

**DECISION No 18/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 15 July 2020

on the harmonisation of the main features of imbalance settlement

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, point (b) of the second subparagraph of Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(2)(j) and Article 6(2) thereof,

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

Having regard to the outcome of the consultation with the Agency's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 2 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

(1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

requirements for electricity balancing, platforms for the exchange of balancing energy, as well as pricing and settlement of balancing energy. These requirements include the development of a proposal to further specify and harmonise the main features of imbalance settlement ('imbalance settlement methodology').

- (2) Pursuant to Articles 4(1) and 5(2)(j) of the EB Regulation, all transmission system operators ('TSOs') are required to develop a common proposal for the imbalance settlement methodology in accordance with Article 52(2) of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the proposal for the imbalance settlement methodology within six months after the receipt of the proposal by the last regulatory authority. In addition, all regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation, where all TSOs have two months to submit an amended proposal to all regulatory authorities. Then, all regulatory authorities have two months to decide on the amended proposal. When all regulatory authorities fail to reach an agreement within the six-month period after the submission of the initial proposal or the two-month period after the submission of the amended proposal or upon their joint request, ACER, pursuant to Article 6(2) of the EB Regulation, shall adopt a decision concerning the TSOs' proposal in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the request of all regulatory authorities that ACER adopts a decision on the proposal for the imbalance settlement methodology, which all TSOs submitted to all regulatory authorities for approval and on which all regulatory authorities could not agree on. Annex I to this Decision sets out the imbalance settlement methodology pursuant to Article 52(2) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) Article 52(2) of the EB Regulation requires all TSOs to submit a proposal for the imbalance settlement methodology by one year after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the imbalance settlement methodology by 18 December 2018.
- (5) On 16 July 2018, all TSOs published for public consultation the draft 'All TSOs' proposal to further specify and harmonise imbalance settlement in accordance with Article 52(2) of the Commission Regulation (EU) 2017/2195 of 23 November 2017

establishing a guideline on electricity balancing³. The consultation lasted until 28 September 2018.

- (6) On 18 December 2018, all TSOs submitted to all regulatory authorities an ‘All TSOs’ proposal to further specify and harmonise imbalance settlement in accordance with Article 52(2) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing⁴. The last regulatory authority received the Proposal on 11 February 2019.
- (7) All regulatory authorities jointly agreed on 11 July 2019 to request an amendment to the imbalance settlement methodology and sent this request to all TSOs. The last regulatory authority issued the request for amendment nationally on 11 September 2019.
- (8) Pursuant to Article 6(1) of the EB Regulation, all TSOs were required to submit the amended proposal for approval to all regulatory authorities within two months.
- (9) Although the amended ‘All TSOs’ proposal to further specify and harmonise imbalance settlement in accordance with Article 52(2) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing⁵ (hereafter referred to as the ‘Proposal’) was submitted by most TSOs by 11 November 2019 (i.e. within two months after the requirement for an amendment) to all regulatory authorities, it was submitted by the last TSO on 14 November 2019. Therefore, the new deadline for approval by all regulatory authorities was 14 January 2020.

2.2. Proceedings before ACER

- (10) In an email⁶ dated 16 January 2020 and received by ACER on the same day, the Chair of the Energy Regulators Forum⁷, on behalf of all regulatory authorities, informed ACER that they were not able to reach an agreement within the two-month deadline. Therefore, the imbalance settlement methodology can be considered referred to ACER as of 14 January 2020, and ACER shall adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation.

³ https://consultations.entsoe.eu/markets/imbalance_settlement_harmonisation_proposal/

⁴ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/10%20ISH/Action%201%20-%20ISH%20proposal.pdf>

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/10%20ISH/Action%203%20-%20ISH%20amended%20proposal.pdf>

⁶ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/10%20ISH/Action%204%20-%20ISH%20referral%20to%20ACER%20letter.pdf>

⁷ The all regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on NEMO’s and TSO’s proposals.

- (11) In the email, it was explained that since the Proposal had been submitted after the entry into force of the Commission Regulation (EU) 2019/942 of 4 July 2019, establishing a European Union Agency for the Cooperation of Energy Regulators, some regulatory authorities considered that they were not competent to issue a decision on the Proposal. Therefore, all regulatory authorities were not able to reach an agreement within the deadline of two months and, according to Article 6(2) of the EB Regulation, from 14 January 2020 the Proposal is to be considered as referred to ACER.
- (12) On 10 February 2020, ACER started the consultation phase on the Proposal, inviting the concerned parties, here all TSOs and all regulatory authorities, to send their comments on the Proposal. On 9 March 2020, ACER launched a public consultation on the Proposal, inviting all market participants to submit their comments by 29 March 2020. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (13) ACER cooperated closely with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by ACER. In general, before each interaction, ACER shared with the regulatory authorities and TSOs a new version of the proposed amendments; in particular, the following procedural steps were taken:
- 22 and 23 January 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Balancing Taskforce ('EB TF');
 - 31 January 2020: telephone conference call with all regulatory authorities and TSOs;
 - 14 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 21 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 26 and 27 February 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 13 March 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 March 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 20 March 2020: telephone conference call with all regulatory authorities and TSOs;
 - 27 March 2020: telephone conference call with all regulatory authorities and TSOs;
 - 2 April 2020: telephone conference call with all regulatory authorities;

- 3 April 2020: telephone conference call with all regulatory authorities and TSOs;
- 8 April 2020: telephone conference call with all regulatory authorities;
- 16 April 2020: telephone conference call with all regulatory authorities and TSOs;
- 22 April 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 23 April 2020: discussion with all regulatory authorities in the framework of AEWG;
- 24 April 2020: telephone conference call with all regulatory authorities and TSOs;
- 27 April 2020: telephone conference call with all regulatory authorities;
- 28 April 2020: telephone conference call with all regulatory authorities and TSOs;
- 13 May 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 13 May 2020: discussion with all regulatory authorities at the Board of Regulators' meeting (for information);
- 27 May 2020: discussion with all regulatory authorities in the framework of AEWG;
- 17 June 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (14) Pursuant to Article 6(2) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, ACER shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (15) According to the email of the Chair of the all Energy Regulators Forum dated 16 January 2020, all regulatory authorities did not reach an agreement on the Proposal and, therefore, ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation. This email was sent by all regulatory authorities after the expiry of the two-month deadline after receiving the amended Proposal (i.e. 14 January 2020).
- (16) Therefore, in accordance with Article 6(2) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, ACER became responsible to adopt a decision concerning the Proposal by the expiry of the deadline for all regulatory authorities on 14 January 2020 and communicated to ACER on 16 January 2020.

