaviour, benefiting both consumers and the overall market. Strategic bidding can be considered a form of market manipulation.”

If it is market manipulation, there is legislation that deals with it. It should not be dealt with through preemptive market functioning suppression.

- 1.3.3.1: “According to Article 7 REMIT Regulation, ACER and NRAs are obliged to monitor the market. If ACER and NRAs find infringements of Articles 3, 4 and in particular Article 5 REMIT Regulation, the NRAs can impose sanctions. However, proving conduct with the aim of market manipulation as distinct from lawful business conduct is extremely difficult because the underlying strategies are often very complex. It is therefore to be expected that a large number of behaviours will not be detected, even though they would influence the price formation and could therefore be considered as a behaviour in line with Article 5 REMIT Regulation, considering ACER’s REMIT Guidance. Moreover, such proceedings are often very lengthy, which is why, from a preventive point of view, investigative proceedings are insufficient. Timely investigation plays a central role in the prevention of further violations. However, if there is a long period of time between the indictable behaviour and the sanction, sanctioning miss part of its preventive power because market participants cannot see a connection between the offence and the sanction. [...] In contrast, by setting a maximum price for balancing energy bids, the regulatory authorities can discourage many attempts to distort the market ex ante by effectively limiting the consequences of strategic bidding.”

Very strong statement questioning a cornerstone of the functioning of the European electricity market. This is far outside the scope of the role and responsibilities of TSOs.

- 1.3.4.1: “The proposed transitional harmonised maximum and minimum balancing energy prices of +/- 10,000 €/MWh is not considered to restrict the free price formation as balancing energy prices that exaggerate their underlying costs distort price signals and incentives to market participants, which may lead to disruptive imbalance settlement prices, not reflecting the real-time value of energy anymore.”
- Circular reasoning that the price cap of 10k€/MWh does not restrict free price formation because everything above that level is the result of exaggeration/manipulation.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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