4. SUMMARY OF THE PROPOSAL

- (17) The Proposal consists of the following elements:

- (a) the ‘Whereas’ section, a list of abbreviations and Title 1 containing Articles 1 and 2, which include the subject matter and scope as well as definitions and interpretation;
- (b) Title 2, covering the specification and harmonisation of imbalance settlement, which includes Articles 3-8 on the calculation of an imbalance adjustment, the calculation of a position, an imbalance and an allocated volume, the components used for the calculation of the imbalance price, the definition of the value of avoided activation of balancing energy from frequency restoration reserves or replacement reserves, the use of single imbalance pricing and the definition of conditions and methodology for applying dual imbalance pricing; and
- (c) Title 3, covering final provisions in Articles 9 and 10 on the publication and implementation of the imbalance settlement methodology and language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of all regulatory authorities

- (18) According to the email of the Chair of the all Energy Regulators Forum of 16 January 2020, all regulatory authorities were not able to reach an agreement within the deadline of two months because some regulatory authorities consider that they were not competent to issue a decision. In the email, all regulatory authorities were silent about possible shortcomings of the Proposal.

5.2. Consultation of all regulatory authorities and TSOs

- (19) ACER, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in Recital (13) above discussed mainly the following topics:
 - a) The calculation of the imbalance; the discussion focused on further clarifying some aspects of this calculation in order to better specify it in the context of the imbalance settlement methodology;
 - b) The specification and harmonisation of the main components of imbalance price; the discussion was mainly focused on the current practices followed by TSOs across Europe with respect to the calculation of the imbalance price and the respective requirements of the EB Regulation;
 - c) The definition of the value of avoided activation, and in particular the cases where such a value should be used;
 - d) The use of single imbalance pricing; the discussion was focused on further specifying the different steps of the process of applying the single imbalance pricing with the aim to harmonise the different components used in such a process;
 - e) The conditions, the justification and the methodology for applying dual pricing; on the conditions and justification, the discussion focused on the transitory phase for TSOs that still apply an imbalance settlement period longer than 15 minutes, while on the methodology for applying dual pricing, the discussion focused on the

alignment, to the extent possible, with the process for using the single imbalance pricing.

5.3. Public consultation

(20) On 9 March 2020, ACER launched a public consultation on the Proposal, inviting all stakeholders to provide their comments by 29 March 2020. The consultation document asked stakeholders to provide views on three topics, which were deemed as the most relevant: (i) the calculation of the imbalance price, (ii) the value of avoided activation, and (iii) further harmonisation; the consultation also allowed respondents to submit comments on other topics under item (iv) ‘other topics’:

- (a) Regarding the calculation of the imbalance price, respondents’ views were divided on whether harmonising the main components of imbalance price calculation should be achieved before or after the implementation of the European platforms for the exchange of balancing energy. Some stakeholders highlighted that further harmonisation of the main components used for the imbalance price calculation could be required for the platforms to function properly, while others mentioned that this could be burdensome for market participants. Five stakeholders stressed that the methodology should be more ambitious to reap the benefits of harmonisation. The majority of the respondents supported using a volume weighted average price for calculating the imbalance price. The majority of stakeholders suggested further useful indicators for the effectiveness of the imbalance price calculation methods (with the most mentioned one being the ratio that relates the daily market price with the imbalance settlement price, the ratio that compares the volume trade in the daily market against the imbalance volume, the ratio that compare the imbalance volume used with the new operation and the imbalance volume used before the change, and the mutual relation of imbalance prices);
- (b) Regarding the value of avoided activation (‘VoAA’), the majority of respondents agreed that all possible cases must be clearly described in the methodology; five stakeholders stated that the VoAA should be used when there is no activation of aFRR/mFRR/RR during an imbalance settlement period (that prevents the TSO from calculating an imbalance price in the normal way) and there are balance responsible parties (‘BRPs’) with imbalances (not being necessary when all the BRPs are balanced). In defining the VoAA, the majority of respondents emphasised that it is necessary that the Proposal provides more clarity on its calculation method and what values should be used;
- (c) Concerning the issue of further harmonisation, the majority of respondents supported the idea of an iterative process which would identify the need for further harmonisation. Four stakeholders stated that there is no basis for further harmonisation, and three supported that harmonisation should occur at the same time;

(d) Finally, stakeholders raised a number of other issues, as well as provided detailed comments on a number of articles of the methodology. Five stakeholders emphasised the low level of ambition of the Proposal in terms of harmonisation as required by the EB Regulation, and also highlighted the need for transparency on the balancing situation.

(21) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the questions raised by ACER.

5.4. Hearing phase

(22) ACER initiated a hearing phase on 30 April 2020 by providing all TSOs and all regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 15 May 2020. During this time, ACER received one written response from ENTSO-E⁸, on behalf of all TSOs, one from the Nordic TSOs, one from the TSOs for Ireland and Northern Ireland, one from the Luxembourgian regulatory authority, one from the Italian regulatory authority, one from the Swedish regulatory authority and one from the Polish regulatory authority.

(23) As agreed with all TSOs' during the consultation, their feedback was submitted in two parts: one focusing on wording suggestions (submitted at the end of the first week), and one on content issues. In general, all TSOs appreciated the content clarifications and improvements added to the methodology, but they also raised a few topics, where they disagree with the approach proposed by ACER: (a) some inconsistencies in the use of the term 'value of avoided activation', (b) the inclusion of the volume and prices of the integrated scheduling process bids in determining the imbalance direction, (c) the inclusion of all FCR volumes in determining the imbalance direction, (d) that determination of the imbalance direction should not be limited to the cases of balancing energy bids activations in both directions, (e) the use of volumes and prices from remedial actions for the calculation of the imbalance price, and (f) the assessment for the need of further harmonisation.

(24) The Nordic TSOs (i.e. Energinet, Fingrid, Statnett and Svenska kraftnät) raised in their submission a specific Nordic implementation issue related to the current way of balancing in the Nordics and the transition phase to the new Nordic Balancing Model (NBM), requesting a derogation from the specified eighteen-month implementation timeline.

(25) The TSOs for Ireland and Northern Ireland (EirGrid and SONI) expressed a concern regarding the requirement for the final imbalance price (calculated after the inclusion

⁸ European Network of Transmission System Operators for Electricity

of any potential additional components) to respect the boundary conditions as set in Articles 55(4) and 55(5) of the EB Regulation.

- (26) The Luxembourgian regulatory authority submitted comments on the structure of the document and wording suggestions for further clarifying some provisions.
- (27) The Italian regulatory authority submitted comments on the aggregation of the imbalance price areas in central dispatching systems for the calculation of the imbalance price, and on the need for additional clarity in the volumes and prices used for the calculation of the imbalance price.
- (28) The Swedish regulatory authority submitted comments (a) on the need for clarity in the calculation of the allocated volume and of the imbalance adjustment, and in the direction of the total system imbalances, (b) requesting the deletion of the remedial actions from the elements used for the determination of the direction of the total system imbalances, and (c) proposing a different place for the determination of the aggravating/non-aggravating imbalances.
- (29) The Polish regulatory authority submitted one comment on the imbalance price, which, according to the amended Proposal, would be determined only depending on the direction of energy activation from frequency restoration reserves and replacement reserves, and therefore without taking into account the volume of locally activated energy in central dispatching systems as part of the integrated scheduling process.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (30) Articles 4(1) and 5(2)(j) of the EB Regulation require all TSOs to provide the proposal for the imbalance settlement methodology in accordance with Article 52(2) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation requires all TSOs to submit an amended proposal for the imbalance settlement methodology for approval to all regulatory authorities, following a requirement for amendment of the initial proposal by all regulatory authorities.
- (31) Article 52 of the EB Regulation sets out the requirements for all TSOs to develop a proposal to harmonise the main features of imbalance settlement. The proposal must further specify and harmonise at least:
 - (a) the calculation of an imbalance adjustment pursuant to Article 49 of the EB Regulation and the calculation of a position, an imbalance and an allocated volume following one of the approaches pursuant to Article 54(3) of the EB Regulation;
 - (b) the main components used for the calculation of the imbalance price for all imbalances pursuant to Article 55 of the EB Regulation including, where

appropriate, the definition of the value of avoided activation of balancing energy from frequency restoration reserves or replacement reserves;

(c) the use of single imbalance pricing for all imbalances pursuant to Article 55 of the EB Regulation, which defines a single price for positive imbalances and negative imbalances for each imbalance price area within an imbalance settlement period; and

(d) the definition of conditions and methodology for applying dual imbalance pricing for all imbalances pursuant to Article 55 of the EB Regulation, which defines one price for positive imbalances and one price for negative imbalances for each imbalance price area within an imbalance settlement period, encompassing: (i) conditions on when a TSO may propose to its relevant regulatory authority in accordance with Article 37 of Directive 2009/72/EC the application of dual pricing and which justification must be provided; (ii) the methodology for applying dual pricing.

- (32) Article 49 of the EB Regulation sets the requirements for the calculation of the imbalance adjustment. In particular, Article 49(2) of the EB Regulation allows the imbalance adjustment to be calculated for each position, for imbalance areas, where several final positions for a single balance responsible party are calculated pursuant to Article 54(3) of the EB Regulation. Furthermore, Article 49(3) of the EB Regulation specifies that each TSO should determine the activated volume of balancing energy calculated pursuant to Article 45 of the EB Regulation and any volume activated for purposes other than balancing.
- (33) Article 54 of the EB Regulation sets the requirements for the calculation of the imbalance. More specifically, Article 54(2) of the EB Regulation defines the area for the calculation of the imbalance, while Article 54(3) of the EB Regulation lists the different approaches for the calculation of the final position. Finally, Article 54(6) of the EB Regulation determines rule for the direction and the sign convention for an imbalance.
- (34) Article 55 of the EB Regulation sets the requirements for the calculation of the imbalance price. Article 55(1) of the EB Regulation defines the sign convention for the payments between the TSO and the balance responsible party depending on the signs of the imbalance and the imbalance price. Articles 55(4), 55(5) and 55(6) of the EB Regulation set the boundary conditions for the imbalance price depending on the activated balancing energy and the value of avoided activation.
- (35) Article 44(1) of the EB Regulation sets general principles for all the settlement process, including specific requirements for the imbalance settlement, with respect to economic signals and incentives to balancing service providers, TSOs and balance responsible parties.
- (36) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

- (37) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(j) of the EB Regulation, as all TSOs jointly developed a proposal for the imbalance settlement and submitted it for approval to all regulatory authorities.
- (38) The procedure for the development of the Proposal did not respect the requirements of Article 52(2) of the EB Regulation, as this proposal, while submitted by most TSOs by 18 December 2018, which is within six months after entry into force of the EB Regulation, was submitted by the last TSO on 11 February 2019. This is in breach of the six month-submission deadline.
- (39) Additionally, following the requirement for an amendment of the proposal for TSOs settlement methodology by all regulatory authorities on 11 September 2019 pursuant to Article 6(1) of the EB Regulation, all TSOs were required to submit the amended proposal for approval to all regulatory authorities within two months (i.e. by 11 November 2019). Although the Proposal was submitted by most TSOs by 11 November 2019, it was submitted by the last TSO on 14 November 2019.

6.2.1.2. Proposed timescale for implementation

- (40) The Proposal partly fulfils the requirements of Articles 5(5) and 52(4) of the EB Regulation with regard to the timescale for implementation. Pursuant to Article 5(5) of the EB Regulation “[t]he implementation timescale shall not be longer than 12 months after the approval by the relevant regulatory authorities, except [...] where different timescales are stipulated in this Regulation.” Pursuant to Article 52(4) of the EB Regulation “[t]he proposal pursuant to paragraph 2 shall provide an implementation date no later than eighteen months after approval by all relevant regulatory authorities in accordance with Article 5(2).” Based on these provisions, the implementation of the imbalance settlement harmonisation should not be later than eighteen months after the approval of the imbalance settlement methodology.
- (41) Article 9(2) of the Proposal sets a timeline for its implementation no later than eighteen months after the approval of the imbalance settlement methodology. This is in accordance with the requirement of Article 52(4) of the EB Regulation, which sets the exact same deadline for the imbalance settlement methodology as mentioned above.
- (42) However, Article 5(1) of the Proposal sets as the timeline for the use of the main components for the calculation of the imbalance price, pursuant to Article 52(2)(b), the effective participation of each TSO in the respective European balancing platform. During the consultation with TSOs and regulatory authorities, it became evident that this approach followed by the TSOs was in line with describing the target model for

the imbalance settlement, which would be feasible only after the implementation of the European balancing markets. Consequently, this implementation timeline for the calculation of the imbalance price in accordance with Article 5 of the Proposal, deviates from the one required in Article 52(4) of the EB Regulation (which is also specified in Article 9(2) of the Proposal), since the implementation of the European balancing platforms may be finalised much later than eighteen months after the approval of this imbalance settlement methodology.

- (43) ACER consulted the stakeholders on the benefits for harmonising the components for the calculation of the imbalance price before the implementation of the European platforms. As mentioned in Recital (20)(a) above, the stakeholders expressed different views on the potential benefits with respect to the timeline, but they strongly expressed the view that the imbalance settlement methodology should strive for further harmonisation.
- (44) Articles 5(2) and (4) of the Proposal list all the relevant volumes and prices to be used for the calculation of the imbalance price. In these lists, the volumes and prices of balancing energy, resulting from the activation of balancing energy bids in the European balancing platforms, are included. Understanding that these are only valid after each TSO joins the respective European balancing platform, ACER inserted an additional point (e) in paragraphs 2 and 4 of Article 5 of the Proposal, specifying that, for the calculation of the imbalance price, volumes and prices from existing balancing energy products should be used until each of them is replaced by either a standard or specific product. With this addition, the implementation timeline defined in Article 9(2) of the Proposal applies also in Article 5 of the Proposal, in line with the requirement of Article 52(4) of the EB Regulation.
- (45) The Nordic TSOs in the submission during the hearing phase, as stated in Recital (24) above requested a derogation from the specified eighteen-month implementation timeline, due to a specific Nordic implementation issue related to the current way of balancing in the Nordics, in order to align the implementation of this imbalance settlement methodology with the transition phase to the new Nordic Balancing Model. However, as mentioned in Recital (40) above, this imbalance settlement methodology is one of the few cases that the timeline is directly specified in the EB Regulation and it is not left open under Article 5(5) of the EB Regulation. Moreover, it is also among the provisions on which derogation is not allowed pursuant to Article 62 of the EB Regulation. Therefore, ACER understands that derogations for the implementation of this imbalance settlement methodology cannot be foreseen; however, as explained in Recital (73) below, ACER further specified the determination of the direction of the total system imbalances to include the specificities of the Nordic balancing until the new Nordic Balancing Model is implemented.
- (46) Therefore, the Proposal as amended by ACER fulfils the requirements of Articles 5(5) and 52(4) of the EB Regulation.

6.2.1.3. *Description of the expected impact on the objectives of the EB Regulation*

(47) The Proposal does not fully fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. The recitals in the Proposal provide a description of the expected impact of the TSOs settlement methodology on the objectives of the EB Regulation. The relevant objectives set in Article 3 of the EB Regulation are addressed under recital (9) of the Proposal but only partially. Therefore, ACER added new subparagraphs and amended the existing ones to address the objectives that were not addressed at all.

6.2.2. Assessment of the requirements for specifying and harmonising the calculation of an imbalance adjustment and the calculation of a position, an imbalance and an allocated volume

(48) Pursuant to Article 52(2)(a) of the EB Regulation, the methodology shall specify and harmonise the calculation of an imbalance adjustment pursuant to Article 49 of the EB Regulation and the calculation of a position, an imbalance and an allocated volume following one of the approaches pursuant to Article 54(3) of the EB Regulation.

6.2.2.1. *Calculation of the imbalance adjustment*

(49) Article 49 of the EB Regulation sets the requirements for the calculation of the imbalance adjustment. Article 3(1) of the Proposal defines the imbalance adjustment as the netted volume of (a) the activated volume of balancing energy, determined in accordance with Article 45 of the EB Regulation, and (b) the volumes activated for purposes other than balancing. This is in line with the requirements pursuant to Article 49(3) of the EB Regulation. Moreover, Article 3(3) of the Proposal specifies that, in the case of central dispatching model where there are several final positions for a single balance responsible party, one for each imbalance area, the imbalance adjustment will be calculated for this balance responsible part for each of these imbalance areas, i.e. for each of its final positions. This is in line with the requirement of Article 49(2) of the EB Regulation.

(50) Article 3(2) of the Proposal includes a non-exhaustive list of the energy volumes that can be taken into account for additional (i.e. apart from the mandatory ones described in Article 3(1) of the Proposal pursuant to Article 49 of the EB Regulation) imbalance adjustments. Following the comment by the Swedish regulatory authority during the hearing phase, as mentioned in Recital (28) above, ACER shares the view that, even if it is optional, the list of the energy volumes that can be used for additional imbalance adjustments should, nevertheless, be exhaustive, in order to provide transparency and a level of harmonisation with respect to the imbalance settlement methodology. The TSOs have argued that they are in the middle of market design discussions, to let new technologies and aggregators joining the balancing market, and for doing so, they need flexibility for innovative ideas. ACER acknowledges the need for flexibility when it comes to listing different options, while still providing transparency to the process, but leaving room for the development of options that are not yet known is against the principles of the EB Regulation, especially with respect to Articles 3(2) and 3(4). Therefore, ACER amended Article 3(2) of the Proposal by deleting “at least”.

- (51) Therefore, the Proposal as amended by ACER fulfils the requirements of Article 49 of the EB Regulation.

6.2.2.2. Calculation of the position

- (52) As mentioned in Recital (48) above, Article 52(2)(a) of the EB Regulation requires the calculation of the position to follow one of the approaches pursuant to Article 54(3) of the EB Regulation: (a) one single final position, (b) two final positions, and (c) for central dispatching model, several final positions. Article 4 of the Proposal further specifies and harmonises the calculation of the position, the imbalance and the allocated volume. In particular, Articles 4(1) and 4(2) of the Proposal harmonise the calculation of the final position, for each TSO applying a self-dispatching or a central dispatching system. For both self and central dispatching systems, the Proposal requires the calculation of a single position per imbalance area, which is in line with the requirements of Article 54(3) of the EB Regulation. During the consultation with regulatory authorities, CNMC (i.e. the Spanish regulatory authority), although supporting the single final position as the target, suggested the introduction of an intermediate period, where the use of two final positions would be allowed, when dual pricing is applied in all ISPs and provided that it is properly justified. ACER understands that Article 52(2)(a) of the EB Regulation requires this imbalance settlement methodology to define one of the options described in Article 54(3) of the EB Regulation. Moreover, Article 52(4) of the EB Regulation sets as the latest date for the implementation of this imbalance settlement methodology 18 months after its approval. Hence ACER understands that 18 months after the approval of the Proposal, all TSOs should follow one approach for calculating the final position, i.e. the approach specified in this imbalance settlement methodology, and there is no possibility for derogating from this deadline or for defining more than one approaches in calculating the position. During the consultation with regulatory authorities and TSOs, ACER further specified some of the aspects of these calculations, in particular with respect to volumes used for the calculation of the allocated volume.

- (53) Therefore, the Proposal as amended by ACER fulfils the requirements of Article 54(3) of the EB Regulation.

6.2.2.3. Structure of the document with respect to the calculation of an imbalance adjustment, a position, an imbalance and an allocated volume

- (54) The structure of the Proposal follows the order of the requirements as indicated in Article 52(2) of the EB Regulation, with each Article of the Proposal corresponding to one or more elements required for further specification and harmonisation in the EB Regulation. Although this approach serves clarity by providing a transparent link between the EB Regulation and the provisions of the Proposal that fulfil it, during the discussions with TSOs and regulatory authorities, a different structure was considered as more suitable, in order to improve the readability of the methodology, in particular due to the extensive amendments in certain parts of the methodology.
- (55) ACER split the main Title 2 of the Proposal into two Titles: one covering all the aspects of the imbalance calculation pursuant to Article 54 of the EB Regulation (new

Title 2), and one covering the aspects of the imbalance price calculation, pursuant to Article 55 of the EB Regulation (new Title 3). Moreover, the Articles on imbalance calculation have been placed in a process-wise order, starting with the calculation of the position of a BRP (Article 3 in the amended Proposal by ACER), then its allocated volume (Article 4 in the amended Proposal by ACER), its imbalance adjustment in Article 5, and in the end the calculation of the BRP imbalance (Article 6 in the amended Proposal by ACER) based on the aforementioned elements. As mentioned by the TSOs in their response during the hearing (Recital (23) above), they welcome these extensive changes.

(56) ACER considers that, given the length of the imbalance settlement methodology, following a content-based approach in its structure provides transparency and clarity with respect to the processes that need to be followed by the TSOs.

6.2.3. Assessment of the requirements for specifying and harmonising the main components used for the calculation of the imbalance price for all imbalances including, where appropriate, the definition of the value of avoided activation of balancing energy from frequency restoration reserves or replacement reserves

(57) Pursuant to Article 52(2)(b) of the EB Regulation, the Proposal should specify and harmonise the main components used for the calculation of the imbalance price for all imbalances pursuant to Article 55 of the EB Regulation including, where appropriate, the definition of the value of avoided activation of balancing energy from frequency restoration reserves or replacement reserves. Each of these requirements is further assessed in the following sections.

6.2.3.1. *Main components used for the calculation of the imbalance price*

(58) Pursuant to Article 52(2)(b) of the EB Regulation, the Proposal should specify and harmonise the main components used for the calculation of the imbalance price for all imbalances pursuant to Article 55 of the EB Regulation. Article 55 of the EB regulation sets the general provisions for the imbalance price calculation.

(59) Article 5 of the Proposal includes all the prices and volumes that can be used by the TSOs in the calculation of the imbalance price. ACER understands that, although these are the elements for the calculation of the imbalance price, the main components used for the calculation should be further specified pursuant to the requirement of Article 52(2)(b). Following the consultation with regulatory authorities and TSOs, ACER identified four main components: the imbalance price for positive imbalance and/or the imbalance price for negative imbalance, the value of avoided activation and the direction of the imbalance. These components have been included in Article 7 of the Proposal, while two of them, i.e. the imbalance price for negative imbalance and the imbalance price for positive imbalance, are further specified in Article 5 of the Proposal, in the new paragraphs 1 and 2, respectively, introduced by ACER.

(60) Therefore, the Proposal as amended by ACER fulfils the requirements of Articles 52(2)(b) of the EB Regulation.

6.2.3.1.1. *Imbalance price for positive/negative imbalance*

- (61) Following the discussion with regulatory authorities and TSOs, regarding further specifying the main components for the calculation of the imbalance price, ACER identified two main approaches followed by the TSOs, which can also be combined, when calculating the price based on the activated balancing energy from different processes/products:
- (a) Maximum/minimum of all balancing energy prices: the highest (for positive balancing energy, and lowest for negative, respectively) price of all balancing energy volumes (regardless of the product) during the specific imbalance settlement period in the given imbalance area; and
 - (b) Volume weighted average price of all balancing energy volumes: the volume weighted average of the marginal prices of each process during the specific imbalance settlement period in the given imbalance area. According to the TSOs' proposal the volumes to be used for weighing, are the volumes for the satisfied balancing energy demand of the connecting TSO of his imbalance price area for a specific imbalance settlement period, calculated for each process.
- (62) ACER consulted on the two approaches and various views expressed by the stakeholders, although the majority of them expressed a preference for the volume weighted average approach, as mentioned also in Recital (20)(a) above. However, during the consultation with regulatory authorities and TSOs, it became evident that both approaches are necessary for the TSOs, since they are used for providing different incentives depending on the way each TSO balances its system. ACER understands that, provided the changes that are about to take place in the balancing markets in the coming years, especially when all TSOs join the European platforms for the exchange of balancing energy, a change in the response of BRPs as well as their incentives should also be anticipated. Nevertheless, ACER acknowledges the increased level of uncertainty with respect to the impact of these changes in the future balancing needs of the system and the way each TSO chooses to balance it. Therefore, ACER explicitly included both options in the newly inserted paragraphs 1 and 2 of Article 5 of the Proposal, allowing also combinations between the two approaches for the calculation of the imbalance price.
- (63) Additionally, ACER further specified, in the newly inserted paragraphs 1 and 2 of Article 5 of the Proposal, the boundary conditions, pursuant to Articles 55(4) and 55(5) of the EB Regulation, by explicitly stating the elements, i.e. volumes and prices that can be used by the TSOs for the calculation of the imbalance price limits. Moreover, ACER specified that the final imbalance price calculated after the application of additional components, in accordance with Article 5(5) of the proposal, should respect the boundary conditions. During the hearing, the TSOs for Ireland and Northern Ireland expressed their concern with respect to such an interpretation of the boundary condition, as mentioned in Recital (25) above, since this is not in line with their current practice. However, ACER does not share the view that a different interpretation would be in line with the EB Regulation, since the requirement of Articles 55(4) and 55(5) of the EB Regulation is very clear: “[t]he imbalance price

for negative[/positive] imbalance shall not be less[/greater] than...” Therefore, ACER considers that this limit can only be applied on the final imbalance price calculated after the application of any additional components. ACER understands that TSOs do not always have to calculate the boundary condition; they can omit that, when it follows from the imbalance price approach they use, that the boundary condition is respected by default.

6.2.3.1.2. Volumes and prices for the calculation of the imbalance price

- (64) Paragraph 4 of Article 5 of the Proposal includes all the volumes that may be used by the TSOs for calculating the imbalance price or for determining the direction of the total system imbalances of their imbalance price area(s). Following the discussion with regulatory authorities and TSOs, it was agreed that the two sets of volumes should be split to (a) the ones used for the calculation of the imbalance price that should also be used for determining the direction of the total system imbalances, and (b) the ones used only for determining the direction of the total system imbalances.
- (65) Pursuant to Articles 55(4) and 55(5) of the EB Regulation, the boundary condition for the imbalance price is the weighted average of activated balancing energy. Moreover, pursuant to Article 44(1)(b) of the EB Regulation, the imbalances should be settled at a price that reflects the real time value of energy. Therefore, ACER understands that the basis for the calculation of the imbalance price should be the balancing energy volumes and prices. However, during the hearing phase, the TSOs expressed their objection to that principle, as mentioned in Recital (23) above, requesting the inclusion of energy volumes and prices resulting from remedial actions to be included in the set of volumes and prices used for the calculation of the imbalance price. ACER does not share this view, and asks TSOs to consider the development of specific balancing energy products to fulfil these special needs in a transparent and market-based approach, which would allow them to also reflect this cost to the imbalance price.
- (66) As explained below in section 6.2.4, a new Article 8 has been inserted in the Proposal for the determination of the total system imbalances direction, where all the additional (to the balancing energy ones) volumes are included. Therefore, ACER removed from paragraph 4 of Article 5 of the Proposal all the non-balancing energy volumes that are only used for determining the direction of the total system imbalances (and not for the calculation of the imbalance price). Additionally, ACER also removed from paragraph 2 of Article 5 of the Proposal all the respective prices, which do not correspond to balancing energy volumes.
- (67) Moreover, the TSOs had initially described in their proposal the volumes and prices relevant for the calculation of the imbalance price, after the implementation of the European balancing platforms pursuant to Articles 19 to 21 of the EB Regulation. However, since the implementation timeline of the methodology is eighteen months after the approval of this imbalance settlement methodology, additional volumes and prices had to be added to cover the balancing energy from existing products, as described in section 6.2.1.2. Therefore, ACER inserted in paragraphs 2 and 4 of

Article 5 of the Proposal an additional point (to each) to cover for the prices and volumes, respectively, of the existing products.

6.2.3.2. Definition of the value of avoided activation

(68) Pursuant to Article 52(2)(b) of the EB Regulation, the imbalance settlement methodology should further specify and harmonise where appropriate, the definition of the value of avoided activation of balancing energy from frequency restoration reserves or replacement reserves. Pursuant to Articles 55(4)(b) and 55(5)(b) of the EB Regulation, the value of avoided activation is used as lower and upper, respectively, imbalance settlement price limit in the event no activation of balancing energy in either direction has occurred during the imbalance settlement period.

(69) Article 2(2)(d) of the Proposal includes a definition for the value of avoided activation, while Article 6 of the Proposal sets the principles for its calculation. ACER consulted on the topic, striving for additional harmonisation at least in the cases where the value of avoided activation is used. As mentioned in Recital (20)(b) above, various views were expressed and the majority of stakeholders asked for more clarity on this topic. During the consultation with regulatory authorities and TSOs, it became evident that the value of avoided activation is calculated differently among TSOs, but is one of the main components in the calculation of the imbalance price. ACER further specified its use in Article 7 of the Proposal.

6.2.4. Assessment of the requirements for specifying and harmonising the use of single imbalance pricing for all imbalances

(70) The Proposal partly fulfils the requirements of Articles 52(2)(c) of the EB Regulation. Pursuant to Article 52(2)(c) of the EB Regulation, the Proposal should specify and harmonise the use of single imbalance pricing for all imbalances pursuant to Article 55, which defines a single imbalance price for positive imbalances and negative imbalances for each imbalance price area within an imbalance settlement period. Article 7 of the Proposal specifies the use of the single imbalance pricing in accordance with Article 55 of the EB Regulation, in cases where dual pricing is not implemented.

(71) ACER, although it agrees with the basis set in the Proposal, understands that Article 52(2)(c) of the EB Regulation requires further specification and harmonisation, by requesting the description of the process the TSOs follow when using the single imbalance pricing. During the consultation with regulatory authorities and TSOs, several aspects of this process were described and clarified by the TSOs. In line with the conclusions of these discussions, ACER inserted two new paragraphs (2 and 3) describing this process. In the new paragraph 2 of Article 7 of the Proposal, ACER included the main components for the determination of the imbalance price, as mentioned in Recital (59) above, and in the new paragraph 3 of Article 7 of the Proposal, ACER included the different cases to be followed for the calculation of the imbalance price, based on the activation of balancing energy: (a) only positive balancing energy activation, (b) only negative balancing energy activation, (c) balancing energy activation on both directions, and (d) no activation of balancing

energy. Each of these cases leads to a different determination of the imbalance price, using the components of paragraph 2 of Article 7 of the Proposal. During the consultation, some regulatory authorities raised concerns regarding the distinction of the aforementioned cases (a)-(d) for the calculation of the imbalance price based on the activation of balancing energy and not based on the total system imbalances. ACER understands that TSOs follow different approaches, but when it comes to the calculation of the imbalance price, only balancing energy volumes should be taken into consideration, hence only the activation of balancing energy. Therefore the TSOs should strive to use balancing energy products to cover their balancing needs, in order to also be able to take the activated balancing energy volume into account in the calculation of the imbalance price.

6.2.4.1. *Determination of the direction of the total system imbalances*

- (72) In the case of balancing energy activation in both directions, the TSOs have to also determine the direction of the total system imbalances of their imbalance price area. During the consultation with regulatory authorities and TSOs, several views were expressed on whether the determination of the direction of the total system imbalances should be done by each TSO for each imbalance settlement period, or whether it should only be linked to the case of balancing energy activations in both directions. ACER understands that this is a process that is anyway required in Article 17(1)(h) of the Commission Regulation (EU) 543/2013 (“*total imbalance volume per balancing time unit*”), as well as in Article 12(3)(a) of the EB Regulation (“*information on the current system balance*”). Therefore, ACER considers this to be a process independent of the aforementioned case, and inserted a new Article 8 in the Proposal, to describe the process for establishing the direction of the total system imbalances.
- (73) For the determination of the direction of the total system imbalances, the TSOs have to aggregate balancing energy volumes, but they may also take into account additional volumes, which are listed in the first paragraph of this new Article 8 of the Proposal. ACER understands that all the volumes that are considered as balancing energy volumes should be taken into account in the calculation for the determination of the direction of the total system imbalances, but the volumes listed in paragraph 1 of Article 8 of the methodology are optional and each TSO shall specify in the national terms and conditions whether to use them or not. Paragraph 2 of the new Article 8 of the Proposal sets the rule for the determination of the direction of the total system imbalances. Paragraph 3 of the new Article 8 of the Proposal includes a provision for the determination of the total system imbalances for the TSOs of the same load-frequency control area, which calculate the frequency restoration control error as the frequency deviation pursuant to Article 143(2)(b) of the SO Regulation. As mentioned in Recital (24) above, the Nordic TSOs during the hearing phase raised an issue related to the technical difficulty of calculating the total system imbalances per imbalance price area, until the implementation of the Nordic Balancing Model, which was supported also by the Nordic regulatory authorities in later discussions. Therefore ACER further specified the calculation of the total system imbalances, to account for the case of TSOs calculating the frequency restoration control error as frequency deviation. Hence, all Nordic TSOs may calculate the total system imbalances for sets

of their imbalance price areas, including DK1. Paragraph 4 of the new Article 8 of the Proposal includes the calculation of the character of the BRP imbalance, distinguishing between aggravating and non-aggravating BRP imbalances, based on the determination of the direction of the total system imbalances of the respective imbalance price area. In this context, aggravating imbalances are considered the ones that do not help the system to restore its balance.

6.2.4.2. *Structure of the document with respect to the calculation of the imbalance price*

- (74) As mentioned also in Recital (54) above, the structure of the Proposal follows the order of the requirements as indicated in Article 52(2) of the EB Regulation, with each Article of the Proposal corresponding to one or more elements required for further specification and harmonisation. Although this approach serves clarity by providing a transparent link between the EB Regulation and the provisions of the proposal that fulfil it, during the discussions with regulatory authorities and TSOs, a different structure was considered as more suitable, in order to improve the readability of the methodology, in particular due to the extensive amendments in certain parts of the methodology.
- (75) Regarding the calculation of the imbalance price, ACER made more extensive amendments, which are described in sections 6.2.3 and 6.2.4.1 above, but with respect to the structure, it adopted a top-down approach, placing at the beginning the overview of the single imbalance pricing (Article 7 of the Proposal), followed by separate articles for each of the sub-processes that are executed in the context of the imbalance pricing on: the direction of the imbalance and the character of the BRP imbalance (new Article 8 of the Proposal), the imbalance price for negative and positive imbalance (new Article 9 of the Proposal), the value of avoided activation (new Article 10 of the Proposal). At the end, Article 11 of the amended proposal by ACER on dual imbalance pricing further specifies the conditions, justification and methodology for applying dual imbalance pricing, by referring to the single imbalance pricing.
- (76) ACER considers that, given the length of the methodology, following a content-based approach in its structure provides transparency and clarity with respect to the processes that need to be followed by TSOs.

6.2.5. Assessment of the requirements for specifying and harmonising the definition of conditions and methodology for applying dual imbalance pricing for all imbalances

- (77) Pursuant to Article 52(2)(d) of the EB Regulation, the Proposal should specify and harmonise the definition of conditions and methodology for applying dual imbalance pricing for all imbalances pursuant to Article 55, which defines one price for positive imbalances and one price for negative imbalances for each imbalance price area within an imbalance settlement period, encompassing: (i) conditions on when a TSO may propose to its relevant regulatory authority, in accordance with Article 37 of Directive 2009/72/EC, the application of dual pricing and which justification must be provided; (ii) the methodology for applying dual pricing.

6.2.5.1. *Conditions for applying dual imbalance pricing*

- (78) Paragraph 1 of Article 8 of the Proposal includes the conditions on when TSOs may propose to their relevant regulatory authority the application of dual pricing, in line with the requirement set in Article 52(2)(d)(i) of the EB Regulation.
- (79) The last of these conditions (i.e. point (e)), which was added following a common request by the regulatory authorities in their request for amendment, provides TSOs with the possibility to propose the application of dual pricing when the imbalance settlement period is 60 minutes. The difference of this condition compared to the rest is that this one allows a proposal for the application of dual pricing for all imbalance settlement periods, while the other conditions apply only to specific imbalance settlement periods. During the discussions with regulatory authorities and TSOs, it became evident that, for systems with imbalance settlement period longer than 15 minutes, the incentives provided to BRPs to be balanced may not be sufficient under single imbalance pricing, and in this case their self-regulation response may trigger oscillations. ACER understands the potential impact on the BRPs' incentives, however it considers that this element alone (i.e. the duration of the imbalance settlement period) cannot constitute a reason by itself, unless it is justified by evidence, which indeed shows this risk (of oscillations) for the system. Finally, following the general reasoning for imbalance settlement periods longer than 15 minutes, as well as the view expressed by a regulatory authority during the consultation that the same risk exists for their system with an imbalance settlement period equal to 30 minutes, ACER extended the applicability of the condition to imbalance settlement periods equal to or longer than 30 minutes.
- (80) Therefore, ACER extended this condition to cover also imbalance settlement periods equal to 30 minutes, but inserted also a requirement for justification of dual imbalance pricing application based on the incentives to BRPs and the avoidance of oscillations.

6.2.5.2. *Methodology for applying dual imbalance pricing*

- (81) Paragraph 2 of Article 8 of the Proposal includes the methodology for applying dual imbalance pricing, in line with the requirement set in Article 52(2)(d)(ii) of the EB Regulation.
- (82) During the discussion with all regulatory authorities in the framework of AEWG, CRE (i.e. the French regulatory authority) raised concerns on the methodology for applying dual imbalance pricing, in particular with respect to the calculation of the imbalance price in case of non-aggravating imbalances and the reference to the respective methodology for the use of the single imbalance pricing. Following the discussions with CRE, ACER understands that the reference to the single imbalance pricing methodology can be misleading, but the reference to the calculation of the imbalance price should be valid. In particular, ACER considers that – as defined in article 2 of the proposal – in case of dual imbalance pricing, there is a different price in value and/or sign for positive and negative imbalances. For aggravating imbalances, whether for negative or positive imbalances, the provisions of Articles 9(1) and 9(2) of Annex I, respectively, apply; similarly, for non-aggravating imbalances, whether

positive or negative imbalances, the provisions of Articles 9(2) and 9(2) of Annex I, respectively, may apply. In this case (i.e. the imbalance price for non-aggravating imbalances results from the same type of calculation as the imbalance price calculation for the single imbalance pricing but based on the opposite activation direction), the two imbalance prices (one for each imbalance direction) will fulfil both boundary conditions described in Articles 55(4) and 55(5) of the EB Regulation. However, Article 55(6) of the EB Regulation also allows for the case where only one of the two boundary conditions is fulfilled. Since the imbalance price for aggravating imbalances is always calculated based on Articles 9(1) and 9(2) of Annex I, it always fulfils the boundary condition pursuant to Articles 55(4) and 55(5) of the EB Regulation. Therefore, the imbalance price for non-aggravating imbalances does not have to respect the boundary conditions pursuant to Articles 55(4) and 55(5) of the EB Regulation. For this case, the TSOs have included in their Proposal the possibility of using in this case as a reference price the value of avoided activation, including any additional components. ACER therefore understands that Article 8 of the Proposal provides TSOs with two options for the imbalance price of the non-aggravating imbalances, which ACER both considers to be in line with the EB Regulation.

- (83) Therefore, ACER amended Article 8(2) of the Proposal, to include the proper reference for the calculation of the imbalance price in dual imbalance pricing.

6.2.6. Amendments for the need for further harmonisation

- (84) The imbalance settlement is a national settlement scheme, defined in the national terms and conditions pursuant to Articles 18(6)(f) and 18(6)(k) of the EB Regulation. The EB Regulation already harmonises some aspects of the imbalance settlement (such as the duration of the imbalance settlement period, which shall be 15 minutes pursuant to Article 53(1) of the EB Regulation) and also explicitly allows for non-harmonisation of some other aspects (such as the incentives to BRPs, where both being in balance and helping the system to restore its balance are acceptable, pursuant to Article 44(1)(c) of the EB Regulation). However, imbalance settlement has many other features and at least some of them should be further specified and harmonised pursuant to Article 52(2) of the EB Regulation.
- (85) The imbalance settlement comes at the end of all markets for electricity (taking place after real-time), thus it is being affected by all of them (in terms of volumes and prices), but it also affects them (in terms of incentives that are sent to BRPs and influence their behaviour in the markets). Hence, ACER understands that, with the numerous developments initiated in the last years and coming in the next ones in the balancing markets, there is a big uncertainty with respect to the impact of all these developments on how each TSO balances its system. The market-based exchanges of balancing energy is still new to many TSOs and the Europe-wide scope of the new platforms is even more challenging. Based on this uncertainty, ACER considers that this imbalance settlement methodology needs to be reviewed once the European platforms have been implemented.
- (86) The European report pursuant to Article 59(1) of the EB Regulation requires the assessment of the progress of harmonisation of the main features of imbalance

settlement, as well as the consequences and possible distortions due to non-harmonisation (Article 59(3)(i) of the EB Regulation). ACER considers that, based on this assessment, and in particular based on possible distortions due to non-harmonisation of elements included in this imbalance settlement methodology, the TSOs will be able to assess also the need for further specifying and harmonising these elements. Moreover, during the public consultation, as mentioned in Recital (20) above, the stakeholders highlighted the low level of ambition of the Proposal with respect to harmonisation, and on the issue of further harmonisation, the majority of the respondents supported the idea of an iterative process which would identify the need for further harmonisation. Following the discussion with TSOs, ACER acknowledges that an iterative process might be burdensome, especially since several changes are planned in the coming years for the balancing market, hence any intermediate conclusions may be misleading. However, ACER sees the benefit for such an assessment once the milestone of the implementation of the European platforms for the exchange of balancing energy has been reached. The TSOs in their submission during the hearing phase, as mentioned in Recital (23) above, expressed their objection to such an assessment on grounds of legality and clarity. ACER agrees that the assessment for the need for further harmonisation is always a possibility for both the regulatory authorities and the TSOs, and the outcome of it may be a proposal for an amendment, pursuant to Article 6(3) of the EB Regulation. However, ACER understands that, under the new conditions set by the operation of the European platforms for the exchange of balancing energy, which marks the target of an integrated balancing energy market, the current imbalance settlement methodology would have to be re-assessed, especially with respect to the fulfilment of the objectives of the EB Regulation, providing also a signal to the stakeholders that the target for the imbalance settlement harmonisation is still to be defined.

(87) Therefore, ACER added a new paragraph 3 in Article 9 of the Proposal, describing the process for such an assessment.

6.2.7. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.7.1. *Consultation and involvement of stakeholders*

(88) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

(89) As indicated in Recital (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the initial draft proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 16 July 2018 until 18 September 2018. In addition, all regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the Proposal were provided in a separate document dated 18 December 2018 and submitted to all regulatory authorities.

7. CONCLUSION

- (90) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (91) Therefore, ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The harmonisation of the main features of imbalance settlement in accordance with Article 52(2) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs

50Hertz - 50Hertz Transmission GmbH
Amprion - Amprion GmbH
APG - Austrian Power Grid AG
Augstsprieguma tükls - AS Augstsprieguma tükls
ČEPS - ČEPS a.s.
CREOS Luxembourg - Creos Luxembourg S.A.
EirGrid - EirGrid plc
Elering - Elering AS
ELES - ELES, d.o.o.
Elia - Elia Transmission Belgium SA/NV
Energinet - Energinet
ESO - Electroenergien Systemen Operator EAD
Fingrid - Fingrid Oyj
HOPS - Croatian Transmission System Operator Ltd
IPTO - Independent Power Transmission Operator S.A.
Kraftnät Åland - Kraftnät Åland Ab
LITGRID - Litgrid AB
MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
National Grid ESO
PSE - Polskie Sieci Elektroenergetyczne S.A.
REE - Red Eléctrica de España S.A.
REN - Rede Eléctrica Nacional, S.A.
RTE - Réseau de Transport d'Electricité, S.A

SEPS - Slovenská elektrizačná prenosová sústava, a.s.
SONI - System Operator for Northern Ireland Ltd;
Svenska Kraftnät - Affärsverket svenska kraftnät
TenneT GER - TenneT TSO GmbH
TenneT TSO - TenneT TSO B.V.
Terna - Terna Rete Elettrica Nazionale S.p.A.
Transelectrica - National Power Grid Company Transelectrica S.A.
TransnetBW - TransnetBW GmbH
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 15 July 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology for the harmonisation of the main features of imbalance settlement pursuant to Article 52(2) of the Electricity Balancing Regulation

Annex Ia (for information only) – Methodology for the harmonisation of the main features of imbalance settlement pursuant to Article 52(2) of the Electricity Balancing Regulation – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Methodology for the harmonisation of the main features of imbalance settlement

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

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.